



POLICY BRIEF

Designating the Muslim Brotherhood as a Foreign Terrorist Organization

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Founded in 1988, the Muslim Public Affairs Council is a national public policy and understanding advocacy organization that improves public understanding and policies that impact American Muslims by engaging our government, media, and communities. Our vision is that America is enriched by the vital contributions of American Muslims.

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CONTACT

Ryan Ahari, Policy Analyst

ryan@mpac.org

(202) 547-7701

Executive Summary

H.R. 377/S. 68, or the “Muslim Brotherhood Designation Act of 2017,” directs the U.S. State Department to determine whether the Muslim Brotherhood (MB) is a Foreign Terrorist Organization (FTO) pursuant to Section 219 of the Immigration and Nationality Act (8 U.S.C. 1189). In addition, reports indicate that President Trump intends to direct the State Department to designate the MB as an FTO through an executive order.¹

The authors of previous editions of this bill have asserted that MB branches have “leveraged the financial resources and institutions of the United States to build their capabilities.”² For example, H.R. 377/S. 68 have been introduced by Representative Mario Diaz-Balart and Senator Ted Cruz, who were also sponsors of the Muslim Brotherhood Designation Act of 2015. Many Senators, including Orrin Hatch and Jim Inhofe, are frequent co-sponsors of these bills.

The intentions of this bill, therefore, remain the same: to disenfranchise American Muslims. The bill's sponsors claim that the MB is funded and domestically and internationally by American-based organizations.³ Past MB designation bills have identified several American Muslim organizations with perceived ties to the MB.⁴ These conclusions are not based on evidence, and the attempt to implicate American Muslim advocacy organizations, academics, and researchers as MB collaborators raises a number of profound civil liberties concerns, including free speech, equal protection, and due process. The bill is being used as a tool to delegitimize American Muslims individuals and institutions by paralyzing their political and civic engagement efforts.

Thus, this brief is neither an attack nor a defense of the MB. Whether the MB fits or does not fit the criteria of an FTO is irrelevant to this policy brief. The purpose of the brief is to provide an analysis of how H.R. 377/S. 68 or an Executive Order would detrimentally impact American Muslims' civil liberties.

¹ Barker, Peter. “White House Weighs Terrorist Designation for Muslim Brotherhood.” The New York Times. February 7, 2017. <http://nyti.ms/2k0um3x>.

² Muslim Brotherhood Designation Act, H.R. 3892, 114th Cong. (2015).

³ Ibid.

⁴ Ibid.



I. Context and Importance of Problem

A. The Muslim Brotherhood Is Not a Single Organization

The MB is a loosely affiliated and decentralized network of organizations, with over 1,500 branches in nearly 70 countries. Their commitment to violence or nonviolence is largely unclear.⁵ While some experts perceive the MB to be nonviolent,⁶ others believe that some branches may financially support terrorism. Most branches have connections to the founding group in Egypt, but these connections vary and are not uniform.

MB members in various countries run for political office, are a part of professional unions, create social welfare programs, and are active on university campuses.⁷ In Egypt, the MB won the presidency in what observers called “free and fair elections.”⁸⁹ Some government officials in U.S.-allied countries like Morocco, Turkey, Jordan, Iraq, and Kuwait are members of the MB.¹⁰

B. Influence from Anti-Muslim Bigots and Islamophobes

Former National Security Advisor Michael Flynn advocates for the addition of the MB to the list of FTOs. He argues that the MB is operating in the U.S. and that Huma Abedin, former deputy chief of staff and close personal aide to Secretary of State Hillary Clinton, is a member of the MB.¹¹ Similarly, political opponents of tax-reform advocate Grover Norquist have tried to discredit him by suggesting he is a “mole” of the MB.¹²

According to the Center for Security Policy, founded by anti-Muslim extremist¹³ Frank Gaffney, the MB has infiltrated America as “the enemy within” through a “stealthy and pre-violent form of warfare aimed at destroying our constitutional form of democratic government and free

⁵ Crane, Mary. “Does the Muslim Brotherhood Have Ties to Terrorism?” April 05, 2005. <http://on.cfr.org/2I5EHfn>.

⁶ “The bulk of the group is peaceful.” - Kenneth Katzman, senior Middle East Analyst for the Congressional Research Service. <http://on.cfr.org/2I5EHfn>.

⁷ Crane, Mary. “Does the Muslim Brotherhood Have Ties to Terrorism?” April 05, 2005. <http://on.cfr.org/2I5EHfn>.

⁸ Greener, Richard. ““Free and Fair Elections” -- Why Are We Lecturing Egypt?” The Huffington Post. February 9, 2011. <http://huff.to/2loEx7d>.

⁹ They later lost the Presidency in Egypt to coup d'état in 2013.

¹⁰ Trofimov, Yaroslav. “Blacklisting Muslim Brotherhood Carries Risks.” The Wall Street Journal. January 26, 2017. <http://on.wsj.com/2kahIW>.

¹¹ Reuters. “Trump Administration Debates Designating Muslim Brotherhood a Terrorist Group.” Newsweek. January 31, 2017. <http://bit.ly/2kpuywz>.

¹² Woodruff, Betsy. “Glenn Beck Thinks Grover Norquist Is a Muslim Brotherhood Mole. Now, the NRA Is Investigating.” Slate. March 16, 2015.

¹³ “Center for Security Policy.” Southern Poverty Law Center. <http://bit.ly/2atHufL>; “Frank Gaffney Jr.” Southern Poverty Law Center. <http://bit.ly/1RChXjy>.



society.”¹⁴ Despite the lack of MB ideological uniformity and evidence, sponsors of the legislation have asserted that some American organizations support the MB abroad. These accusations are largely based on the conspiracy theories of Gaffney and his followers. Previously considered to be on the political fringe, Gaffney and his followers who peddle mistrust and fear of American Muslims are now in positions of influence.

C. Civil Rights and Civil Liberties Implications

Designating the MB as an FTO poses several risks that will negatively impact American civil liberties because the designation process has few procedural protections.

1. FTO Designation – AEDPA and IEEPA

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) gives the Secretary of State broad power to designate any entity a “foreign terrorist organization.” Along with the Attorney General and Treasury Secretary, the Secretary of State makes the designation based on an administrative record that often includes information classified under national security laws.¹⁵ The designation allows the U.S. government to block FTO funds that are in the control of U.S. financial institutions; to bar members of FTOs from entry into the U.S.; and to prohibit any U.S. financial institution, organization, or individual from providing any material support, services, or resources to an FTO under penalty of law.

Groups allegedly linked to an FTO have little information about the allegations against them, as they are prohibited from seeing any classified evidence supporting the Secretary of State’s determination. A person charged criminally for providing material support to an FTO may not challenge the propriety of the designation.

Another way to designate an FTO or Specially Designated Global Terrorists (SDGT) is through the International Emergency Economic Powers Act (IEEPA)¹⁶, which allows the president to establish economic sanctions against “any unusual and extraordinary threat.” If designated, the Treasury’s Office of Foreign Asset Controls (OFAC) can freeze assets pending an investigation of individuals or organizations allegedly linked to SDGTs. IEEPA does not require the Secretaries of State or Treasury to provide the individuals or organizations notice of SDGT designation, or any public evidence supporting designation, but the designation will obligate American financial institutions to block the funds of designated FTOs and their agents.

¹⁴ “The Muslim Brotherhood in America.” Center for Security Policy. May 29, 2014. <http://bit.ly/1CTPijy>.

¹⁵ German, Michael and Faiza Patel. “What Does it Mean to Designate the Muslim Brotherhood a Foreign Terrorist Organization?” January 26, 2017. Brennan Center for Justice. <http://www.brennancenter.org/blog/what-does-it-mean-designate-muslim-brotherhood-foreign-terrorist-organization>

¹⁶ 50 U.S.C. 35 §1701. <https://www.treasury.gov/resource-center/sanctions/Documents/ieepa.pdf>



OFAC regulations allow it to designate an entity as an SDGT and freeze its assets if there is reasonable suspicion (a very low threshold) that an individual or organization provided “financial, material, or technological support for, or financial services to,” or is “otherwise associated” with an SDGT. Judicial review of SDGT designations is limited by the Administrative Procedures Act (APA).¹⁷ To overturn a designation, a court must find that the Secretary acted in an arbitrary or capricious manner or abused his discretion.

2. Chilling American Muslim Civic and Political Participation

The broad discretion authorities have to designate FTOs and SDGTs, the lack of notice to affected parties, and the limits of judicial review in this area of law create risks that innocent individuals and organizations may be unfairly linked to FTOs, SDGTs, or both. An improper designation can have a compounding effect, as individuals or organizations allegedly associated with a wrongly designated FTO or SDGT may have its assets frozen pursuant to the IEEPA or may be criminally prosecuted under “material support” statutes.

The use of an FTO designation to chill and criminalize speech by mere implication is illustrated in a landmark First Amendment Supreme Court case, *Holder v. Humanitarian Law Project*.¹⁸ At issue in *Humanitarian Law Project* was whether the government could make it a crime to engage in speech advocating only lawful, peaceful activity, when done in support of an FTO. The Supreme Court held that it could. Since then lower courts have convicted individuals based on their speech when an FTO is implicated.¹⁹

Supporters of the bill have used the label of “Muslim Brotherhood” as a shorthand to silence American Muslim organizations with which they disagree. Whether or not an organization actually is linked to the MB, the mere implication could have serious repercussions, both legal and reputational. Those who provide services to the American Muslim community are in danger of delegitimization.²⁰ The bill will disenfranchise American Muslim organizations that provide valuable social and civic engagement programs and discourage American Muslims from engaging in the civic, social and political processes. The bill questions the loyalty of American Muslims who are dedicated to the betterment of their communities and America.

D. Negative Consequences for Academics & U.S. Interests Abroad

For academics and scholars, the designation confers further risks: those who research topics on the MB can be investigated and potentially prosecuted for providing “material support.” Statutes

¹⁷ 5 U.S.C. Subchapter II, <https://www.archives.gov/federal-register/laws/administrative-procedure>

¹⁸ 561 U.S. 1 (2010), 130 S.Ct. 2705.

¹⁹ Feldman, Noah. “Speech Isn’t Free When Terrorism Is Involved.” Bloomberg View. November 14, 2013. <http://origin-www.bloombergvew.com/articles/2013-11-14/speech-isn-t-free-when-terrorists-are-involved>

²⁰ Hauslohner, Abigail. “How an Obscure U.S. Policy Effort Could Hurt American Muslims.” The Washington Post. January 11, 2017. <http://wapo.st/2k4oxCV>.



regarding material support for terrorism have recently been expanded to include research and policy recommendations.²¹

Regarding U.S. interests abroad, previous administrations have made a point of engaging with MB members who have been elected to office, such as former Egyptian President Morsi. Turkish President Erdogan, with whom the U.S. has a strong relationship, is also a supporter of the MB and has allowed the MB to be active in Turkey. Because the group maintains millions of supporters and members abroad, designating them as an FTO can complicate U.S. interests abroad. Secretary of State Tillerson has incorrectly conflated the MB with al-Qaeda.²²

E. These Tactics Have Been Tried and Failed Before

These tactics have been employed in the past, specifically targeting other faith-based organizations and advocacy groups. In the early 1900s, the Roman Catholic Church was perceived to be a serious threat to American democracy. Some Americans believed that Catholics were the “primary source” of America’s turmoil, and that Catholic leaders like President John F. Kennedy were conspiring with the papacy.²³ Attempts like these — defamation tactics based on unsubstantiated charges — are reminiscent of the 1950s McCarthy era.

Over the course of American history, belief systems, religious practices and ethnicities that differed from the mainstream have been considered a threat or simply undesirable.²⁴ According to journalist Nicholas Kristof, this mentality led to the internment of Japanese Americans and the refusal to admit Jewish refugees who escaped the Holocaust.²⁵

Members of Congress who seek to disenfranchise American Muslims have made multiple attempts to pass similar legislation in prior years. This is the fifth attempt orchestrated by anti-Muslim groups²⁶ to designate the MB as an FTO.²⁷ The bill continues to be used to broad-brush the American Muslim community and cast it under a net of suspicion.

²¹ March, Andrew. “Designating the Muslim Brotherhood a ‘Terrorist Organization’ Puts Academic Researchers at Risk.” The Washington Post. January 25, 2017. <http://wapo.st/2jGGwmP>.

²² Hauslohner, Abigail. “How an obscure U.S. policy effort could hurt American Muslims.” The Washington Post. January 11, 2017. https://www.washingtonpost.com/national/how-an-obscure-policy-effort-could-hurt-american-muslims/2017/01/11/8ce93184-d76e-11e6-b8b2-cb5164beba6b_story.html?utm_term=.f3d33d1486a0.

²³ Kristof, Nicholas. “America’s History of Fear.” The New York Times. January 03, 2016. <http://nyti.ms/2loOrUO>.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Groups who support designating MB as an FTO have been cited as anti-Muslim extremists by the Southern Poverty Law Center. “Field Guide to Anti-Muslim Extremists.” <https://www.splcenter.org/20161025/journalists-manual-field-guide-anti-muslim-extremists>

²⁷ Mathias, Christopher. “Ted Cruz vs. The Muslim Brotherhood Boogeyman.” The Huffington Post. January 13, 2017. <http://huff.to/2jgEV6f>.



II. Current Policy

Both House and Senate versions of the bill direct the State Department to determine if the MB meets the criteria of an FTO. The State Department must report to Congress if it concludes that the MB does not fulfill the FTO requirements.

Authors of previously introduced MB designation bills contend that other nations have designated the MB as an FTO and that the U.S. has designated some MB members as Specially Designated Terrorists. They assert that the MB has ties to every “Islamist” terrorist organization in the world, associating Iranian intelligence with Hamas and Osama bin Laden, and claim that this type of ideology is spreading across nations, including the U.S. They also claim that the MB is financed by American-based organizations, specifically those that are politically active within the American democratic system.²⁸

The alternative to the legislation passing is that President Trump signs an executive order designating the MB as an FTO -- effectively bypassing Congress’ legislative authority.²⁹ An executive order would infringe on the constitutional guarantees for American Muslims, specifically the Due Process Clause, Equal Protection Clause, and First Amendment freedoms.

III. Policy Recommendations

As described above, the Muslim Brotherhood Designation Act or similar Executive Order could be used nefariously to intimidate and marginalize American Muslims. These policy decisions carry a number of civil liberties implications. As such, we have outlined the following policy recommendations for members of Congress.

1. Members of Congress could introduce legislation to rescind and defund the ability of the Departments of State, Homeland Security, and Treasury to enforce an executive order designating the MB as an FTO or SDGT.
2. Members of Congress could introduce amendments to existing national security legislation: to direct the appropriate departments and agencies to implement rules to increase civil liberties safeguards like:
 - a. increasing criminal investigatory standards from reasonable suspicion to probable;
 - b. providing notice to parties under investigation; and
 - c. expanding judicial review of designation decisions.

²⁸ Muslim Brotherhood Designation Act, H.R. 3892, 114th Cong. (2014).

²⁹ Wittes, Benjamin. “Should the Muslim Brotherhood be Designated a Terrorist Organization?” Lawfare. January 27, 2017. <http://bit.ly/2kpPUIH>.





Appendix A: Actions for Members of Congress

1. Introduce amendments to current legislation to protect the rights of the American Muslim individuals and organizations that would be negatively affected by the Muslim Brotherhood Designation Act or similar Executive Order. (See Appendix B, Section 1.)
2. Introduce legislation to rescind or defund the Muslim Brotherhood Designation Act or similar Executive Order. (See Appendix B, Section 2, 3.)
3. Collaborate with other Members of Congress to publicly oppose and prevent the Muslim Brotherhood Designation Act or similar Executive Order from being passed.
4. Oppose publicly the Muslim Brotherhood Designation Act or similar Executive Order and make a statement and express your concerns on the floor. (See Appendix C, Section 1, 2.)
5. Inform your constituents that the Muslim Brotherhood Designation Act or similar Executive Order will harm American interests and ask them to be vocal in their opposition.
6. Issue a press release and attract media attention to publicly oppose the bill or EO.



Appendix B: Proposed Congressional Legislation

1. Recommended language for amendments to legislation

SAMPLE AMENDMENT 1

A BILL

To amend the Muslim Brotherhood Designation Act, the Anti-terrorism and Effective Death Penalty Act (AEDPA), and International Emergency Economic Powers Act (IEEPA) to direct the Departments of State, Treasury, Justice, and Homeland Security, and any other relevant departments and agencies to issue rules necessary to ensure civil liberties.

SECTION 1. ISSUE RULES

1. Increase criminal investigatory standards from reasonable suspicion to probable;
2. Provide notice to parties under investigation; and
3. Expand judicial review of designation decisions.

SAMPLE AMENDMENT 2

A BILL

To amend the Muslim Brotherhood Designation Act to provide that an individual or a civic organization may not be criminalized or surveilled because of their ethnic or religious affiliations. The Muslim Brotherhood Designation must uphold constitutional guarantees.

SECTION 1. DEFINITION OF MATERIAL SUPPORT

The “material support” statutes may not be used to target academics and individuals.
[Define “material support” as actions that directly aid terrorist activities.]

None of the funds made available in this bill may be used to close down American Muslim organizations.

SECTION 2. DHS FUNDING

None of the funds made available to the Department of Homeland Security or any other Federal agency may be used for the surveillance of groups or individuals on the basis of their ethnic or religious affiliations.



SAMPLE AMENDMENT 3

A BILL

To amend the Homeland Security Act of 2002 to establish guidelines and rules of conduct for investigating individuals or organizations.

SECTION 1. DEPARTMENT OF HOMELAND SECURITY

Amend SEC. 101 of the Act to ensure the DHS may not use racial, religious, or ethnic origin as an indicator of criminal activity.

2. Recommended language for legislation to rescind designation

A BILL

To nullify the effect of the recent executive order to designate the Muslim Brotherhood as a Foreign Terrorist Organization (FTO).

SECTION 1. RESCISSION

The provisions of Executive Order ____, entitled ____, are rescinded and shall not have any legal effect. The executive order is unconstitutional and encroaches upon the rights guaranteed under the First, Fourth, and Fourteenth Amendments.

3. Recommended language for legislation to defund designation

A BILL

To restrict funding for the Administration's executive order designating the Muslim Brotherhood as an FTO.

SECTION 3. SHORT TITLE

Act may be cited as the "Defund Executive Order on Muslim Brotherhood Designation."

SECTION 2. DHS FUNDING

The bill blocks funding for the Department of Homeland Security to carry out any action outlined in the executive order that targets any person or organization on the basis of religious association.



Appendix C: Recommended floor statements

1. Statement re: EO Designating MB as FTO

President Trump's latest executive action is a direct attack on the constitutional rights of American Muslims. It infringes upon the freedoms guaranteed by our Constitution. It is inherently un-American. We call for a repeal of the executive order on Muslim Brotherhood Designation.

The executive order bypasses constitutional guarantees of freedom of religion and peaceful assembly, due process, and equal protection. The designation will paralyze American Muslim civic engagement and dissuade them from participating in American political society.

Through the use of McCarthy-era tactics, the order directly defies the First Amendment right to freedom of religion and assembly. It threatens the Fifth Amendment right to due process and the Fourteenth Amendment right to equal protection under law by paving the way for the criminalization of American Muslims without convincing evidence.

We cannot and should not remain complacent in the face of blatant violations of the supreme law of the land. Nor can we ignore the parallels between this executive order and Executive Order 9066, which authorized the internment of Japanese-Americans on spurious grounds.

We are fighting to uphold the core principles and identity of America here. This is not the time for partisanship or party loyalty. The executive order in question is a clear overreach of presidential authority and demonstrates little regard for civil liberties or constitutional guarantees. It is our responsibility as Americans to repeal this executive order.

2. Statement re: MB Designation Act

This bill is a direct attack on the constitutional rights of American Muslims. It infringes upon the freedoms enshrined in our Constitution. It is inherently un-American.

The provisions outlined in this bill bypass constitutional guarantees of freedom of religion and peaceful assembly, due process, and equal protection. The designation is a mechanism for disenfranchising Muslims from American society.

By singling out American Muslims through McCarthy-esque methods of ostracizing and blacklisting, the bill directly defies our First Amendment right to freedom of religion. It threatens the Fifth Amendment right to due process and the Fourteenth Amendment right to equal protection under the law by paving the way for the criminalization of American Muslims' religious, social, political and cultural activities without the presence of substantial evidence.





We cannot and should not remain complacent in the blatant violations of the supreme law of the land. We are fighting to uphold the core principles and identity of America here. This is not the time for partisanship or party loyalty. The executive order in question is a clear overreach of presidential authority and holds little regard for civil liberties or constitutional guarantees. It is our responsibility as Americans to vote down this legislation.

