

## No. 12-1118

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN RE PEOPLE'S MOJAHEDIN ORGANIZATION OF IRAN,  
*Petitioner.*

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On a Petition for a Writ of Mandamus To  
Enforce Court's Mandate

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**BRIEF OF AMICI CURIAE MICHAEL B. MUKASEY, THOMAS J. RIDGE,  
LOUIS FREEH, FRANCES TOWNSEND, R. JAMES WOOLSEY,  
ROBERT G. JOSEPH, RUDOLPH W. GIULIANI, JOHN R. BOLTON,  
JOHN SANO, GLENN L. CARLE, HUGH SHELTON, DAVID  
PHILLIPS, LEO MCCLOSKEY, WESLEY MARTIN,  
GARY MORSCH, JAMES CONWAY, DELL DAILEY, THOMAS G.  
MCINERNEY, PAUL E. VALLELY, DAVID A. DEPTULA AND  
JAMES A. LYONS, JR. IN SUPPORT OF THE PETITIONER**

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*Glossary of Abbreviations*

- AEDPA - Anti-Terrorism and Effective Death Penalty Act of 1996
- CIA - Central Intelligence Agency
- DOD - Department of Defense
- DOJ - Department of Justice
- FTO - Foreign Terrorist Organizations
- MEK - Mujahedine-e Khalq, also known as PMOI
- PMOI - People’s Mojahedin Organization of Iran

STATEMENT OF IDENTITY, INTEREST IN CASE, AND  
SOURCE OF AUTHORITY TO FILE

*Amici curiae* are senior former public officials and former U.S. military and intelligence officers who have devoted substantial portions of their careers to understanding terrorism, to fighting terrorism, and to protecting the national security of the United States.

Michael B. Mukasey served as Attorney General of the United States, the nation's chief law enforcement officer, from November 2007 to January 2009. As Attorney General, he advised on critical issues of domestic and international law. From 1988 to 2006, Mr. Mukasey served as a District Judge in the United States District Court for the Southern District of New York, becoming Chief Judge in 2000. Among the cases over which he presided were the terrorism trial of Omar Abdel Rahman (the "Blind Sheik") and nine other defendants. From 1972 to 1976, Mr. Mukasey served as an Assistant United States Attorney for the Southern District of New York.

Following the attacks of September 11, 2001, the Honorable Thomas J. Ridge became the first Assistant to the President for Homeland Security, and, on January 24, 2003, the first Secretary of the United States Department of Homeland Security, a position in which he served until February 1, 2005. During his almost four years of service in the White House, he received near daily listings of terrorist

threats against the United States. As he has said publicly, there was never even a single reference to the PMOI.

Mr. Ridge was Governor of Pennsylvania from 1995 to 2001. Before that, beginning in 1982, he was elected six times to the United States House of Representatives, one of the first Vietnam combat veterans to have been elected to the House.

Louis Freeh has had a distinguished role in law enforcement, which culminated in his 1993 appointment by President Clinton as Director of the FBI, a position in which he served until June 2001. At the time of his appointment as FBI head, Mr. Freeh sat on the federal bench, as United States District Court Judge for the Southern District of New York, having been appointed to that position by President George H. W. Bush. Before that, Mr. Freeh had served as an Assistant United States Attorney, and as a special agent of the FBI.

Frances Townsend was Homeland Security Advisor to President George W. Bush from 2004 to 2007. Ms. Townsend chaired the Homeland Security Council and reported to the President on United States homeland security policy and combating terrorism matters. She previously served as Deputy Assistant to the President and Deputy National Security Advisor for Combating Terrorism. Ms. Townsend went to the White House from the United States Coast Guard, where she

had served as Assistant Commandant for Intelligence. Prior to that, she spent 13 years at the United States Department of Justice in a variety of senior positions, her last assignment being Counsel for the Attorney General for Intelligence Policy.

R. James Woolsey was the Director of the Central Intelligence Agency (1993-94). Additionally, he served as General Counsel to the Senate Armed Services Committee (1970-73) and Under Secretary of the Navy (1977-79), on the National Commission on Terrorism (1999-2000), and on the President's Commissions on Strategic Forces (1983-94) and on Defense (1985-86).

Ambassador Robert G. Joseph served as the Under Secretary of State for Arms Control and International Security (2005–07), the principal State Department officer on matters that included arms control, regional security and defense relations. Before that, he served in the National Security Council as Special Assistant to the President and Senior Director for Proliferation Strategy, Counterproliferation and Homeland Defense (2001-04), responsible for developing and coordinating U.S. policies and strategies for preventing, deterring and defending against threats to the United States from weapons of mass destruction. He is a Senior Scholar at the National Institute for Public Policy.

Hon. Rudolph W. Giuliani served as Associate Attorney General under President Reagan (1981-83) and was thereafter appointed U. S. Attorney for the

Southern District of New York. He was the Mayor of New York City (1997-2001), leading New York through the aftermath of the September 11th terrorist attacks.

Ambassador John R. Bolton served as the U.S. Permanent Representative to the United Nations from August, 2005 to December, 2006, and had previously been the Under Secretary of State for Arms Control and International Security (2001-05) and Assistant Secretary for International Organization Affairs at the State Department (1989-93). He also held key positions with the U.S. Agency for International Development. Mr. Bolton is currently a Senior Fellow at the American Enterprise Institute, specializing in Foreign Policy and International Organizations.

John Sano spent 28 years in the Central Intelligence Agency. He was appointed the National Clandestine Service's first Deputy Director in November 2005, and he exposed the efforts of Iran's Ministry of Intelligence and Security to malign the MEK as a subversive and terrorist organization.

Glenn L. Carle, a top counterterrorism official during the administration of President George W. Bush, served 23 years in the Clandestine Services of the Central Intelligence Agency in overseas posts on four continents and in Washington, D.C. His last position was Deputy National Intelligence Officer for Transnational Threats, on the National Intelligence Council.



Other *amici* are former U.S. military officers who are in a position to share their unique knowledge of PMOI (also known as MEK), and its leaders and members and who wish to advise the Court why they have publicly called for de-listing.

General Hugh Shelton (ret) became the 14<sup>th</sup> Chairman of the Joint Chiefs of Staff on October 1, 1997, after a long and distinguished career in the armed forces. General Shelton served two two-year terms as Chairman, retiring on September 30, 2001. General Shelton was assistant division commander of the 101st Airborne Division as it invaded Iraq. For his exemplary service to his country, the 107<sup>th</sup> Congress bestowed the Congressional Gold Medal on General Shelton on September 19, 2002.

Brigadier General David Phillips (ret) served as the Director of Security for the Army Staff at the Pentagon at the time of the 9/11 attacks, and in 2002, he assumed duty as the Commander of the 89<sup>th</sup> Military Police Brigade which deployed to Iraq and, among other duties, had responsibility for the safety and security of the over 3,000 members of the MEK at Camp Ashraf. General Phillips was there when these individuals voluntarily disarmed in 2003, and when they consolidated at Camp Ashraf.

Lieutenant Colonel Leo McCloskey US Army (ret) was the last Commander of the Joint Interagency Task Force (JIATF) responsible for the protection of Camp Ashraf. Prior to his departure in 2009, he turned over protection of the residents to the Iraqi Government, under the condition that they would continue to be protected.

Colonel Wesley Martin (ret) served as the Antiterrorism/Force Protection Officer for all coalition forces in Iraq, and as J-3 (Operations Officer) for Task Force 134 (Detention Operations), and later as the first colonel to serve as the Base Commander of Camp Ashraf.

Colonel Gary Morsch, M.D., served with distinction in the military, enlisting at the age of 17 during the Vietnam War. He holds the rank of Colonel in the U.S. Army Reserve, and has deployed to Iraq, among other places. Living and working at Camp Ashraf, he served as Battalion Surgeon there.

General James Conway (ret) is the former Commanding General of the First Marine Expeditionary Force in Iraq and the 34<sup>th</sup> Commandant of the Marine Corps.

Three-star General Dell Dailey retired in April 2007 after serving more than 36 years in the Army, where his career included leading Special Operations forces into both Afghanistan and later, Iraq. In 2003 he was assigned as the director for the new Center for Special Operations, the military's counterterrorism hub. In June 2007, Ambassador at Large Dailey became the head of the State Department's

Counterterrorism Office, serving as its Coordinator until mid-2009. In this capacity he coordinated with both domestic agencies and over forty countries regarding terrorist organizations, their activities and terrorists.

Lieutenant General Thomas G. McInerney, USAF (ret) retired in July 1994 after an illustrious 35-year military career that included serving as a Commander in the Philippines, Japan, England and of the Alaskan Air Command, as well as Vice Commander in Chief, Headquarters U.S. Air Forces in Europe. He is a heavily-decorated command pilot, and was inducted into the Order of the Sword in 1980 in recognition of his significant contributions.

Major General Paul E. Valley, US Army (ret) was the Deputy Commanding General, Pacific Command, when he retired in 1993 after serving in the U.S. Army for over 30 years. He is the Chairman Emeritus of the Military Committee at the Center for Security Policy in Washington, D.C.

David A. Deptula, Lt. Gen., USAF (ret) was the first Air Force Deputy Chief of Staff for intelligence, surveillance, and reconnaissance. A highly decorated military leader, he transitioned from the Air Force in 2010 after more than 34 years of distinguished service. He is a pioneer in planning and executing national security operations from humanitarian relief to major combat operations. General Deptula has twice been a Joint Task Force Commander and orchestrated air

operations over Iraq in 1998/1999. In 2001, he planned and executed the removal of the Taliban regime, and eliminated the Al Queda terrorist training camps from Afghanistan.

Admiral James A. "Ace" Lyons, Jr. (ret), was an Officer of the U.S. Navy for 36 years, most recently as Commander in Chief of the U.S. Pacific Fleet. As the Deputy Chief of Naval Operations (1983-85), he was principal advisor on all Joint Chiefs of Staff matters and was the father of the Navy Red Cell, an anti-terrorism group comprised of Navy Seals he established in response to the Marine Barracks bombing in Beirut.

By virtue of the positions they held, most of the *amici* had access to classified information regarding terrorism and terrorist groups. None of the *amici* has seen any evidence of terrorism by PMOI. On the contrary, PMOI members' commitment to freedom, human rights and peaceful democratic change in Iran, coupled with the open behavior and conduct of its members in Ashraf, are in sharp contrast to the behavior of a terrorist group.

After careful study of the situation, all of the *amici* believe that the continued designation of PMOI is not only unjustifiable under the statutory standards, but is also harmful to the interests of the United States and to the security of this nation. Among other things, it places in harm's way individuals whom this nation promised

to protect, and serves as an excuse for those persons' enemies to visit harm upon them.

*Amici* believe they can assist this Court in understanding the seriousness of the situation and in reaching a just decision, and they feel a strong moral obligation to try to do so. Petitioner PMOI and the Respondent Secretary of State have, through counsel, consented to the filing of this brief.

STATEMENT PURSUANT TO FRAP 29(c)(5)

No party's counsel authored the brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. Money that was intended to fund preparation or submission of the brief was contributed by Ross Amin and Mostafa Nemovi, California businessmen, and Javad Mirabdal, a San Francisco transportation engineer. All are U.S. citizens and members of the American-Iranian community.

## SUMMARY OF ARGUMENT

The *amici* are individuals who, by virtue of their former longstanding service as senior public officials, are in a position to know, and who do know, that there is no evidence that PMOI has the capability or intent to engage in terrorism or terrorist activities. They believe that PMOI is not a terrorist organization, and that it should be removed from the FTO list. Further, *amici* believe that what they know, the Department of State, the Department of Defense, the Department of Justice, and the Central Intelligence Agency know, too.

Thus, there is no reason related to legitimate national security concerns for the delay that has characterized the State Department's handling of this matter. The de-listing decision to be made is not a difficult one. Indeed, *amici* submit that the State Department's foot-dragging and failure to timely comply with this Court's mandate is itself powerful evidence that the continued designation of PMOI as a foreign terrorist organization cannot be justified.

*Amici* ask this Court to act swiftly; lives are at stake. The presence of PMOI on the list of terrorist organizations itself places thousands of people at Camp Ashraf in jeopardy and interferes with the ability to move them to safety. At this point, an order directing the Secretary of State to act is not enough. This Court should itself order de-listing or direct the Secretary to show cause why de-listing is unwarranted.

## ARGUMENT

PMOI IS NOT A TERRORIST ORGANIZATION; IT SHOULD BE DE-LISTED IMMEDIATELY FOR ITS CONTINUED LISTING HARMS U.S. INTERESTS AND PLACES MANY INNOCENT LIVES IN IMMINENT DANGER

1. PMOI is not a terrorist organization. It has neither the intent nor ability to engage in terrorism or terrorist activity.

It is clear to the *amici* that PMOI has neither the intent nor the capability to engage in terrorism or terrorist activity. Many of the *amici* have firsthand knowledge of PMOI, having served in Iraq or participated in investigations of the group. Because of their unique experiences and access on account of the positions in which they served, together with their long-standing interest and involvement in these matters, all of the *amici* have a sophisticated understanding of PMOI. Since 2001, not a single open source terrorism data base has recorded an incident of violence by PMOI at all, let alone one directed at the United States or its allies.

A review of the facts – including classified information some of the *amici* have seen in connection with their official duties – makes it clear to them that there is not a shred of evidence that, given the statutory standards, warrants the present designation of PMOI as a foreign terrorist organization. On the contrary, it is manifest that the defenseless Iranian dissidents at Camp Ashraf are committed to non-violent regime change and a democratic, nuclear-free Iran.

*Amicus* Brigadier General David Phillips was there when every person of the MEK was biometrically identified, vetted, screened, and individually interviewed. Each one was thoroughly investigated and not one was found to have had any linkage to criminal acts or to have violated U.S. law. In General Phillips' words, he "had to step back and wonder as a commander, why are they identified as terrorists?"

#### General Phillips

tried, ... tried very hard to find some credible allegation, some overt or covert crime, criminal acts, anything as to why this group was [so] labeled .... I could not. My soldiers asked me, 'Sir, they support democracy, freedom, and especially equal rights for women'; I did not have an answer for my soldiers.

*Amicus* General James Conway also has unique knowledge to share. In 2004, he took his force back to Iraq, and into the province of Anbar in the west of that country. At that time, there was a small satellite camp inhabited by PMOI or persons who eventually went to Ashraf. General Conway's intelligence officer reported that there was a terrorist camp in the middle of the sector under his command. When they investigated, it was found that nothing could have been further from the truth.

General Phillips witnessed firsthand equal rights in action at Camp Ashraf, spending a significant amount of time living and working there. He knew almost



every senior leader of the PMOI at Camp Ashraf, and a significant number of their junior members. After the completion of the vetting process, he conveyed the message that they were now classified as non-combatant “protected persons” under the Fourth Geneva Convention. He was personally charged with their safety and security. General Phillips has said:

Were there issues between my units, my forces, and the MEK at Ashraf? Of course. But they were few and far between, and they were all resolved by simple discussions, and understanding between each other.

Though no longer directly responsible for safety and security at Camp Ashraf, General Phillips still feels morally responsible, and he fears that another tragedy may occur.

*Amicus* Colonel Wesley Martin told the U.S. Congress in July 2011 that:

The PMOI surrendered to the United States military without firing a shot, turned over all their weapons, accepted consolidation at Camp Ashraf, renounced terrorism, accepted protected person status under the 4th Geneva Convention, provided the free world with critical intelligence to include Iran’s development of a nuclear weapons program, and fulfilled every limitation and requirement placed on them.

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The terror and torment that is being cast upon the PMOI and Camp Ashraf needs to stop. I know from experience, the PMOI is not a terrorist organization. My recommendations in this effort is for the People’s

Mojahedin to be immediately removed from the State Department terrorist list. Concurrent with this is the creation of a secure environment for the PMOI until they can be removed completely from Iraq – to some place other than Iran.<sup>1</sup>

Likewise *Amicus* General Hugh Shelton has publicly criticized our country's continued listing of the PMOI as a terrorist group though it meets none of the criteria and long ago renounced violence. General Shelton has pointed out that the group was the first to reveal Iran's 20-year clandestine nuclear program and provided invaluable intelligence to the United States military in Iraq, helping to identify and neutralize Iran's proxy terrorist groups operating in that country and undoubtedly saving American lives in the process.

*Amicus* Colonel Gary Morsch, who was Battalion Surgeon at Camp Ashraf, has said, in reference to his service there:

Due to the nature of my responsibilities, I worked closely with all levels of the MEK, from the newest and youngest members of Ashraf, to the highest leadership of the MEK; even including MEK members who had moved to the TIPF [Temporary International Presence Facility] after leaving the ranks of the MEK. I had full access to all areas of Camp Ashraf, and could interact freely with all MEK members. I also worked closely with the command structure of the 530th MP Battalion, as well as their higher

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<sup>1</sup> Colonel Martin appeared as a witness in a hearing of the Subcommittee on Oversight and Investigations of the House Foreign Affairs Committee on July 7, 2011, "Massacre at Camp Ashraf: Implications for U.S. Policy?" available at <http://foreignaffairs.house.gov/112/mar070711.pdf>

command, the 89th MP Brigade, and its commander, COL David Phillips, now BG Phillips. During the interview and interrogation phase of the investigation, I worked closely with the various members of the investigating agencies that were onsite.

Based on the information I personally received or observed from the members of the MEK, the information I received from those who had surrendered to the TIPF, what I learned from discussions with the leadership of the 530th MP Battalion and the 89th MP Brigade, and, finally, based on the information I received from the various investigators, there were no findings of any terrorist activities, disloyalty to the mission of the US military in Iraq, illegal activities, coercion of MEK members, hidden arms, or any evidence that the MEK were not fulfilling their agreement with the US Military to fully cooperate with and support the goals of the US in Iraq.

Colonel Morsch “directly observed many instances where the MEK were very helpful to the U.S., providing intelligence, cooperation, and support to the U.S. mission in Iraq, which resulted in protecting the lives of me and the soldiers I served with. In point of fact, the MEK at Camp Ashraf played an important role in the success of our mission.”<sup>2</sup>

It was *Amicus* Lieutenant Colonel Leo McCloskey who turned over the protection of Ashraf residents to the government of Iraq on the condition that they

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<sup>2</sup> Colonel Morsch appeared as a witness in a hearing of the Subcommittee on Oversight and Investigations of the House Foreign Affairs Committee on July 7, 2011, titled “Massacre at Camp Ashraf: Implications for U.S. Policy” available at <http://foreignaffairs.house.gov/112/mor070711.pdf>

would be protected. He has said,

since that time I have been appalled at the way the Iraqi Police and Army has systematically killed and injured the people in the city of Ashraf. I know these people well having lived with them for nearly 15 months.

*Amicus* John Sano, who was the first Deputy Director of the CIA's National Clandestine Service, has spoken of Iran's efforts to malign the MEK as a subversive terrorist organization:

This is in direct contravention of the reports here in the United States and internationally that have provided the true story ... and the reality of the MEK as a peace-loving, pro-democratic, nonviolent organization seeking only to promote a system with freedom of speech, assembly, and political parties ....

I looked at the earlier intelligence that the State Department had, once it was unclassified, that had established some very nefarious links to terrorism. I looked at that intelligence. I could find nothing, based on my nearly 30 years of experience in the field of intelligence, that linked anyone from the MEK to any acts of terrorism. On the contrary, in recent years it has been the MEK that has helped the U.S. intelligence community in better understanding the growing threat of Iran's nuclear program.<sup>3</sup>

The *amici curiae* are not alone in recognizing that PMOI should be delisted.

Reliable sources indicate that many others have called for delisting, including

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<sup>3</sup> [http://www.isdciran.org/index.php?option=com\\_content&view=article&id=1534%3Adirector-john-sano--solution-needed-for-camp-ashraf-before-arab-spring-can-succeeds&catid=10%3Aconferences&Itemid=25&lang=](http://www.isdciran.org/index.php?option=com_content&view=article&id=1534%3Adirector-john-sano--solution-needed-for-camp-ashraf-before-arab-spring-can-succeeds&catid=10%3Aconferences&Itemid=25&lang=)

former Director of Central Intelligence Porter Goss; former Obama Administration National Security Advisor General James Jones; two other former chairmen of the Joint Chiefs of Staff, Generals Richard Myers and Peter Pace; former Supreme Allied Commander Europe of NATO, General Wesley K. Clark; former Deputy Commander of United States European Command, General Chuck F. Wald; former State Department Policy Planning Director Ambassador Mitchell Reiss; former Governors Bill Richardson, Howard Dean and Ed Rendell; former House Speaker Dennis Hastert; former Senators Spencer Abraham, Evan Bayh, Bill Bradley, and Robert Torricelli; former Secretary of the Army, Togo West; and former Executive Director of the 9/11 Commission and Counselor of the Department of State, Philip Zelikow.

In the U.S. House of Representatives, chairman of the Select Committee on Intelligence, Mike Rogers (R-MI), along with 97 other bi-partisan members have co-sponsored H. Res. 60, “Urging the Secretary of State to remove the People's Mojahedin Organization of Iran from the Department of State's list of Foreign Terrorist Organizations.” Others who have called for delisting the MEK and protection of Camp Ashraf include Nobel Peace Prize laureate Elie Wiesel.

Thus, a wide array of knowledgeable persons have recognized that there is no justification for PMOI's continued presence on the FTO list.

2. The Department of State – as well as the Departments of Defense and Justice and the CIA – knows that PMOI is not a terrorist organization.

The *amici* respectfully submit that the Department of State, as well as the DOD, the DOJ, and the CIA, know what the *amici* know: given the statutory standards for designating an FTO, there is no legitimate basis to retain PMOI on the list.

As *amicus curiae* Frances Townsend has pointed out, the second Bush administration did not delist PMOI for reasons that had nothing to do with its being a terrorist organization.

After 2003 we were in a very difficult fight in Iraq. We were losing our men and women in uniform and I can assure you, being in the administration, that that was a very painful reality. If there was anything you could do to save one American life or one soldier you would have done it. It led perhaps to a bad judgment, because of course, if in the midst of that fight in Iraq we had delisted the MEK, there was fear that it could have provoked a reaction from Iran.

This is not a close case, nor – on the merits – a difficult decision. Indeed, we submit that the State Department's foot-dragging, even in the face of this Court's unambiguous mandate, has occurred precisely because there is no justification for retaining PMOI on the Foreign Terrorist Organizations list.

3. In light of the carefully crafted provisions for judicial review that are an essential part of the statutory framework and the possibility of another humanitarian disaster, immediate de-listing is necessary and appropriate.

Although some of the most serious consequences of PMOI's continuation on the list of FTOs are visited upon persons living on foreign soil in a region where foreign policy concerns run high, the matter before the Court raises questions ultimately committed to the judiciary for resolution under standards familiar to the Court.<sup>4</sup> The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") allows independent judicial review of the Secretary's decision as to whether a foreign group designated based on past acts currently engages in terrorism or terrorist activity or retains the capability and intent to do so. AEDPA's drafting history establishes that Congress rejected proposals to insulate FTO designations from court scrutiny, providing instead for increasingly robust judicial review.<sup>5</sup> The

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<sup>4</sup> The Department of State has not suggested, and could not reasonably contend, that the case raises political questions outside judicial competence or committed to one of the other branches of government. See generally *Baker v. Carr*, 369 U.S. 186, 210-13 (1962).

<sup>5</sup> As AEDPA progressed from bill to law, Congress took steps to ensure designated FTOs would obtain meaningful judicial review, rejecting President Clinton's initial proposal to insulate FTO designations from any judicial scrutiny. (Omnibus Counterterrorism Act of 1995, S. 390, 104<sup>th</sup> Cong., § 301(a)(1995)(original proposal authorizing President to designate a group as a terrorist organization and providing that a presidential finding that a group engages in terrorism "shall be conclusive.")). Instead, Congress included provisions for robust judicial review in successive

Secretary's unexplained failure to act cannot be permitted to frustrate this Congressionally-mandated review.

Where, as here, a designated organization files a petition for revocation within the time periods set forth in the statute and supplies evidence that relevant circumstances have changed, the Secretary *shall* make a determination *no later than* 180 days after receiving such petition. 8 U.S.C. § 1189(a)(4)(B)(iv)(I)(emphasis added). The Secretary *shall* revoke a designation upon a finding that the circumstances that were the basis for the designation have changed in such a manner

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versions of what would become AEDPA. *See* Comprehensive Terrorism Prevention Act of 1995, S. 735, 104<sup>th</sup> Cong., § 401(a)(1995)(authorizing President to designate FTOs but including a new subsection entitled “Judicial Review”); 141 Cong. Rec. S7480 (daily ed. May 25, 1995)(statement of Sen. Hatch highlighting the new judicial review requirement as a significant change to the administration bill); see also H.R. 1710 (initial House bill authorizing President to designate FTOs, without any mention of judicial review); H.R. 1710 RH (version reported by House Judiciary Committee entrusting Secretary of State with designating FTOs and providing review before the D.C. Circuit); Comprehensive Antiterrorism Act of 1995, H.R. 2703 (version introduced by Rep. Hyde, with judicial review). The conference bill, signed into law, echoed the APA's grounds for setting aside agency action, but without a rigorous substantial evidence standard. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 302, 110 Stat. 1214, 1248-50 (1996).

Congress remedied its shortcomings a year later, adding two additional bases for invalidating FTO designations. Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009 (1997). Courts were to set aside FTO designations found to be “lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court” or “not in accord with the procedures required by law.” *Id.*, § 356, 110 Stat. at 3644.



as to warrant revocation *or* the national security of the United States warrants a revocation. 8 U.S.C. § 1189(b)(A)(i),(ii) (emphasis added).

The judiciary's obligations under the act are no less mandatory. Congress has directed that the Court *shall hold unlawful and set aside* a determination in response to a petition for revocation if any one of a list of circumstances exists. *See* 8 U.S.C. § 1189(c)(3).

The Secretary's failure to timely discharge her statutory obligations cannot be permitted to frustrate the judicial review Congress consciously and carefully crafted.<sup>6</sup> Judicial review is a cornerstone of the legislation that provides for the designation of foreign terrorist organizations, which designation triggers the application of other federal laws that apply to those organizations, their members, their funds, and those who would support them.

In *all* cases, when the Secretary of State designates an entity as a foreign terrorist organization, "the consequences of that designation are dire." *National*

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<sup>6</sup> *Compare* other laws relating to national security that leave decisions largely or entirely with the Executive. *See, e.g.*, 8 U.S.C. § 1226(e) (precluding review of Attorney General's decision to arrest and detain aliens pending removal); 8 U.S.C. § 1187(c)(2)(C), (c)(6) (precluding review of determination whether a country's participation in Visa Waiver Program would compromise national security); 31 U.S.C. § 5318A(f)(requiring *ex parte* and *in camera* review of classified information used in designating foreign entity as a "primary money laundering concern," but providing that such requirement "does not confer or imply any right to judicial review of any finding made or any requirement imposed under this section").

*Council of Resistance of Iran v. U.S. Dep't. of State*, 251 F.3d 192, 196 (D.C. Cir. 2001)(“*NCRI I*”). The designation blocks any funds which the organization has on deposit with a financial institution in the United States; representatives and certain members of the organization are barred from entry in the United States; and, all persons within or subject to jurisdiction of the United States are forbidden from knowingly providing material support or resources to the organization. *Id.*

In this case, however, the consequences are of a different order of magnitude, and give rise to an emergency requiring swift action. In 2004, the United States guaranteed, in writing, to every one of the residents of Camp Ashraf that if they relinquished their only means of defense, then the United States would protect them. Based on this promise, they surrendered their instruments of self-defense. But tragically, on two occasions, one in 2009 and one just last year, the residents of Ashraf were brutally attacked while defenseless. In last year’s attack, carried out by Iraqi soldiers using United States weapons and vehicles, the Iraqis killed 36 residents, including eight women. Over 300 people were injured. One of the reasons given by the Iraqis for that attack is the United States’ designation.

The residents of Ashraf are at risk again. As *amicus* Michael B. Mukasey has stated:

The cure for this is to remove the MEK from the list of foreign terrorist organizations, and that cure is not difficult

to administer. The legal case is there. They don't fulfill the requirements of the statute. They have not been a danger to anybody for well over the last 10 or 20 years. They have renounced violence. They want only the creation of a democratic nuclear free Iran in which rights are respected, and when they are removed from that list the worst of times really will be transformed into the best of times; but it won't happen until that designation has changed.

It is essential that PMOI be de-listed so that it cannot be used by Iraq as an excuse for slaughtering innocent human beings. And time is of the essence, given Iraq's stated intention to close Camp Ashraf and relocate its inhabitants, and the troubling indications that Iraq is rapidly falling apart. As Porter Goss, former Director of the Central Intelligence Agency, said in Paris on January 20, 2012, "This is about real people in real trouble in real places." These real people remain at mortal risk in Iraq, and in danger of being deported to Iran, where they would face almost certain execution. Perversely, the continuation of PMOI on the United States' terrorist organization list will interfere with efforts to resettle Camp Ashraf's residents in other countries, notwithstanding their status as protected persons or their designation as refugees.

Accordingly, the *amici* upon whose behalf this brief is filed adopt all of the arguments advanced by PMOI in support of mandamus. The *amici* also request that the Court order the immediate removal of PMOI from the List of Foreign Terrorist

Organizations. This Court undoubtedly has the power to grant such relief, and, under the circumstances, the exercise of that power is warranted. A writ of mandamus compelling the Department of State to adjudicate the petition for removal from the FTO list within a set period of time would be inadequate under the circumstances, and it underestimates this Court's authority.

Over a decade ago, this Court "recognize[d] that a strict and immediate application of the principles of law [set forth in that decision] could be taken to require a revocation of the designations before us." *NCRI I*, 251 F.3d at 209. This Court repeated this precise admonition nine years later when, in its July 16, 2010 decision, it remanded the matter to the Secretary with clear directions as to what had to be done. *People's Mojahedin Org. of Iran v. U.S. Dep't of State*, 613 F.3d 220, 230 (D.C. Cir. 2010).

Given the Court's unambiguous mandate and the State Department's unexplained failure to comply, this Court should direct the Secretary of State to de-list PMOI, or, at a minimum, show cause in this Court why it should not be de-listed, and the evidence upon which she relies for that position.

Grave circumstances require timely and decisive action. Any less would devalue the rule of law, encourage the mistreatment or murder of thousands of human beings, and operate to preserve an obstacle to the protection and rescue of

persons in clear and present danger.

### CONCLUSION

For the reasons set forth above, *Amici* respectfully submit that the Petition for a Writ of Mandamus should be granted. An order should be entered directing the Secretary of State to immediately de-list PMOI, or show cause on a date certain why de-listing is not warranted.

Respectfully submitted,

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Dated: February 29 , 2012

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(c) of the Federal Rules of Appellate Procedure, I hereby certify that:

1. This brief complies with the type-volume limitation of Rule 32(a)(7)(b) because this brief contains 5,717 words, excluding the parts of the brief exempted by Rule 32(a)(7)(b)(iii), as counted by Microsoft Word 2010, the word processing software used to prepare this brief.

2. This brief complies with the typeface requirements of Rule 32(a)(5) and the type size requirements of Rule 32(a)(6) because this brief has been prepared in 14pt. Times New Roman, a proportionally spaced roman typeface, using Microsoft Word 2010, the word processing software used to prepare this brief.

Dated: February 29, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system:

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