



Office of the Attorney General
Washington, D. C. 20530

February 18, 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Re: Al Haramain Islamic Foundation, Inc. v. U.S. Dep't of Treasury (D. Ore).

Dear Madam Speaker:

Consistent with the purposes of 28 U.S.C. § 530D, I am writing to advise you that the Department of Justice has decided not to appeal the one portion of the district court's ruling in the above-referenced case that was adverse to the government. In that portion, the district court found unconstitutionally vague a limited portion of Executive Order 13224, 66 Fed. Reg. 49,079 (Sept. 23, 2001), which was issued by the President pursuant to the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1701 *et seq.* That Executive Order grants the Secretary of the Treasury authority to block "all property and interests in property" of persons who provide "material * * * support" for other persons determined by the President or the Secretary to be subject to that Executive Order because they have committed, or pose a significant risk of committing, acts of terrorism. See § I (d)(i). Shortly after the district court entered its final judgment in this case, the Department of the Treasury issued a regulation defining the term "financial, material, or technological support" as used in Executive Order 13224. See 31 C.F.R. § 594.317. Because this new regulation removes the basis of the district court's ruling, and because the new regulation, rather than the ruling, would be the starting point in any future litigation challenging the Executive Order, the Department believes that the regulation renders the adverse portion of the court's opinion of no prospective significance.

Executive Order 13224 declares a national emergency with respect to "grave acts of terrorism and threats of terrorism committed by foreign terrorists," including the September 11, 2001, terrorist attacks. Under the Order, the President blocked any transaction "to or for the benefit of" twenty-seven individuals and entities that he determined to be linked to international terrorism. See § 2(a); *id.* Annex (listing individuals and entities). He also delegated to the Secretary of the Treasury the power to designate any additional persons or entities that, in the Secretary's determination, "assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to this order or determined to be subject to this order." *Id.* § I (d)(i).

Plaintiffs in this case are the Al-Haramain Islamic Foundation, Inc. (AHIF-Oregon) and the Multicultural Association of Southern Oregon (MCASO). AHIF-Oregon is an Oregon-based entity determined by the Secretary to be subject to blocking under Executive Order 13224, and, accordingly, has been designated by the Secretary as a Specially Designated Global Terrorist

(SDGT). MCASO is a group that allegedly wishes to speak out against AHIF-Oregon's designation, write to newspapers and contact government representatives on behalf of AHIF-Oregon, and work with that group to teach about Islam. In this suit, AHIF-Oregon raised a number of procedural and substantive challenges to its designation as a SDGT by the Secretary. MCASO, which has not been designated, sought only a declaration that the President's designation authority under IEEPA and the Secretary's designation authority under Executive Order 13224 based on the furnishing of material support were unconstitutionally vague.

On November 6, 2008, the district court issued a partial ruling on the parties' motions for summary judgment. See *Al Haramain Islamic Found., Inc. v. U.S. Dep't of Treasury*, 585 F. Supp. 2d 1233 (D. Or. 2008). That decision upheld the Secretary's designation of AHIF-Oregon as a SDGT in light of substantial evidence in the administrative record showing that AHIF-Oregon was supporting other SDGTs through its relationship with the Saudi headquarters of AHIF, which has also been designated as a SDGT because it provided funds to Al Qaida and other SDGTs. *Id.* at 1241-1242, 1253. The court rejected some of AHIF-Oregon's other challenges to its designation, and requested further briefing on remaining matters.

The court did rule in favor of MCASO on one of its claims. While the court declined to find that MCASO had standing to challenge the President's designation authority under IEEPA, see *AHIF*, 585 F. Supp. 2d at 1265, it found that the group had standing to challenge the Secretary's designation authority under the Executive Order, notwithstanding the fact that MCASO had received "no specific threat of prosecution or designation by the Secretary of Treasury," *ibid.* Addressing the merits of the issue, the court concluded that the term "material * * * support" as used in Executive Order 13224 was unconstitutionally vague. *Id.* at 1268-1269. The court noted that the term was not defined in the Executive Order or its implementing regulations, *id.* at 1268, and concluded that a person of ordinary intelligence would be left guessing at the term's meaning and application, *id.* at 1269.

Following that initial decision, the parties submitted further briefing as requested by the court. On November 5, 2009, the court issued an opinion and judgment resolving all remaining questions in the case. See *Al-Haramain Islamic Foundation, Inc. v. U.S. Dep't of Treasury*, (Nov. 5, 2009), available at 2009 WL 3756363 ("Slip Op."). The court rejected the remainder of AHIF-Oregon's challenges to the Secretary's actions. It reiterated, however, the finding that the term "material * * * support" as used in the Executive Order was unconstitutionally vague. See Slip Op. at 33, 36.

Shortly after the court entered that final judgment, the Department of the Treasury, working in close consultation with the Department of Justice, issued a new regulation clarifying the term "financial, material, or technological support" as used in Executive Order 13224. Under that new regulation, 31 C.F.R. 594.317, that term means:

any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related material; chemical or biological agents; explosives; false documentation

or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. "Technologies" as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

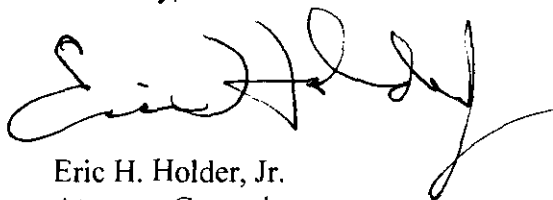
Ibid.

This new regulation, with its detailed specification of types of prohibited support, removes the basis of the district court's conclusion that the term "material * * * support" is unconstitutionally vague. See *AHIF*, 585 F. Supp. 2d at 1268 (noting that the term had not been defined in the Executive Order or by any implementing regulation). Moreover, in any future litigation contending that the material support provision of the Executive Order is unconstitutionally vague, the new regulation - rather than the district court's opinion - will be the starting point for a court's analysis. Finally, I note that the court's opinion awarded MCASO only a declaratory judgment; it awarded no injunctive, monetary, or other relief as a result of this ruling.

Plaintiffs have appealed the district court's decision insofar as it was adverse to them, and hence the Department of Justice will be defending the court's other rulings in the Ninth Circuit. The Department has concluded, however, that in light of the clarifying regulation issued by the Department of the Treasury, the appropriate course of action is not to pursue a government appeal from the district court's ruling, which was rendered without the benefit of that regulation. Rather, the Department will defend the Executive Order as clarified by 31 C.F.R. 594.317 should an allegation that the Order is unconstitutionally vague arise in another case. The Department of Treasury concurs in this approach.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric H. Holder, Jr.", with a stylized flourish at the end.

Eric H. Holder, Jr.
Attorney General