Questions for the Record for
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Committee on the Judiciary

"Countering Terrorist Financing: Progress and Priorities"
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SENATOR JON KYL

Questions for all witnesses

1. **There are several USG departments, agencies, and offices with equities in terrorist and proliferation financing. How do you balance the need to designate and sanction entities or pursue criminal investigations against the intelligence value of additional information that the USG could potentially gather by allowing an entity to continue operating?**

Response:

The decision whether to pursue designation, administrative sanctions and/or criminal prosecution, or alternatively to continue intelligence collection, is made on a case-by-case basis. We consider a variety of factors, such as the relative value of the intelligence to be gained, the relative strength of the criminal case, the threat to individuals and national security from acting or not acting against a particular target, and more. Further, investigations do not always require pursuing just one avenue; some investigations may be intended initially to gather intelligence and eventually evolve into a criminal prosecution or have criminal cases spun-off. The U.S. Government has a robust interagency process for ensuring that each agency's equities are addressed and that designation and sanction efforts do not impinge upon operational equities. Disputes of this nature between agencies are extremely infrequent given the multiple opportunities for any such potential problem to be thoroughly discussed before any action is taken.

2. **How do you handle a situation where Treasury believes an entity should be sanctioned for illicit activities, and the FBI believes those sanctions will impede a criminal investigation?**

Response:

The situation described in this question is quite rare. In the event that agencies cannot agree at the working level on a course of action, the issue may be raised for further discussion by senior agency officials. The National Security Council (NSC) process is also available to assist in resolving any interagency disputes.

3. **What about the role of the State Department?**

Response:

The State Department is an important stakeholder in the interagency process. For example, the Antiterrorism and Effective Death Penalty Act of 1996 and Executive Orders 12947 and 13224 each prescribe procedures whereby the Secretary of State may make terrorism-related designations, whether of foreign terrorist organizations, specially designated terrorists, or specially designated global terrorists.

For those designations on which the Department of State is the lead agency, the Department of State is required to consult with the Department of Justice and with the Department of the Treasury on the record in making a designation. Attorneys from the Departments of Justice and Treasury closely review the records compiled by the Department of State for purposes of such designations to ensure that they adequately support the factual findings required by the applicable authority. The process includes an opportunity for the Department of Justice to raise any operational concerns and to ensure that the designation would not impede or interfere with an ongoing or planned investigation.

4. **Do you face a situation where the State Department argues the imposition of sanctions or the initiation of a criminal investigation will undermine diplomacy?**

Response:

As noted in our response to question one, the decision as to what approach to take in dealing with a particular terrorist financing target or concern is made on a case-by-case basis, taking into account all relevant factors. The issue of whether diplomatic methods may be the best way to advance our national security interests is among the factors that are considered. The interagency works hard to determine the best means to address terrorist financing threats while balancing multiple equities.

5. What mechanism is in place to adjudicate any disputes that arise?

Response:

As previously stated, a robust interagency process exists to balance equities and to develop consensus as to the most appropriate U.S. Government approach. As part of this process, U.S. Government agencies and departments engaged in countering terrorist financing coordinate and de-conflict their activities to ensure that in addressing each case, the U.S. Government uses the tool, or combination of tools, that will best protect national security.

The NSC and the National Security Staff are responsible for facilitating interagency coordination and resolution of any interagency disputes on all national security matters, including our efforts to counter terrorist financing. Within the NSC structure are specific working groups which develop policy, share information and coordinate responses to terrorist and other threats against U.S. interests. Should a dispute arise that cannot be resolved at that level, it would be elevated to more senior NSC groups, up to and including the Deputies and Principals Committees.

6. Would any of you care to comment on the material support statutes, and what role they have played in denying funds and resources to international terrorist organizations?

Response:

18 U.S.C. §§ 2339A and 2339B, which criminalize providing material support or resources to terrorists and designated Foreign Terrorist Organizations (FTOs), are among the most important tools in the U.S. Government's toolbox in the fight against terrorism. Time and again, prosecutors have used these statutes to disrupt efforts to funnel money and other support to terrorist organizations or activities. In the last decade, the Department of Justice has prosecuted individuals on material support charges in more than 100 cases.

7. Do you agree that it is important to deny all funds to a terrorist organization, regardless of whether a donation purports to be only for the organization's "charitable activities"?

Response:

Yes. Terrorist financing frequently involves funds that, prior to being remitted, are unconnected to any illegal activity. We recognize that terrorist organizations and individual terrorists exploit the charitable efforts of others to divert to terrorist purposes funds meant for the poor, needy and disenfranchised. Accordingly, we have increased our efforts to identify and eliminate terrorist financing disguised as charitable giving.

Our current laws and policies recognize that money is fungible, and that the provision of funds to a terrorist organization, regardless of the donor's intention as to how such funds are to be used, frees up other resources at the disposal of such organizations and further enables their terrorist activities. See *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2725 (2010). Therefore such "charitable donations" are, and should continue to be, prohibited.