

Ninth Circuit Faults Way 'Terrorist' Label Was Affixed to Al-Haramain

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SAN FRANCISCO — The Ninth Circuit U.S. Court of Appeals on Friday ruled that the federal government violated the First and Fourth amendment rights of an Islamic charity in how it blocked its funds and designated it as a global terrorist organization.

But the unanimous three-judge panel rejected Al-Haramain's most "sweeping" argument — that the government wasn't entitled to use classified information in designating groups as terrorist organizations. And the court upheld the U.S. Office of Foreign Assets Control's determination that Al-Haramain is a terrorist organization.

Judge Susan Graber, writing for the panel in *Al-Haramain v. U.S. Dept. of the Treasury*, 10-35032, said after reviewing classified records, "we conclude confidently" that "substantial evidence" exists for the designation.

The Al-Haramain Islamic Foundation is the group at the heart of a major challenge to the Bush administration's post-9/11 warrantless wiretapping program. That matter also is on appeal at the Ninth Circuit, with briefing under way.

In reviewing whether the government was permitted to search and seize Al-Haramain's assets without a warrant, the court acknowledged the government's "extremely high" interest in preventing terrorism. But it said it "cannot accept" the argument that "blocking orders" — used to halt funding of terrorism — are "per se reasonable in all circumstances solely by the virtue of that vital mission." And it rejected the government's other theory — that a "special needs" exception applies — concluding that the government "has not given us any reason why it could not have obtained a warrant here."

And while the court upheld the terrorist designation, it said the government had violated the group's First Amendment right to due process by failing to provide "constitutionally adequate notice and a meaningful opportunity to respond" and by failing to produce nonclassified information.

"We find significant that there may be means of providing information to the potential designee that do not implicate national security," the opinion said. "For example, an unclassified summary, by definition, does not implicate national security because it is unclassified."

Those errors, however, were harmless and no judicial relief is available, the court said.

Lastly, the court sided with another plaintiff, the Multicultural Association of Southern Oregon, which is not a terrorist organization, on a First Amendment claim. The association planned to sponsor events and other "advocacy" activities — such as a joint press conference — with Al-Haramain, but was blocked by an executive order that banned anyone from aiding terrorist organizations. The court called that a content-based prohibition.

Senior Judge Dorothy Nelson and Judge Sidney Thomas also were on the panel.