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## **Gitmo Detainees' Groups Not Listed by U.S.**

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WASHINGTON , March 31 (UPI) -- Dozens of the terrorist or terrorist-linked organizations to which those held at Guantanamo Bay as enemy combatants belong are not on the U.S. government's "Terrorist Exclusion List" -- and their members might not be routinely barred from entering the United States.

An analysis of material submitted by the U.S. military to the Combatant Status Review Tribunals examining the cases of several hundred detainees yields more than 70 groups or organizations -- including charities, political parties and religious movements -- association with which is considered by the Department of Defense to be relevant to their designation as an enemy combatant.

"The Pentagon is saying, if you have even the slightest connection with one of these groups, then you're an enemy combatant, and you should be locked up indefinitely," Joshua Denbeaux, a lawyer who is representing pro bono two detainees held at Guantanamo, told United Press International.

But dozens of these groups regarded as threats by the U.S. military do not appear on either of the State Department's formal lists of designated terrorist organizations.

The primary list maintained by the State Department -- of designated "Foreign Terrorist Organizations" -- brings to bear a whole range of U.S. policy tools against the group listed: diplomatic, legal, and financial. Designation is a highly regulated and relatively transparent process challengeable in court and seen by critics as sclerotic.

The suite of sweeping anti-terror laws known as the USA Patriot Act -- hurriedly passed in the aftermath of the Sept. 11, 2001 terror attacks -- established the Terrorist Exclusion List specifically to leverage the discretion that U.S. officials have in immigration cases to exclude members of the broadest range of suspect groups.

Compared to the foreign terrorist designation, the Terrorist Exclusion List "has a broader standard of inclusion, is subject to less stringent administrative requirements, and is not challengeable in court," wrote the State Department in its 2002 Patterns of Global Terrorism report.

Membership in or support for groups on the list is grounds for inadmissibility.

But the analysis of the groups mentioned in the tribunal documents raises the question of how officials are using the new tools, and highlights the tough decisions that consular officers often have to make.

Denbeaux, his father Mark Denbeaux -- a professor at Seton Hall University School of Law -- and a group of his father's students compiled the analysis, by going word-by-word through thousands of pages of material submitted to the tribunals and extracting the names of 72 groups or organizations with which one or more detainee's affiliation was mentioned to support the contention that they were enemy combatants.

The Pentagon order establishing the tribunal process defines enemy combatant as "an individual who was part of or supporting Taliban or al-Qaida forces, or associated forces," adding that this "includes any person who has committed a belligerent act or directly supported hostilities."

Katherine Newell-Bierman, counterterrorism counsel with Human Rights Watch, who has also been analyzing the tribunal documents, told UPI that there were many cases where no direct hostile act against U.S. forces was alleged.

"In those cases they are saying (the detainee) was an al-Qaida fighter or a Taliban fighter, or was 'associated with' the Taliban or al-Qaida. That's where the nexus with these other groups comes in."

In some cases, she said, the association alleged was "very slight."

But the Seton Hall analysis shows that dozens of these groups are not on either of the State Department's formal lists -- even the Patriot Act's new, broader one.

Denbeaux sees a problem there. "If these groups are so dangerous that the slightest connection with them makes you an enemy combatant then their members ought to be barred from entering the country," he told UPI.

"Since they're not on the State (Department) list, it appears that isn't happening."

In reality, the picture is more complicated.

"They're comparing apples to oranges," Pentagon Spokesman Lt. Cmdr. Jeffrey Gordon told UPI, adding that the U.S. government maintains several different lists of terrorist organizations for different purposes -- a point also made by several other officials and former officials UPI spoke to.

"The U.S. government has multiple authorities for designating terrorist organizations," reads a recent set of State Department talking points on the issue. "Different terrorist designations have significant -- and different -- consequences."

A State Department official authorized to speak to the media added that the Patriot Act, as well as creating the Terrorist Exclusion List, gave a lot more flexibility to consular staff on the ground in U.S. embassies around the world.

The official said the act created "a very specific definition" of a terrorist group, which consular officers use to decide which groups' members and supporters should be banned from the United States.

"They have the specialist knowledge," said the State Department official, adding that "there is no procedure laid out in statute ... These groups are terrorist groups by definition, not by designation."

"Because of the informal nature of the process, there is no single consolidated list," the official said.

The change in the law "was designed to cut through all the red tape associated with the designation process," said Janice Kephardt, former Sept. 11 Commission staffer and border security consultant.

The law also makes supporting a terrorist group -- rather than being a member -- grounds for inadmissibility, which lowers the evidential bar, Kephardt said.

Gordon said that much of the information underlying the claims about associations with groups mentioned in the tribunal documents was classified.

The State Department official told UPI the same kind of intelligence was available to, and used by, consular officials making visa decisions.

"That is one of the many sources of intelligence used when making these decisions. We regularly sanitize down to the secret level the most highly classified intelligence we have so that it is accessible to consular officials."

"Consular officials, if they are doing their job effectively, should be keeping an eye on" extremist groups locally, said former U.S. immigration official Bill West.