

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

**In re PEOPLE'S MOJAHEDIN)
ORGANIZATION OF IRAN, Petitioner.) No. 12-1118**

**OPPOSITION TO PETITION FOR A WRIT OF MANDAMUS
TO ENFORCE THIS COURT'S MANDATE**

Petitioner People's Mojahedin Organization of Iran ("the PMOI") filed a petition for a writ of mandamus, asking this Court either to order the United States Secretary of State to revoke her designation of the PMOI as a Foreign Terrorist Organization ("FTO"), or to act within 30 days on the PMOI's request to the Secretary to revoke this designation.

For the reasons described more fully below, the writ should be denied because the decision by the Secretary of State concerning whether or not to revoke the terrorism organization designation in this instance involves:

(1) statutorily required consultation with the Secretary of the Treasury and the Attorney General;

(2) close analysis of highly classified information;

(3) expert judgments about the continuing capabilities and intentions of a currently designated foreign terrorist organization;

(4) extremely sensitive national security judgments; and

(5) difficult decisions concerning the best way to avoid possible serious human rights violations.

Moreover, the official to whom the PMOI wants this Court to order a writ of mandamus is the Secretary of State, the central Officer of the United States responsible for this nation's foreign relations. On an unremitting basis, the Secretary of State must direct her full attention to emergencies of the highest magnitude, involving the United States and its allies throughout the globe. Besides requiring constant attention by the Secretary personally, as well as by her staff and many officials throughout the Department of State, these matters demand frequent travel around the world to deal on the spot with rapidly changing events. Any interference by a court with the Secretary's ability to carry out these absolutely critical duties would set a seriously troubling precedent. Indeed, while the courts should be most hesitant in general to issue mandamus orders against Cabinet officers, such an order against the Secretary of State raises perhaps the most serious concerns, given her unique international responsibilities.

Under these highly unusual circumstances, this Court should decline to displace the authority of the Secretary of State by ordering revocation of the terrorist designation of the PMOI. The Court should also decline to direct the Secretary to

make a decision within a short period, thereby interfering with her ability to deal with the evolving situation involving the PMOI cadres still in Iraq.

STATEMENT

1. As this Court described in its ruling in *People's Mojahedin Organization of Iran v. U.S. Department of State*, 613 F.3d 220 (D.C. Cir. 2010), the PMOI has been designated by the Secretary of State as a Foreign Terrorist Organization ("FTO") since 1997. This Court has upheld this designation on several occasions because the PMOI engaged for years in terrorist activities in Iran launched from bases in Iraq, including assassinations of high-level Iranian officials and attacks in Iran with heavy weaponry.¹

The Secretary of State designated the PMOI pursuant to her authority under the Anti-Terrorism and Effective Death Penalty Act of 1996. See 8 U.S.C. §1189(a)(1). This statute provides that the Secretary may designate an entity as an FTO if it is foreign, engages in terrorism or terrorist activity, and threatens the security of the United States or its nationals. See *People's Mojahedin*, 613 F.3d at 223 (citing 8

¹ See *National Council of Resistance of Iran v. Department of State*, 373 F.3d 152 (D.C. Cir. 2004); *People's Mojahedin Organization of Iran v. Department of State*, 327 F.3d 1238 (D.C. Cir. 2003); *National Council of Resistance of Iran v. Department of State*, 251 F.3d 192 (D.C. Cir. 2001); *People's Mojahedin Organization of Iran v. U.S. Department of State*, 182 F.3d 17 (D.C. Cir. 1999), *cert. denied*, 529 U.S. 1104 (2000).

U.S.C. § 1189(a)(1)). The term “national security” includes “the national defense, foreign relations, or economic interests of the United States.” 8 U.S.C. § 1189(d)(2). In making a designation decision, the Secretary may rely on classified information not available to the FTO, and she may share that classified information with this Court *ex parte/in camera*, if a petition for review is filed. See 8 U.S.C. § 1189(a)(4)(B)(vi)(II).

An FTO designation results in a freeze of the organization’s assets and immigration restrictions on its members, and prohibits provision of material support or resources to the FTO. See 18 U.S.C. § 2339B. Entities designated as FTOs may challenge their designations directly in this Court exclusively (see 8 U.S.C. § 1189(c)(1)), and the PMOI has done so unsuccessfully on several occasions. See *People’s Mojahedin*, 613 F.3d at 222.

This Court has previously upheld the Secretary’s FTO designations of the PMOI because of that entity’s admitted serious and deadly terrorist attacks carried out in Iran. In upholding these FTO designations, this Court held that the Secretary’s determinations regarding threats to national security caused by the activities of organizations such as the PMOI are *not* subject to judicial review. See *People’s Mojahedin Organization of Iran v. U.S. Department of State*, 182 F.3d 17, 23 (D.C. Cir. 1999), *cert. denied*, 529 U.S. 1104 (2000).

FTOs may petition the Secretary to revoke their designations, and she has 180 days to rule on a revocation petition. See 8 U.S.C. § 1189(a)(4)(B)(vi)(I). In such a proceeding, the FTO must provide evidence that the current situation is “sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the organization is warranted.” *People’s Mojahedin*, 613 F.3d at 225 (quoting 8 U.S.C. § 1189(a)(4)(B)(iii)). In addition, even in the absence of a revocation petition mechanism, the Secretary shall revoke a designation if she finds that “the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation,” or “the national security of the United States warrants a revocation.” See 8 U.S.C. § 1189(a)(6)(A). Significantly for the case at bar, the Secretary may continue an FTO designation in place if the organization engages in terrorism or terrorist activities, or “retains the capability and intent to engage in terrorist activity or terrorism * * *.” 8 U.S.C. 1189(a)(1)(B).

In sum, under the governing statutory scheme, the Secretary may designate foreign organizations as FTOs if she finds that they meet the statutory criteria, but she is not required to make such a designation. And she shall revoke such a designation if she finds that the circumstances leading to it are no longer present, or national security warrants revocation. Further, an FTO may itself petition for revocation and must then provide evidence demonstrating to the Secretary that the relevant

circumstances warranting designation no longer exist. If that revocation petition is denied, the FTO may seek review directly in this Court.

2. The PMOI filed a revocation petition with the Secretary in 2008. The PMOI contended that its relevant circumstances had changed and that it had ceased its terrorist campaign launched from Iraq against the governing regime in Iran. The PMOI asserted that its combat forces in Iraq had surrendered their substantial weaponry to U.S. forces in Iraq, and that its force of several thousand people in Iraq gathered in Camp Ashraf were disarmed and had been cooperating with U.S. troops there. In addition, the PMOI claimed that the organization's leadership in Europe had renounced violence as part of its effort to overturn the current regime in Iran. See *People's Mojahedin*, 613 F.3d at 225.

In response to the PMOI petition, the State Department assembled an administrative record, including material submitted by counsel for the PMOI; that record included classified information gathered from the U.S. Intelligence Community, and not shared with the PMOI. On the basis of that record, in early 2009, Secretary of State Rice denied the PMOI's revocation petition, finding that the entity had not shown a sufficient change in the relevant circumstances, and that the PMOI continued to engage in terrorism or terrorist activity, or retained the capability and intent to do so. See *id.* at 225-26. At that time, Secretary Rice stated that, in light

of the evidence submitted by the PMOI and “the uncertainty surrounding the [PMOI] presence in Iraq, the continued designation of the [PMOI] should be re-examined” in the next two years even if the organization did not file a petition for revocation. *Id.* at 226.

3. The PMOI sought review of Secretary Rice’s decision in this Court, which ruled in July 2010, that the State Department had not provided the PMOI, even as a foreign organization designated as terrorist, with sufficient process in the administrative proceedings. *People’s Mojahedin*, 613 F.3d at 227-30. In addition, the Court determined that Secretary Rice had not fully explained her analysis of the record evidence, given that some intelligence reports indicated that the reliability of certain information had not been established; Secretary Rice had not adequately described which evidence she credited and found relevant. *Id.* at 230.

This Court remanded the matter to the State Department for further proceedings; in doing so, the Court rejected the PMOI’s request that the FTO designation be vacated, leaving that designation in place. *Id.* at 230-31. The Court required that the PMOI be given further opportunity to respond to the relevant unclassified material, and that the Secretary explain which sources in the record she finds credible and relies upon, and how the evidence relates to any determinations she makes with regard to the governing statutory criteria; two judges on the panel also

questioned the validity of reliance by the Secretary on classified information. *Ibid.* In leaving the designation in place during the remand, the Court explained that it had “recognize[d] the realities of the foreign policy and national security concerns asserted by the Secretary in support of th[e] designation.” *Id.* at 230 (quoting *National Council of Resistance of Iran v. Department of State*, 251 F.3d 192, 209 (D.C. Cir. 2001)).

4. Since the remand order from this Court, the State Department has been carrying out the process directed by the Court. It has consulted with the U.S. Intelligence Community, and engaged in the difficult process of determining whether classified material may now be declassified and disclosed publicly; it has given the PMOI new opportunities to respond to the unclassified evidence, and that entity has submitted a substantial amount of material; it has gathered fresh relevant classified information; it has met with representatives of the PMOI, which made a lengthy in-person presentation; it has consulted with the Department of the Treasury and the Department of Justice; and it has engaged in extensive internal deliberations.

In addition, Secretary Clinton recently testified in Congress before the House Foreign Affairs Committee, and was asked about her consideration of the PMOI revocation petition. See “Assessing U.S. Foreign Policy Priorities Amidst Economic Challenges: The Foreign Relations Budget for Fiscal Year 2013,” Hearing before the

House of Representative Committee on Foreign Affairs (Feb. 29, 2012) (webcast of hearing available at http://foreignaffairs.house.gov/hearing_notice.asp?id=1407).

The Secretary explained that the State Department was “continu[ing] to work on our review of the [PMOI’s] designation as a foreign terrorist organization in accordance with the D.C. Circuit’s decision and applicable law.”²

Secretary Clinton made clear, however, that “first, we are deeply concerned about the security and safety of the residents of Camp Ashraf [where most of the PMOI personnel are still located in Iraq]. And we have supported the work of the United Nations to find a path forward to relocate the residents and that has now begun.” *Ibid.* The Secretary described that several hundred of the Camp Ashraf residents had already transferred to a different facility in Iraq (Camp Hurriya), which is serving as a United Nations-monitored temporary transit facility as part of efforts by the United Nations High Commissioner for Refugees (“UNHCR”) to assist the relocation of residents out of Iraq. *Ibid.*³ (Since the Secretary’s public testimony, the

² The House Foreign Affairs Committee has not yet made available a transcript of Secretary’s Clinton’s testimony. The State Department has, however, prepared an unofficial transcript of the short, relevant portion of Secretary’s Clinton’s testimony regarding the PMOI, and we have attached a copy as an Addendum to this opposition to the mandamus petition. We ask the Court’s indulgence in using this unofficial transcript given the Committee’s delay in producing one on its own.

³ The Secretary noted that some of the residents of Camp Ashraf are possibly not PMOI members, and that each individual’s situation would have to be examined as

State Department reports that approximately 800 additional Camp Ashraf residents have voluntarily transferred to the temporary transit facility at Camp Hurriya for UNHCR processing.)

Secretary Clinton made clear that she was principally focusing on trying to “resolve a complex situation, avoid bloodshed and violence, and have the people from Camp Ashraf move to Camp Hurriya and have them processed as soon as the United Nations can process them [for relocation out of Iraq].” *Ibid.* She explained that, “given the ongoing efforts to relocate the residents, [PMOI] cooperation in the successful and peaceful closure of Camp Ashraf, the [PMOI’s] main paramilitary base, will be a key factor in any decision regarding the [PMOI’s] FTO status.” *Ibid.*

REASONS FOR DENYING A WRIT OF MANDAMUS

Issuance of a writ of mandamus to the Secretary of State is plainly inappropriate in the circumstances of this case, which already involves an unusual type of judicial review. See generally *People’s Mojahedin*, 182 F.3d at 19-25 (remarking on the odd and limited nature of judicial review involving FTO designations). The PMOI urges this Court to revoke the entity’s FTO designation because the Secretary of State is assertedly not acting quickly enough on remand from this Court. Such relief would – despite the PMOI’s long history of terrorism –

resettlement efforts proceed. *Ibid.*

remove an important barrier to the PMOI's ability to operate freely in the United States, and is clearly unwarranted here. Moreover, an order directing the Secretary to act by a particular date is also inappropriate given the highly complex and delicate overall nature of the matter pending before her.

1. The Supreme Court "repeatedly has observed that the writ of mandamus is an extraordinary remedy, to be reserved for extraordinary situations. * * * [The Court has] held that the party seeking mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988) (internal quotation marks omitted) (quoting *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 384 (1953), and *United States v. Duell*, 172 U.S. 576, 582 (1899)).

This Court too has recognized the extremely high standards that govern requests for a writ of mandamus: "Although we plainly have jurisdiction over such requests, '[m]andamus is an extraordinary remedy [and] we require similarly extraordinary circumstances to be present before we will interfere with an ongoing agency process.'" *In re United Mine Workers of America International Union*, 190 F.3d 545, 549 (D.C. Cir. 1999) (alterations in original) (quoting *Community Nutrition Inst. v. Young*, 773 F.2d 1356, 1361 (D.C. Cir. 1985)).

In that case, this Court made clear that even a finding that the agency had violated a statutory deadline by some eight years “does not end the analysis. * * * Equitable relief, particularly mandamus, does not necessarily follow a finding of a [statutory] violation * * * .” *Id.* at 551 (alteration in original) (quoting *In re Barr Labs., Inc.*, 930 F.3d 72, 74 (D.C. Cir. 1991)). And this Court noted that “[i]t is sometimes the case with mandamus petitions that the agency’s priorities are of little concern to the petitioner, whose goal is simply to force its matter to the front of the line.” *Id.* at 553. Accordingly, the Court has been hesitant to require an agency to move forward with one administrative matter “if such a command would seriously disrupt other rulemakings of higher or competing priority.” *Public Citizen Health Research Grp. v. Auchter*, 702 F.2d 1150, 1158 (D.C. Cir. 1983).

Although this Court has found it appropriate in some egregious circumstances to issue a writ of mandamus to enforce the Court’s judgment on remand, we have found no case (nor has the PMOI pointed to any) like this one. Thus, in *In re Core Communications, Inc.*, 531 F.3d 849, 857 (D.C. Cir. 2008), this Court found a writ warranted when the FCC had been for seven years enforcing interim rules that were to last only three years, and the agency had not yet acted six years after the Court had held for the second time that the FCC’s legal justification was invalid. In that case, the Court emphasized that the most important factor in considering a claim of

unreasonable agency delay is a “rule of reason.” *Id.* at 855 (citing *Telecommunications Research & Action Center v. FCC* (“*TRAC*”), 750 F.2d 70, 80 (D.C. Cir. 1984)). And, among other factors, the Court will consider “the effect of expediting delayed action on agency activities of a higher or competing priority.” *Core Communications*, 531 F.3d at 855 (quoting *TRAC*, 750 F.2d at 80).

Even in the special circumstances of *Core Communications*, this Court refused to vacate the agency’s existing rules at that time. Rather, the Court gave the agency six months (from the date of oral argument) to provide a legal justification for its rule. 531 F.3d at 861-62.

2. Under these standards, the writ of mandamus sought here should be denied. Secretary Clinton is assiduously carrying out the remand from this Court, which requires the State Department to analyze highly classified and complicated information, and make an extremely challenging, expert predictive judgment about whether the PMOI retains the capability and intent to continue to engage in terrorism, as it has done to deadly effect on many occasions in the past.

In addition, the Secretary must make an extremely delicate decision – assuming that she believes the evidence adequately shows that the PMOI continues to engage in terrorism or terrorist activity – about the impact on the national security of the United States of the actions of the PMOI, including its capabilities and intentions.

And she must do this in consultation with the Attorney General and the Secretary of the Treasury, against the backdrop of this nation's dealings with both Iraq and Iran.

Moreover, as described above, the Secretary must make a decision in this matter while carrying out duties of the most paramount importance, addressing nearly constant emergencies arising out of, for example, the revolution in Libya, the escalating violence in Syria, the withdrawal or drawing down of combat troops in Iraq and Afghanistan, events in Pakistan over the past year, constant saber rattling by North Korea, and relationships in Europe affected by substantial debt crises.

In such circumstances, a determination by this Court that the Secretary of State is not acting quickly enough on a single matter involving a relatively small group of foreign individuals – whose organization has historically engaged in terrorism and who are now seeking resettlement while still endeavoring to overturn the current regime in Iran – would obviously be inappropriate.

3. Moreover, as Secretary Clinton explained to Congress, the State Department is focused immediately on the humanitarian imperative of supporting a peaceful resolution to the impasse between the PMOI located at Camp Ashraf and the Iraqi government, which has ordered that camp closed and the residents to depart Iraq. The State Department is working with the Iraqi government at high levels on this issue, and with the United Nations, which is directly supporting the Iraqi government in

transferring the inhabitants of Camp Ashraf to Camp Hurriya as part of efforts to safely relocate them out of Iraq. Not surprisingly, the State Department has given priority in this overall matter to this transfer activity, as it involves an effort to protect the physical safety of individuals who are or were resident at the PMOI camp in Iraq (at Camp Ashraf), and may have a significant bearing on the Secretary's decision regarding the organization's FTO status.

The Secretary is closely observing this transfer because the PMOI's actions in connection with it will likely provide further key information about the actual future intentions of the organization. If the process succeeds through cooperation between the PMOI, the Iraqi government, and the United Nations, this success might bear on the credibility of PMOI's claims that it has indeed abandoned its terrorist tactics. A crucial process is thus currently ongoing that could provide information of the highest relevance to the Secretary's predictive judgments about the PMOI.

Furthermore, the governing statute authorizes the Secretary to revoke an existing designation even if the statutory criteria continue to be met, if the Secretary believes that revocation is in the national interests of the United States.

Accordingly, the Secretary is acting quite reasonably in wishing to take into account the PMOI's actions with regard to the transfer from Camp Ashraf in order to determine if an FTO designation revocation is warranted. Action by this Court to

revoke the designation anyway or to impose a short deadline on the Secretary would seriously interfere with the State Department's ongoing efforts to seek a peaceful resolution to the situation at Camp Ashraf.

4. The PMOI nevertheless argues (Pet. 20-23) that, by not acting more quickly on remand from this Court, the Secretary has violated the statutory provision setting a 180-day time period for acting on a revocation petition. 8 U.S.C. § 1189(a)(4)(B)(vi)(I). But nothing in the language of the statute makes this period apply to the Secretary's response to a remand order by this Court, finding that further proceedings are necessary. In any event, as this Court's *United Mine Workers* decision makes plain, even a clear violation of a statutory time limit does not mean that a writ of mandamus is warranted; other factors can, as was true there, compel the conclusion that issuance of the writ is wholly inappropriate in this case. See 190 F.3d at 553-56.

CONCLUSION

For the foregoing reasons, the PMOI's petition for a writ of mandamus should be denied.

Respectfully submitted,

 /s/ Matthew Collette
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March 26, 2012

ADDENDUM

Unofficial State Department transcript of testimony by Secretary of State Clinton before the House of Representatives Committee on Foreign Affairs, in February 29, 2012:

In response to a question from Representative Rohrabacher:

Secretary Clinton:

“Well first, we are deeply concerned about the security and safety of the residents of Camp Ashraf. And we have supported the work of the United Nations to find a path forward to relocate the residents and that has now begun. We fully support the MOU signed in December between the United Nations and the Government of Iraq. And it includes commitments from the Iraqi government for the safety and security of the new camp where the relocation is taking place.

As you know, there were 397 residents relocated on February 18. There were complications but it was peaceful, there was no violence. The safety so far has been protected and we are watching that very closely.

We continue to work on our review of the [PMOI]’s designation as a foreign terrorist organization in accordance with the DC Circuit’s decision and applicable law. And I would note that not every resident relocated to what used to be Camp Liberty (is now Camp Hurriya) may be [a PMOI] member. The organization’s structure and history dictate that we take a serious look at each individual, not prejudge membership or the conditions of that person’s presence at Ashraf.

And once again, the UNHCR process will be expedited. * * *. And we’re going to continue to work to ensure the safety and security, and we think that we have a good plan.”

And I would say, Congressman, that given the ongoing efforts to relocate the residents, [PMOI] cooperation in the successful and peaceful closure of Camp Ashraf, the [PMOI]’s main paramilitary base, will be a key factor in any decision regarding the [PMOI]’s FTO status.

In response to a question from Representative Poe:

Secretary Clinton:

“Well, Congressman, I appreciate your deep concern. I share it because we are trying to work to resolve a complex situation, avoid bloodshed and violence, and have the people from Camp Ashraf move to Camp Hurriya and have them processed as soon as the United Nations can process them. There were a lot of – I would have preferred having them processed at Camp Ashraf. That turned out to be impractical for a lot of reasons. And therefore the move now should open an accelerated process for these interviews to be held and decisions made.

And we’re working around the clock. We’re seeing improvements in the infrastructure. We have to close Camp Ashraf in order to move this process forward. And it is – will be a key factor in any decision regarding the Foreign Terrorist Organization status.”

CERTIFICATE OF SERVICE

I hereby certify that I have on this 26th day of March 2012, filed with the Court, and served on all counsel, the foregoing Opposition to Petition for a Writ of Mandamus to Enforce this Court's Mandate through the Court's ECF system.

/s/ Matthew Collette
Matthew Collette
Attorney