

The Honorable John Kerry,
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

July 25, 2013

**Formal Petition To Designate Boko Haram As A Foreign Terrorist Organization Pursuant To
The Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”) 8 U.S.C. §1189**

Dear Mr. Secretary,

The Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 8 U.S.C. §1189 (amended 2004), empowers you to designate an entity as a “foreign terrorist organization.” To authorize designation, the Secretary compiles an administrative record and based off that record, determines whether the organization meets the statutory criteria for designation as a foreign terrorist organization. We the undersigned organizations believe that the criteria for designating the Boko Haram as a foreign terrorist organization (FTO) are overwhelmingly met.

The enclosed Brief outlines the legal criteria for conferring FTO. The AEDPA empowers the Secretary to make the following findings, based on the administrative record that: (A) “The organization is a foreign organization”; (B) “the organization engages in terrorist activity”; and (C) “the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.”

Boko Haram is a Jihadist terror group based in northern, its 200+ body count in the January 20, 2012 massacre topped the charts as the highest single death toll in any conflict worldwide exceeding Iraq, Afghanistan, Sudan, Pakistan and was tied only with Syria. The National Consortium for the Study of Terrorism and Responses to Terrorism (START) reported in their 2012 report that Boko Haram was the second most deadly terrorist group for the year 2012 ranking only behind the Taliban – and ahead of Al Qaeda.

On June 4th, 2013 the Nigerian government officially named Boko Haram as a terrorist organization and outlawed their activities under their terrorism law. Within the same time frame the United States government identified Abubakar Shekau, the leader of Boko Haram, as

a foreign terrorist offering \$7 Million for information leading to his arrest but again stopped short of designating it. The United Kingdom has however initiated the designation process as well in recent weeks.

Since 2011, Boko Haram has killed nationals of the following countries:

- | | |
|-------------------|-----------------|
| 1. Kenya | 10. France |
| 2. Norway | 11. India |
| 3. Nigeria | 12. Ghana |
| 4. Italy | 13. South Korea |
| 5. Germany | 14. Lebanon |
| 6. China | 15. Syria |
| 7. Cameroun | |
| 8. United Kingdom | |
| 9. Mali | |

Citizens of the United States have survived attacks by Boko Haram. (Including reportedly a U.S. diplomat/official under chief of mission control or cover)

As we approach the 10th anniversary of Boko Haram's launch of violent attacks on Christmas eve 2003, we urge you to use your good office to designate this lethal mass murdering organization as a foreign terrorist organization.

Attached, please find with compliments, a brief that will assist you in compiling a compelling administrative record in this regard.

Sincerely,

ORGANIZATIONS

ALLIANCE DEFENDING FREEDOM

ADVOCATES INTERNATIONAL

ALLIANCE FOR DEMOCRATIC REPUBLICS IN AFRICA

AMERICAN CENTER FOR LAW AND JUSTICE

CHRISTIAN ASSOCIATION OF NIGERIAN-AMERICANS

FAMILY RESEARCH COUNCIL

IGBO LEAGUE

INSTITUTE ON RELIGION AND DEMOCRACY

JUBILEE CAMPAIGN

JUSTICE FOR JOS PLUS

WESTMINSTER INSTITUTE

Individuals

Ann Buwalda, Esq.
Executive Director,
Jubilee Campaign

Faith McDonnel
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Emmanuel Ogebe, Esq.
Justice for Jos Plus

Kanayo K. Odeluga MD., MPH
Executive Director,
Igbo League, Inc.

Mr. Tony Perkins
President,
Family Research Council

Katharine Gorka
Executive Director,
Westminster Institute

I. Boko Haram Has Killed over 2000 People Since 2009, and It has Killed Almost 500 People in the First Half of 2013 Alone.

Boko Haram is a terrorist organization based in Northern Nigeria. Its declared mission is to continue its acts of terrorism, and it has stated the intent to target any who are not subject to or practicing Islamic Sharia law, including (and especially) the United States.

The Nigerian terrorist group's true name with which it refers to itself is "*Jama'atu Ahlis Sunna Lidda'awati wal-Jihad*", meaning "People committed to the propagation of the Prophet's teaching and jihad."¹ (For the purpose of brevity, the name "Boko Haram" will be used to reference the group hereinafter.) Further their well-known name of "Boko Haram" translates to "western education is a sin."

From its beginnings, Boko Haram has been committed to eradicating ways of life other than what is allowed within strict interpretation of Islamic Sharia laws; Boko Haram is committed to seeing total application of strict Sharia law in all of Nigeria as well as in any other countries it has opportunity to implement it.²

Although there are claims of its existence dating back to 1995, the more visible footprints of the current violent Boko Haram began in 2002 when the young, Islamist preacher, Mohammed Yusuf, began attracting followers with his messages of radical Islamic extremism. After being banned from two mosques in Maiduguri, he established a mosque as the headquarters for his movement in Maiduguri.³

It is essential to note that Boko Haram developed in the immediate post-9/11 environment in which pre-existing local conflicts, both intra-Muslim and Muslim-Christian,

¹ "Who Are Nigeria's Boko Haram Islamists?", Farouk Chothia, *BBC News*, January 11, 2012. Available at: <http://www.bbc.co.uk/news/world-africa-13809501>.

² Says Abu Shekau, the current leader of Boko Haram, "For this fact, where ever you are, you should know that it is not an ethnic war, it is not an ignorant war, it is not a war for money, it is not a war for any other reason. No, it is a religious war! This war is not meant to end in either a day, a week, or a year, but the end of this war is when we are all dead the whole of us and none of us is left to continue the war or it is the religion that will dictate what is to be done and this may decipher the end of the war...This is a war against Muslims and infidels Yes! And we are ever ready to face any one that will take any step against us be it individuals, group of persons or government or whoever..." *Boko Haram: Inciting messages of intolerance against Christians*: a direct transcript from the video preaching of Imam Abu Muhammad Abubakar Bin. Muhammad Shekau, 2.

³ "Nigeria: Timeline of Boko Haram attacks and related violence," *Integrated Regional Information Networks (IRIN)*, January 20, 2012. Available at: <http://www.unhcr.org/refworld/country,,IRIN,,NGA,,4f1e71cd2,0.html>.

were recast within the framework of global jihad.⁴ One reason Boko Haram deeply resents the political elites of northern Nigeria is because they cooperate with the Christian political leaders of southern Nigeria inside the national framework of the Federal Republic of Nigeria.⁵ This is further compounded by the friendly relations that Nigeria has with the “great Satan” – the United States.

Effectively Boko Haram operated in plain sight for a long time with or without tacit support of the authorities. Our information is that many of the hundreds of young men that constituted Yusuf’s initial army of followers were from neighboring African countries. He ran a camp in Zaji Biriri where he provided them lodging for a daily fee. During the day they would forage for income and return to base at night. The group soon began to be regarded by the people of the area as a menace rather than a harmless camp of devout religious people. After beating a woman because she refused to allow the group to fish in a pond that the group had no right to, Boko Haram members began conducting criminal activities, eventually forcing the Government to issue a three-day ultimatum for the group to leave Zaji-Biriri.⁶

After its forced departure from Zaji-Biriri, Boko Haram took up arms against state security forces on December 24, 2003, in Geiam and Kanamma in Yobe State.⁷ The police station, local government secretariat, local government’s lodge, and the residence of the Chairman were burned down⁸ and police weapons and vehicles were stolen.⁹ Boko Haram members killed the Divisional Police Officer and the district head as well as a new police recruit,¹⁰ and then occupied the two buildings for several days, hoisting the flag of Afghanistan’s Taliban movement over the camps.¹¹ On December 31, 2003, Boko Haram left the village and went into other northern states. It established a base called ‘Afghanistan’ in

⁴ Ibid. at 77.

⁵ Ibid. at 76.

⁶ Sani, supra note 20.

⁷ “The 9/7 Boko Haram Attack on Bauchi Prison: A case of intelligence failure,” Onuoha, supra note 18; “Nigeria: Timeline of Boko Haram attacks and related violence,” supra note 11.

⁸ Sani, supra note 20.

⁹ “Nigeria: Timeline of Boko Haram attacks and related violence,” supra note 11.

¹⁰ Sani, supra note 20.

¹¹ “The 9/7 Boko Haram Attack on Bauchi Prison: A case of intelligence failure,” Onuoha, supra note 18.

Kanamma village in northern Yobe State, in 2004,¹² where the group became known as the Taliban of Yobe.¹³

During the period of time between 2004 and 2008, Boko Haram was recruiting new members and amassing more weapons.¹⁴ Their attacks continued throughout 2004. In October 2004 Boko Haram ambushed a police convoy of about 60 officers in Kala-Balge (near Lake Chad).¹⁵ It killed three officers instantly and captured twelve officers, who were later killed by the group.¹⁶ In 2005, Boko Haram attacked over 50 churches and also abducted and then beheaded some pastors who refused to convert to Islam.¹⁷

That Boko Haram continued to gain popularity during this time and attract a following is demonstrated by Borno State governor Ali Modu Sheriff appointing an influential Boko Haram member, Buju Foi, as his commissioner of religious affairs in 2007.¹⁸ Other accounts hold that he was recruited into the sect while in the governor's cabinet. Whatever the case, a considerable level of state influence, access and resources boosted Boko Haram's fortunes.

Tensions between the Boko Haram members and police forces exploded in June of 2009 after several Boko Haram members refused to obey a Nigerian law and wear crash helmets while riding in a funeral procession to the burial of members who had died in a car accident.¹⁹

On July 26, 2009, several hundred Boko Haram members attacked the Dutsen Tanshi police station in Bauchi in retaliation for the arrest of several of the sect's members and probably an attempt to free the detained leaders.²⁰ Over the next four days, Boko Haram members battled police and military forces in Bauchi, Borno, Kano, and Yobe states.²¹ An

¹² Ibid.

¹³ Tanchum, supra note 14 at 77; "Nigerian Islamist Sect Threaten to Widen Attacks," Aminu Abubakar, *Agence France-Presse*, March 29, 2010. Available at: <http://www.google.com/hostednews/afp/article/ALeqM5j1FA1NjRS-ES89YWeX4f--kcQGmA>.

¹⁴ "Nigeria: Timeline of Boko Haram attacks and related violence," supra note 12.

¹⁵ Ibid.

¹⁶ Peters, supra note 35.

¹⁷ Report by Stefanos Foundation, Jos Nigeria

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ "On 25 July 2009, police arrested several leaders on suspicion they were preparing for violence. The Bauchi state governor, Isa Yuguda, said he ordered the arrests after intelligence indicated the group was planning to over-run Bauchi city. They had already clashed with police in Borno state." Peters, supra note 35.

²¹ Ibid.

estimated 3,600 people were displaced in the violence.²² The worst violence was in Maiduguri. Exact casualty figures are not available, but the Red Cross reported over 780 bodies buried in mass graves²³ and CAN – the Christian Association of Nigeria - data showed 29 churches burnt and at least three pastors killed.²⁴ Police listed 28 of its officers among those killed.²⁵

After years of kidnappings, beheadings, church burnings, forced conversions against Christians, assassinations of rival clerics, murders of policemen and destruction of public property, on July 30, 2009 military units stormed Boko Haram headquarters in Maiduguri and destroyed the building. They also captured Mohammed Yusuf, and he later died in custody.

Despite analysts' and governmental officials' pronouncements that Boko Haram would die off with the killing of its leader Yusuf, the group used Yusuf's extrajudicial killing as a major recruitment tool, and gained hundreds of followers, appealing to many to reject the federal government. Shekau took leadership over Boko Haram after Yusuf's death and is primarily responsible for upgrading and reorganizing the group into its current lethal form.

A. 2010 Boko Haram Activity Highlights (We began following Boko Haram as of 2010 and the information from here on out will be more detailed as a result of that)

On September 7, 50 Boko Haram gunmen launched a massive jail break freeing over 700 inmates. Around 150 of these inmates were Boko Haram members and the jail break attempt resulted in killing of four people. Boko Haram's next large scale attack occurred around Christmas and at least 107 people were killed²⁶ in attacks in Maiduguri during a series of four bombings in Jos.²⁷ After these attacks Boko Haram threatened new attacks, stating on the

²² "Victims of Nigerian Clashes Buried in Mass Graves," Christian Purefoy, *CNN*, August 3, 2009. Available at: http://articles.cnn.com/2009-08-03/world/nigeria.violence_1_orno-state-boko-haram-nigeria?_s=PM:WORLD.

²³ Purefoy, supra note 57.

²⁴ United States Commission on International Religious Freedom, *USCIRF Annual Report 2010 - Countries of Particular Concern: Nigeria*, 29 April 2010. Available at: <http://www.unhcr.org/refworld/docid/4be2840c6.html>.

²⁵ "Nigeria: Families of killed policemen to get insurance benefits," Misbahu Bashir, *Daily Trust*, August 25, 2009. Available at: <http://allafrica.com/stories/200908250346.html>.

²⁶ "Nigeria: New wave of violence leaves 200 dead," *Human Rights Watch*, January 27, 2011. Available at: <http://www.hrw.org/en/news/2011/01/27/nigeria-new-wave-violence-leaves-200-dead>.

²⁷ "Radical Islamist Sect Claims Responsibility for Nigeria Church Attacks," *The Telegraph*, December 28, 2010. Available at: <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/8228816/Radical-Islamist-sect-claims-responsibility-for-Nigeria-church-attacks.html>.

group's website that, "We will continue with our attacks on disbelievers and their allies and all those who help them."²⁸

Later in December 2010 and into January 2011, Boko Haram assassinated Alhaji Modu Fannami Gubio, a gubernatorial candidate of the All Nigeria People's Party (ANPP) along with Alhaji Goni Sheriff and four police officers.²⁹ Boko Haram assassins shot and killed an ANPP chieftain and shot and wounded Sergeant Isa Omale and a corporal of the Nigerian Security and Civil Defense Corp.³⁰

B. 2011 Boko Haram Activity Highlights

Boko Haram attacks continued but it next received widespread attention with its May attacks. On May 27, about 70 gunmen slaughtered eight people, including four policemen, in simultaneous gun and bomb attacks on a police station, a police barracks and a bank in Damboa, Borno State, near the border with Chad.³¹ Authorities suspected Boko Haram.³² Just days later on May 29, a series of bombings were launched by Boko Haram resulting in the deaths of at least 12 and the injuring of at least 48 more.³³

The next bombing on June 16, marked a significant shift in Boko Haram's capabilities and tactics, and it proved that Boko Haram had evolved into a terrorist organization capable of successfully using suicide bombings. Boko Haram had been, up to this point, relying mainly on gunmen and fairly small explosives to accomplish its evil purposes and keep the populace in a state of fear and intimidation. However, on June 16, a suicide bomber and possibly two accomplices were responsible for a new signature explosion on Louis Edet House, the national headquarters of the Nigerian Police Force in Abuja.³⁴ At least two people were killed (some

²⁸ Ibid.

²⁹ "The Hunt for Boko Haram Members: Tracking an unknown enemy," Jide Ajani, *Vanguard*, July 17, 2011. Available at: <http://www.vanguardngr.com/2011/07/the-hunt-for-boko-haram-members-tracking-an-unknown-enemy/>.

³⁰ Ibid.

³¹ "Nigeria: Timeline of Boko Haram attacks and related violence," supra note 12.

³² Ibid.

³³ "Nigeria Attacks Claimed by Islamic Sect Boko Haram," *BBC News*, June 1, 2011. Available at: <http://www.bbc.co.uk/news/world-africa-13618775>.

³⁴ "Abuja Bomb Blast," John Campbell, *Council on Foreign Relations*, June 16, 2011. Available at: <http://blogs.cfr.org/campbell/2011/06/16/abuja-bomb-blast/>.

reports say up to eight if including the unidentified casualties), and over 30 vehicles were destroyed.³⁵

The mayhem continued on June 27, when Boko Haram gunmen rode into a crowded tavern in Maiduguri on two motorcycles and threw bombs and fired random shots on the civilians assembled there, killing at least 25 people and seriously wounding about 30 more.³⁶

Boko Haram carried out multiple attacks during the beginning of July including the attack on All Christian Fellowship Mission church in Suleija which was the first known bombing of a church outside its operational base.

Boko Haram fully developed into an international terrorist threat on August 26, when it targeted its first international victims and sent a suicide bomber to drive a vehicle through two security barriers into the United Nations headquarters in Abuja killing 23 people³⁷ and wounding over 115.³⁸ Each of the following agencies lost staff members: UNICEF, UNAIDS, WHO, UNODC and UNDP.

In a video later released by Boko Haram, the suicide bomber explained his reasons for undertaking his mission of death as being **a message to the United States president "and other infidels."**³⁹ According to *Voice of America* news, the spokesperson for Boko Haram told the news agency in an interview that Boko Haram members had just returned from *training in Somalia* prior to the U.N. bombing.⁴⁰ A report by the Nigerian Tribune stated that 58 Boko Haram members were arrested in Maiduguri by federal security agents shortly after the bombing in Abuja and that among those arrested were *Somalis and Sudanese*, seeming to further substantiate the suspected connection between Boko Haram and aid and training from

³⁵ "Islamist Group Claims Responsibility for Nigeria Bombing," *Voice of America*, June 15, 2011. Available at: <http://www.voanews.com/content/blast-hits-nigeria-police-headquarters-123996399/140868.html>.

³⁶ "Nigeria Boko Haram Islamists 'Bomb Maiduguri Drinkers'," *BBC News*, June 27, 2011. Available at: <http://www.bbc.co.uk/news/world-africa-13920980>.

³⁷ "Nigeria UN Bomb: Video of 'Boko Haram bomber' released," *BBC News*, September 18, 2011. Available at: <http://www.bbc.co.uk/news/world-africa-14964554>.

³⁸ "UN Releases Names of Abuja Bomb Attack Casualties," *United Nations Development Programme*, September 13, 2011. Available at: <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2011/09/13/un-releases-names-of-abuja-bomb-attack-casualties.html>.

³⁹ "Nigeria UN Bomb: Video of 'Boko Haram bomber' released," supra note 94.

⁴⁰ *Voice of America*, supra note 82.

Somalian terrorist groups and Al Qaeda in the Islamic Maghreb (AQIM).⁴¹ This claim was further supported by a statement made by Boko Haram two days before the U.N. attack saying, “Very soon, we will wage jihad... our jihadists have arrived in Nigeria from Somalia where they received real training on warfare from our brethren who made that country ungovernable.”⁴²

On September 27, suspected militants from Boko Haram went to shops owned by Christians in the city of Madala and demanded that the Christians recite verses from the Quran. If they could not, the gunmen shot and killed them. Five people were killed this way.⁴³

Boko Haram continued to execute attacks throughout October. On October 3, Boko Haram attacked a market in Maiduguri, this time killing a tea-seller, a drug store owner, and a passer-by.⁴⁴ On October 25, Boko Haram gunmen executed a targeted attack in Damaturu and assassinated a policeman. On October 29, gunmen shot the Muslim cleric Sheikh Ali Jana’ a (who is believed to have provided information on Boko Haram to security forces) outside his home in Maiduguri.⁴⁵

In November Boko Haram unleashed what was then its most deadly attack in its campaign of violence with the highest number of deaths caused in one day,⁴⁶ killing around 150 people.⁴⁷ Boko Haram bombed police stations, churches, a bank, and an army base in and around Damaturu, the capital of Yobe State.⁴⁸ Members of the group then engaged security forces in gun battles that lasted for hours.⁴⁹ And in Maiduguri, the motorcade of Borno State

⁴¹ “Abuja Bomb Blast: Police swoop on Boko Haram, Arrest 58 Suspects while Jubilating, Sudanese, Somalians, Nigerians Among,” Chris Agbambu, *The Nigerian Tribune*, June 20, 2011. Available at: <http://tribune.com.ng/index.php/front-page-news/23750-abuja-bomb-blast-police-swoop-on-boko-haram-arrest-58-suspects-while-jubilating-sudanese-somalians-nigerians-among>.

⁴² “Nigerian Islamists Vow ‘Fiercer’ Attacks,” *Agence France-Presse*, June 15, 2011. Available at: <http://www.google.com/hostednews/afp/article/ALeqM5hvNBLQti-6QLphVdW7gU24qGfCVA?docId=CNG.7c89daafc598520ace67ee7e41be9139.9a1>.

⁴³ “Muslim Extremists in Nigeria Kill Christians in Two States,” *Compass Direct News*, September 27, 2011. Available at: http://www.compassdirect.org/english/country/nigeria/article_120948.html.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ “Nigeria: Boko Haram attacks indefensible,” *Human Rights Watch*, November 9, 2011. Available at: <http://www.hrw.org/news/2011/11/08/nigeria-boko-haram-attacks-indefensible>.

⁴⁷ Ibid.

⁴⁸ “Nigeria: Boko Haram widens terror campaign,” *Human Rights Watch*, January 24, 2012. Available at: <http://www.hrw.org/news/2012/01/23/nigeria-boko-haram-widens-terror-campaign>.

⁴⁹ “Nigeria: Boko Haram’s deadly attacks show Islamists’ growing reach,” Kristen Chick, *The Christian Science Monitor*, November 6, 2011. Available at: <http://www.csmonitor.com/World/terrorism-security/2011/1106/Nigeria-Boko-Haram-s-deadly-attacks-show-Islamists-growing-reach>.

governor Kashim Shettima came under Boko Haram bomb attack while on its way from the airport to the governor's residence as he returned from a trip to Abuja.

These widespread, coordinated bombings had a far-reaching effect that the Boko Haram of 2009 would never have been capable of executing. Additionally, on November 23, Boko Haram killed two children of a former member of theirs who had converted to Christianity.⁵⁰

December showed an increased frequency in attacks by Boko Haram, proving the group was gaining followers, technique, and resources. The sect attacked at least once each week in December. On December 13, Boko Haram instigated a bomb attack on a military checkpoint in Maiduguri which resulted in 10 dead and 30 injured.⁵¹ Boko Haram then bombed parts of Maiduguri on December 22, killing 20 people. Also that same day, around 100 were killed following multiple bomb and shooting attacks by Boko Haram gunmen and ensuing gun battles with troops in the Pompomari outskirts of Damaturu.⁵² On December 25, Christmas Day, in an attack that world leaders and Vatican officials roundly condemned, Boko Haram bombed the Saint Theresa Catholic Church in Madalla, near Abuja, killing 44 in addition to simultaneous attacks in other cities. Multiple other attacks occurred during the Holiday season.^{53 54 55 56 57}

C. 2012 Boko Haram Activity Highlights

January began ominously as President Jonathan declared a state of emergency on 15 local government areas that had been hit the hardest by Boko Haram attacks in Borno, Yobe and Plateau states.⁵⁸ The very next day, Boko Haram issued a statement warning all Christians in the northern states of Nigeria that they had three days to evacuate the north or face death

⁵⁰ "Nigeria Militants Kill Children of Christian Convert, Missionaries Say," Stephan J. Bos, *BosNewsLife*, November 23, 2011. Available at: <http://www.bosnewslife.com/19199-news-alert-nigeria-militants-kill-children-of-christian-convert>.

⁵¹ Ibid.

⁵² Ibid.

⁵³ "90,000 Displaced in Damaturu," *Vanguard*, December 28, 2011. Available at:

<http://www.vanguardngr.com/2011/12/90000-displaced-in-damaturu/>.

⁵⁴ "Nigeria: Timeline of Boko Haram attacks and related violence," supra note 12.

⁵⁵ Mark, supra note 120.

⁵⁶ "Nigerian Churches Targeted by Christmas Day Bombs," Shiv Malik, *The Guardian*, December 25, 2011. Available at: <http://www.guardian.co.uk/world/2011/dec/25/nigerian-church-bombed-christmas-prayers>.

⁵⁷ "Nigeria: Timeline of Boko Haram attacks and related violence," supra note 12.

⁵⁸ "Nigeria: Jonathan declares state of emergency in 15 LGAs," Ahamfeula Ogbu, *This Day*, December 31, 2011. <http://allafrica.com/stories/201112310067.html>

and violence.⁵⁹ Boko Haram gunmen followed through with their threat, making numerous bloody attacks in January. On January 5, Boko Haram gunmen stormed a church in Gombe city, killing six worshippers and wounding ten others.⁶⁰ Boko Haram launched a shooting attack on a church in Yola on January 6, killing 17 Christian mourners in Adamawa State. The victims were mourning the five people killed in a Boko Haram attack on a hotel the previous day.⁶¹ Also on January 6, in Mubi, Adamawa State, Boko Haram gunmen invaded a town hall meeting where Christians had gathered to pray, and killed at least 20 people.

On January 20, Boko Haram began what was to be a deadly series of coordinated attacks within a short period of days. It carried out a massive attack on Kano, slaughtering over 200 people.⁶² Police found at least 12 locally made explosives in abandoned vehicles, over 300 improvised grenades⁶³, and 10 VBIEDs (in addition to those used in the explosions) after the attacks.⁶⁴ The attacks were mostly on police stations and incorporated at least two suicide vehicle-borne IEDs (VBIEDs). The January 20 massacres remained the highest single day death toll in any conflict in the world in 2012 only tied with Syria.

In claiming responsibility for the attacks Boko Haram Spokesperson Abu-Qapa said "By the grace of God, we are responsible for all the attacks . . . There will never be peace until our demands are met. We want all our brothers who have been incarcerated to be released; we want full implementation of the *sharia* system and we want democracy and the *constitution to be suspended*."⁶⁵

In the January bombings, Boko Haram demonstrated that it had evolved into a large organization capable of obtaining the resources it needs for producing the explosives it uses,⁶⁶

⁵⁹ "Islamist Militants in Nigeria Warn Christians to Leave North Within 3 Days," Tim Lister, *CNN*, January 2, 2012. Available at: http://articles.cnn.com/2012-01-02/africa/world_africa_nigeria-sectarian-divisions_1_boko-haram-shehu-sani-muslim-community?_s=PM:AFRICA.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² "In Nigeria, a Deadly Group's Rage Has Local Roots," Adam Nossiter, *New York Times*, February 25, 2012. Available at: <http://www.nytimes.com/2012/02/26/world/africa/in-northern-nigeria-boko-haram-stirs-fear-and-sympathy.html?pagewanted=all>.

⁶³ Mamah and Omonobi, supra note 140.

⁶⁴ "Kano Attack: Emir leads prayer s in Nigerian city," *BBC News*, January 23, 2012. Available at: <http://www.bbc.co.uk/news/world-africa-16678098>.

⁶⁵ "The Rise of Boko Haram," David Francis, *Foreign Policy*, December 28, 2011. Available at: http://www.foreignpolicy.com/articles/2011/12/27/the_rise_of_boko_haram.

⁶⁶ "Nigeria's Boko Haram Militants Remain a Regional Threat," Stewart, supra note 144.

that it is able to carry out attacks repeatedly in close succession, and that it has the human resources to maintain repeated clashes with security forces and that it can engage security forces on multiple battle fronts simultaneously.

February saw the attacks of military complexes, marketplaces, churches, and children's schools. On February 8, Boko Haram bombed a military complex in Kaduna. According to an army spokesman, soldiers shot the suicide bomber but he still detonated the bomb in the car he was driving into the barracks. On February 20, gunmen opened fire on street vendors and bystanders at a Maiduguri market. At least 30 people were estimated to be dead from the shootings.⁶⁷ On February 22, Boko Haram members invaded a 79-year-old Christian woman's home, slit her throat, and left a note on her chest that read, "We will get you soon," probably addressed to the woman's son who is a pastor.⁶⁸ On February 26, a Boko Haram suicide bomber rammed his car at full speed through gates at a crowded church in Jos killing several worshippers.⁶⁹

Boko Haram members are suspected of burning three schools around February 20.⁷⁰ Then, between February 26 and 29, Boko Haram burned at least four more schools.⁷¹ Boko Haram continued to burn schools in March as well. On March 1, five schools were torched.⁷²

Taking their brutality in a new direction, in early March, Boko Haram members killed two Europeans they had kidnapped in May the year before.⁷³ The two men, one Italian and one British, had been working on a construction project in Kebbi State when they were abducted.⁷⁴ Boko Haram's spokesperson never officially claimed credit for the kidnappings, so authorities speculate that a splinter cell of the group conducted the kidnappings.⁷⁵ Boko Haram sent a

⁶⁷ "30 Killed in Nigeria Attack, Witnesses Claim," *The Telegraph*, February 20, 2012. Available at: <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/9094436/30-killed-in-Nigeria-attack-witnesses-claim.html>.

⁶⁸ "Boko Haram Slit Christian Woman's Throat," *24/7 Nigeria News Update*, February 24, 2012. Available at: <http://247nigerianewsupdate.com/boko-haram-slit-christian-womans-throat/>.

⁶⁹ Ibid.

⁷⁰ "Nigeria: Boko Haram targeting schools," *Human Rights Watch*, March 7, 2012. Available at: <http://www.hrw.org/news/2012/03/07/nigeria-boko-haram-targeting-schools>.

⁷¹ Ibid.

⁷² "Nigeria: Boko Haram targeting schools," supra note 158.

⁷³ "Nigeria Rescue Bid: kidnapped Briton and Italian killed," *BBC News*, March 8, 2012. Available at: <http://www.bbc.co.uk/news/uk-17305707>.

⁷⁴ Ibid.

⁷⁵ Ibid.

suicide bomber to St. Finbar's Catholic Church in Jos on March 11,⁷⁶ killing 13 people and injuring 14.⁷⁷ The attack was executed by means of a VBIED.

Boko Haram continued its frequent attacks on defenseless civilians throughout April. On April 5, suspected Boko Haram gunmen killed seven traders in a Maiduguri market, and injured three other civilians.⁷⁸ Boko Haram killed at least 15 people in Banki, a town near the border of Cameroon, on April 10.⁷⁹ Attempting to bomb a church in Kaduna on Easter Sunday, a Boko Haram suicide bomber was stopped in his vehicle outside the church. As soon as he was stopped, he detonated the explosives, killing at least 38 people.⁸⁰ There were simultaneous attacks in other cities.

Branching out from its usual targets, Boko Haram bombed *This Day* newspaper in Abuja on April 26.⁸¹ One suicide bomber drove a jeep into the *daily's* Abuja office, killing himself and two others. Simultaneously, in Kaduna an attacker jumped out of his vehicle after it was prevented from getting into *This Day's* Kaduna office. Two brave Nigerians challenged him, and were killed instantly as he threw a bomb at them and detonated it.⁸² The death toll was fixed at six.⁸³ In a YouTube video, Boko Haram threatened that it wanted to completely destroy *This Day* and named several other newspapers that it would soon attack if they did not conform to the terrorists' demands. One of the media threatened was New-York-based *Sahara Reporters*, which Boko Haram threatened to "find a way to attack."

⁷⁶ "Nigeria Attack Targets Catholic Church in Jos," *BBC News*, March 12, 2012. Available at: <http://www.bbc.co.uk/news/world-africa-17331707>.

⁷⁷ "Six Dead in Car Bomb Attack at Nigeria Church," Hassan John, *CNN*, March 11, 2012. Available at: http://articles.cnn.com/2012-03-11/africa/world_africa_nigeria-violence_1_car-bomb-attack-boko-haram-explosion?s=PM:AFRICA.

⁷⁸ "Nigeria Says Boko Haram Kills 7 in Northeast Market," *Reuters*, April 5, 2012. Available at: <http://af.reuters.com/article/topNews/idAFJ0E83403G20120405>.

⁷⁹ "Cameroon Tightens Border Security After Boko Haram Attack," Pius Lukong, *Bloomberg News*, April 13, 2012. Available at: <http://www.bloomberg.com/news/2012-04-13/cameroon-tightens-border-security-after-boko-haram-attack.html>.

⁸⁰ "Nigerian Easter Bomb Kills Many in Kaduna," *BBC News*, April 8, 2012. Available at: <http://www.bbc.co.uk/news/world-17650542>.

⁸¹ "Four Killed in Nigerian Bomb Attacks," *The Telegraph*, April 26, 2012. Available at: <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/9229918/Four-killed-in-Nigerian-bomb-attacks.html>.

⁸² *Ibid.*

⁸³ "Nigeria's Boko Haram Militants Claim ThisDay Attacks," *BBC News*, May 2, 2012. Available at: <http://www.bbc.co.uk/news/world-africa-17926097>.

On April 29, Boko Haram completed yet another assault on worshippers at a church service on the Bayero University campus in Kano.⁸⁴ Gunmen rode up to the building on motorcycles, throwing homemade explosives at the building, then gunning down the people who tried to flee the building killing over a dozen students, professors and worshippers.

May attacks on civilians began May 3, when gunmen shot their way into a cattle market in Yobe State. A large group of gunmen suspected to be Boko Haram surrounded the market and opened fire, killing at least 50 people. A police man who was present at the time said "They started throwing explosives as we were closing for the day. Everybody started running. There was gunfire everywhere, they were even shooting cattle. These people were madmen."⁸⁵ On May 17, blasts and gunfire were heard overnight in the Farawa and Sharada schools of downtown Kano city in Kano State. The next day, police found two unexploded bombs in the decimated schools.⁸⁶ Boko Haram issued a new threat on May 17, warning people to vacate any government quarters or buildings. The spokesperson for Boko Haram said "Every government building, whether occupied or empty will be blown up. Whoever is caught up in the attacks has his or herself to blame. We have done our best by issuing this warning."⁸⁷

The finale to Boko Haram's terrorist activities in May was the killing of a German hostage who had been claimed by AQIM a few months previously.⁸⁸ Engineer Edgar Fritz Raupach was killed by his captors in Kano when security forces stormed the hideout on May 31 on a tip that Boko Haram members were residing therein.⁸⁹ Ignorant of Raupach's presence, the security forces attacked the house and later found Raupach's corpse punctured with stab

⁸⁴ "20 Killed at Bayero University Church Services Attack," *Vanguard*, April 29, 2012. Available at: <http://www.vanguardngr.com/2012/04/20-killed-as-gunmen-attack-church-services-in-buk/>.

⁸⁵ "Nigeria Market Attack Kills Dozens," Monica Mark, *The Guardian*, May 3, 2012. Available at: <http://www.guardian.co.uk/world/2012/may/03/nigeria-market-attack-kills-dozens>.

⁸⁶ *Ibid.*

⁸⁷ "Boko Haram Threatens to Bomb Government Buildings in 19 Northern States, Abuja," Abdulrahman Abdulmalik, *Sahara Reporters*, May 17, 2012. Available at: <http://saharareporters.com/news-page/boko-haram-threatens-bomb-government-buildings-19-northern-states-abuja-premium-times>.

⁸⁸ "German Authorities to Blame for Raupach's Killing in Kano – AQIM," *Pilot Africa*, June 12, 2012. Available at: <http://www.pilotafrika.com/2012/06/12/german-authorities-to-blame-for-raupachs-killing-in-kano-aqim/>.

⁸⁹ "Kidnapped German, Six Gunmen Killed as JTTF Invades Boko Haram's Den," AbdulSalam Muhammad, *Vanguard*, June 1, 2012. Available at: <http://www.vanguardngr.com/2012/06/kidnapped-german-six-gunmen-killed-as-jtft-invades-boko-haram-den/>.

wounds. They surmise that as soon as his captors realized they were not going to escape, they turned on him and shot and stabbed him to death.⁹⁰

Boko Haram continued weekly attacks in Nigeria during June, focusing especially on bombing churches. After the bombings in churches across Kaduna State on June 17, Boko Haram reached its twelfth successful suicide bombing for the year 2012 alone. This is significant, in that only about four suicide bombings were attempted in the period of time between June 2011 and December 2011,⁹¹ therefore in the first 6 months of 2012, Boko Haram had effectively tripled the rate of suicide bombings it conducted in 7 months.

In July Boko Haram continued their sporadic killings and terrorist activities. On July 25, they targeted and attacked a police division in Borno which resulted in the death of five people and fire damage to the building which they had set ablaze.⁹² On August 7, Boko Haram attacked a church in Lokoja right before a bible study began. The attackers effectively trapped the members in the church by cutting the power so they could not find their way out. The attack resulted in 19 deaths.⁹³ On September 23, a Boko Haram suicide bomber attacked a church in Bauchi state just after the ending of their first service. 5 people were killed and at least 48 were injured.⁹⁴ The north eastern town of Potiskum was attacked by Boko Haram from October 18 thru October 22. This bombardment of attacks resulted in the deaths of at least 31 people.⁹⁵ On November 25, Boko Haram members attacked a church inside a military barracks. The suicide bombing resulted in the death of 11 people and 30 more were injured.⁹⁶ An air force General

⁹⁰ Ibid.

⁹¹ June 16, 2011 bombing of police headquarters in Abuja; August 26, 2011 bombing of UN compound in Abuja; November 4, 2011 bombing outside Maiduguri military JTF headquarters; December 25, 2011 bombing of secret police headquarters in Damaturu.

⁹² "Terrorists target policemen, kill five in Bauchi, Borno," *The Guardian*, July 27, 2012. Available at: http://www.ngrguardiannews.com/index.php?option=com_content&view=article&id=93622:terrorists-target-policemen-kill-five-in-bauchi-borno&catid=1:national&Itemid=559.

⁹³ "19 Killed at Central Nigeria Church Bible Study," *Kitsap Sun*, August 7, 2012. Available at: <http://www.kitsapsun.com/news/2012/aug/07/military-19-killed-at-central-nigeria-church/#axzz2Yesm6IVK>.

⁹⁴ "Nigeria: Five Killed in Bauchi Church Bomb," *This Day*, September 24, 2012. Available at: <http://allafrica.com/stories/201209240426.html>.

⁹⁵ "Nigerian soldiers 'killed by Boko Haram' in Potiskum," *BBC News Africa*, October 22, 2012. Available at: <http://www.bbc.co.uk/news/world-africa-20027088>.

⁹⁶ "Nigeria Blasts: Eleven Dead at Kaduna Barracks Church," *BBC News Africa*, November 25, 2012. Available at: <http://www.bbc.co.uk/news/world-africa-20486998>.

injured in this blast subsequently died bringing the number of serving Generals killed by this group to three.

On December 21, Boko Haram members entered homes of Christians in the middle of the night and slit their throats while they slept resulting in 15 deaths. Locals reported that most of the Christians who were killed had recently moved to Mubi in Adamawa in an attempt to avoid the violence in their own towns as a result of Boko Haram's presence.⁹⁷ Further on Christmas Eve Boko Haram members attacked churches in Maiduguri and in Peri, Yobe resulting in the deaths of 12 Christians. After the attack on the people inside the church in Yobe the attackers set the church on fire.⁹⁸

The START report for 2012 revealed some striking statistics about the violence in Nigeria. First half of the 57 telecommunication targets of the year were by Boko Haram seeking to cut off the Christian community from communicating, nearly one-third of the religious institutions targeted were located in Nigeria, and nearly 60 percent of the 325 educational targets were attacked in Nigeria and Pakistan as well.

The most lethal terrorist attacks in 2012 were those in which the primary target was a religious institution and there were more attacks on religious institutions in Nigeria than there were attacks on diplomatic embassies around the world combined (diplomatic targets included the African Union, the European Union, the World Bank, and the World Health Organization, as well as consulates, embassies, and diplomatic personnel representing Bulgaria, Canada, China, Egypt, Germany, Great Britain, India, Indonesia, Iran, Israel, Italy, Japan, Saudi Arabia, Syria, Tunisia, Turkey, and the United States.) On average, these attacks on religious institutions resulted in 2.56 deaths per attack.

Another telling statistic is that around the world 186 single attacks killed more than 10 people. The majority of these highly lethal attacks (159) took place in Afghanistan, Pakistan, Iraq, Nigeria, and Syria, and killed a total of 2,880 people. Nigeria is the only non-warring nation

⁹⁷ "15 Christians killed in their sleep by suspected Nigerian Islamists," *Africa Review*, December 30, 2012. Available at: <http://www.africareview.com/News/15-Nigerian-Christians-killed-in-their-sleep-/-/979180/1654452/-/12kbv31z/-/index.html>.

⁹⁸ "12 Christians Killed in Christmas Bloodshed in Nigeria," *Morning Star News*, Dec. 26, 2012. Available at: <http://morningstarnews.org/2012/12/12-christians-killed-in-christmas-bloodshed-in-nigeria/http://morningstarnews.org/2012/12/12-christians-killed-in-christmas-bloodshed-in-nigeria/>.

on the list. It is also important to note that the high number of fatalities in January (1,378) was due in large part to terrorist violence in Iraq (425 deaths) and Nigeria (348 deaths). Lastly, the average lethality of terrorist attacks in Nigeria (2.54 deaths per attack) is more than 50 percent higher than the global average of 1.64.⁹⁹

D. 2013 Boko Haram Activity Highlights

On January 21 and 22 in Borno and Kano, Boko Haram members killed 23 people for allegedly disobeying Sharia law; in one of the attacks members targeted people who were selling pork and in another attack members targeted people who were gambling.¹⁰⁰ On February 8, suspected gunmen from Boko Haram killed at least nine women vaccinating children against polio in Kano in northern Nigeria.¹⁰¹

On March 18, Boko Haram attacked a bus station in Kano. Several buses were destroyed; carrying mostly people from Nigeria's largely Christian south many of whom were actually fleeing the insecurity in the north. The bombings resulted in at least 25 deaths.¹⁰² It was further reported in early March that Ansaru, a splinter cell of Boko Haram, abducted 7 people it called "Christian foreigners" a Briton, an Italian, a Greek and Lebanese workers, in northern Nigeria and later executed them all.¹⁰³ On April 29, at least 17 people died in fighting between Boko Haram and security forces.¹⁰⁴

More recent accounts indicate that mass amounts of arms are making their way to northern Nigeria. In May, soldiers in northern Kano uncovered a hidden arms cache that authorities stated belonged to three Lebanese men. Nigerian military spokesman Captain Ikedichi Iweha said "All those arrested have confessed to have undergone Hezbollah terrorist

⁹⁹ "Country Reports on Terrorism 2012," *Annex of Statistical Information*, May 2013. Available at: www.start.umd.edu.

¹⁰⁰ "Boko Haram kills 23 people in Nigeria for disobeying Sharia Law," *CP Africa*, January 23, 2013. Available at: <http://global.christianpost.com/news/boko-haram-kills-23-people-in-nigeria-for-disobeying-sharia-law-88762/>.

¹⁰¹ "Recent Highlights in Terrorist Activity" *Combating Terrorism Center*, March 27, 2013. Available at: <http://www.ctc.usma.edu/posts/recent-highlights-in-terrorist-activity-39>.

¹⁰² "Nigeria Bomb Blast Kills at least 25; Boko Haram Suspected," *The Washington Times*, March 29, 2013. Available at: http://www.washingtontimes.com/news/2013/mar/19/nigeria-bomb-blasts-kill-least-25-boko-haram-suspe/?utm_source=RSS_Feed&utm_medium=RSS.

¹⁰³ Boko Haram's Splinter Claims Killing of 7 Abducted Foreigners in Nigeria, *ZeeNews*, March 9, 2013, http://zeenews.india.com/news/world/boko-haram-s-splinter-claims-killing-of-7-abducted-foreigners-in-nigeria_834211.html.

¹⁰⁴ *ABC News International*, April 28, 2013. Available at: <http://abcnews.go.com/International>.

training.” The weapons were confiscated from under the master bedroom of a home in Kano, the north's largest city. The weapons had been packed into small coolers and concealed under several layers of concrete. The arms included eleven anti-tank weapons, four anti-tank landmines, twenty one rocket-propelled grenades, more than 11,000 bullets and an amount of dynamite. Iweha concluded that “The arms and ammunition were targeted at facilities of Israel and Western interest in Nigeria,” although he did not elaborate further.¹⁰⁵ ¹⁰⁶ There has also been an influx of weapons coming to Nigeria from Libya. This has reoccurred with arms coming in from northern Mali, after Boko Haram members traveled to northern Mali last year to receive training from Pakistani and other foreign fighters. Further, military officials are noting that after Boko Haram returned from this training they were obviously more audacious.¹⁰⁷ Finally on May 14, President Goodluck Jonathan declared a state of emergency in the three northwest states of Nigeria where Boko Haram was wreaking havoc.

E. Nigerian Attempts to Negotiate Peace

In an apparent effort to stop the ever-increasing carnage and destruction caused by Boko Haram, the Nigerian Federal government attempted to establish dialogue with the sect. In July of 2011, President Goodluck Jonathan appointed seven people, including the ministers of defense and labor, to a negotiation committee in hopes that the panel would act as a “liason between the federal government... and Boko Haram and to initiate negotiations with the sect.” The panel was also supposed to work with Nigeria’s security advisor to ensure that security forces acted with “professionalism” instead of the excessive brutality they were often accredited with.¹⁰⁸

However, in August, the Secretary to the Government of the Federation (SGF), Anyim Pius Anyim, stated that the panel appointed in July was only supposed to be a fact-finding, not negotiation, panel. He said that the government cannot negotiate with “faceless people,” and

¹⁰⁵ Nigeria Military Discovers Arms Cache in North, *San Francisco Chronicle*, May 30, 2013, <http://www.sfgate.com/news/crime/article/Nigeria-military-discovers-arms-cache-in-north-4563197.php#ixzz2VYbFbMC>.

¹⁰⁶ Nigeria Halts Hezbollah Plan to Attack Israeli, Western Targets, *Bicom* 5/31/2013.

¹⁰⁷ Nigerian Islamist Militants return from Mali with weapons, skills. *Washington Post*, May 31, 2013, http://www.washingtonpost.com/world/africa/nigerian-islamist-militants-return-from-mali-with-weapons-skills/2013/05/31/d377579e-c628-11e2-9cd9-3b9a22a4000a_story.html.

¹⁰⁸ “Nigeria Plans Talks with Islamist Group Boko Haram,” *BBC News*, July 30, 2011. Available at: <http://www.bbc.co.uk/news/world-africa-14356349>.

warned that “negotiation does not come in at this stage,” and the purpose of the panel’s assignment does not include negotiation, but rather that the committee is a “fact finding team and a forum to proffer a solution to the crisis.”¹⁰⁹

Most recently the President appointed a 25 man committee to attempt to negotiate peace with Boko Haram and to discuss amnesty with the group. On July 9, 2013 reports began to surface that this 25 man committee had indeed negotiated a ceasefire agreement with Boko Haram and that Boko Haram had agreed to discontinue with violence and in return the Nigerian military would remove some or all of its troops from the areas most populated by Boko Haram. This agreement was received with suspicion by Nigerians who remember similar agreements in the past which Boko Haram has not respected and which did not result in peace. Further others who believe the peace agreement may be true between the leaders of Boko Haram and the government fear that Boko Haram will not be able to implement such a policy throughout their group and that peace is not possible.¹¹⁰

Six days after reports claiming that a ceasefire had been reached Shekau made statements dismissing these claims stating that no such agreement had been made. His announcement was made in the wake of Boko Haram’s deadly attacks on schools which resulted in the deaths of at least 46 children. In the same statement Shekau vowed to continue these attacks.¹¹¹

F. Boko Haram Versus Recently Designated Foreign Terrorist Organizations (FTO)

Since 2012 the State Department has designated five groups as Foreign Terrorist Organizations. These groups are: Jemaah Anshorut Tauhid, Abdallah Azzam Brigades, Haqqani Network, Ansar Al-Dine, and Al Nusra as an alias for Al Qaeda in Iraq. Each of these groups was well deserving of the FTO designation with an immense amount of attacks and deaths associated with them. However, Boko Haram is guilty of much more. The National Consortium for the Study of Terrorism and Responses to Terrorism (START) 2012 report included a list of

¹⁰⁹ “Nigeria: No dialogue with Boko Haram,” Adekunle Adesuji, *Daily Champion*, August 3, 2011. Available at: <http://allafrica.com/stories/201108030578.html>.

¹¹⁰ “Boko Haram begs for Forgiveness, Signs cease fire,” *Vanguard*, July 9, 2013. Available at: <http://www.vanguardngr.com/2013/07/boko-haram-begs-for-forgiveness-signs-ceasefire-deal/>.

¹¹¹ “Boko Haram Leader Abubakar Shekau Urges More School Attacks” *International Business Times*, July 15, 2013. Available at: <http://www.ibtimes.co.uk/articles/490350/20130715/boko-haram-abubakar-shekau-schools-attack.htm>.

the top 10 groups with the most attacks worldwide for 2012.¹¹² Boko Haram ranked 2nd on this list, only behind the Taliban, yet none of the five most recently designated FTO's made this list.

Jemaah Anshorut Tauhid seeks to establish an Islamic caliphate in Indonesia, and has carried out numerous attacks on Indonesian Government personnel and civilians in order to achieve this goal. JAT has robbed banks and carried out other illicit activities to fund the purchase of assault weapons, pistols, and bomb-making materials. They have further sent suicide bombers into churches and mosques.¹¹³ In comparison Boko Haram has stated on multiple occasions through their spokesperson and on YouTube videos that they desire a Sharia law state and in 2012 alone they committed at least 87 acts of violence against government facilities/persons and at least 56 acts of violence against other civilian targets.¹¹⁴ Members have admitted that they attack banks when they needed "fast, big cash."¹¹⁵ They also have destroyed churches through the use of suicide bombers and in 2012 alone they committed at least 168 acts of violence against Christians and at least 10 acts of violence against Muslims.¹¹⁶

Abdallah Azzam Brigades have repeatedly articulated their intent to carry out attacks against Western interests in the Middle East. In 2010, for instance, the group expressed an interest in kidnapping U.S. and British tourists in the Arabian Peninsula.¹¹⁷ Boko Haram has also voiced their desire to carry out attacks against Western interests and Westerners and in March 2012 suspected Boko Haram members killed two Europeans they had kidnapped. The two men, one who was British and the other who was Italian had been working on a construction project in Kebbi State when they were abducted.

¹¹² "Country Reports on Terrorism 2012," *Annex of Statistical Information*, May 2013. Available at: www.start.umd.edu.

¹¹³ Press Release, U.S. Department of State, Terrorist Designation of Jemaah Anshorut Tahuid (Feb. 23, 2012) (<http://www.state.gov/r/pa/prs/ps/2012/02/184509.htm>).

¹¹⁴ www.factsnigeriaviolence.com

¹¹⁵ Investigation: How Foreign Groups Fund Terrorism In Nigeria, By: Bayo Oladeji, Hassan Gimba Ahmed, Edegbe Odemwingie, Jonathan Nda-Isaiah on May 22, 2013.

¹¹⁶ www.factsnigeriaviolence.com

¹¹⁷ Press Release, U.S. Department of State, Terrorist Designation of Abdallah Azzam Brigades (May 24, 2012) (<http://www.state.gov/r/pa/prs/ps/2012/05/190810.htm>).

The Haqqani Network is a fighting force in Pakistan and many of its leaders have been designated as Foreign Terrorists.¹¹⁸ Boko Haram's top leaders have also been designated as Foreign Terrorist's by the State Department.¹¹⁹

The Ansar Al-Dine has ties to AQIM and in the March 2012 attack against the town of Aguelhok, the group executed 82 Malian soldiers and kidnapped 30 more.¹²⁰ Comparatively Boko Haram has connections with AQIM and has reportedly even trained with them. Further they have committed multiple acts of violence against Nigerian police forces.¹²¹ The irony is that Ansar Al-Dine operating in Mali is designated an FTO but when it operates in Nigeria, it is not. Even if it is argued that the FTO designation for Ansaru extends to its Nigerian affiliate and therefore doesn't require another designation, it still creates an absurd situation where Ansaru which has only been known to operate in the last couple of years with a dozen or so attacks to its name is deemed designated while Boko Haram with a decade-long track record, hundreds of attacks and thousands of deaths is not.

The Al Nusra has claimed responsibility for numerous attacks since November 2011; and within months of its operations, was promptly designated an FTO by the US even though it claimed primarily to target military forces and not innocent civilians and Christians.¹²² ¹²³ During these attacks innocent Syrians have been killed and this year 3 Christians were beheaded.¹²⁴ During the same time frame Boko Haram committed at least 133 attacks and caused at least 1,068 deaths. The majority of these deaths were of innocent civilians. Boko Haram has been beheading Christians for at least half a dozen years and since last year slit the

¹¹⁸ "US Designating Haqqani Network as Terrorists," *Fox News*, Sept. 7, 2012, Available at:

<http://www.foxnews.com/world/2012/09/07/us-to-designate-haqqani-network-as-terrorists/>.

¹¹⁹ "Nigeria: Boko Haram- U.S. Lists Shekau, 2 others as Foreign Terrorists" *All Africa*, June 21, 2012. Available at:

<http://allafrica.com/stories/201206211428.html>.

¹²⁰ Press Release, U.S. Department of State, Terrorist Designation of Ansar Al-Dine (March 21, 2013)

(<http://www.state.gov/r/pa/prs/ps/2013/03/206493.htm>).

¹²¹ www.factsnigeriaviolence.com

¹²² "Profile: Syria's Al-Nusra Front," *BBC News*, April 10, 2013. Available at: <http://www.bbc.co.uk/news/world-middle-east-18048033>

<http://www.bbc.co.uk/news/world-middle-east-18048033>.

¹²³ "Inside Jabhat al Nusra- the Most Extreme Wing of Syria's Violence," *The Telegraph*, July 19, 2013. Available at:

<http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9716545/Inside-Jabhat-al-Nusra-the-most-extreme-wing-of-Syrias-struggle.html>

<http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9716545/Inside-Jabhat-al-Nusra-the-most-extreme-wing-of-Syrias-struggle.html>.

¹²⁴ Press Release, U.S. Department of State, Terrorist Designation of Al Nusrah Front as an Alias for Al-Qa'ida in Iraq (Dec. 11, 2012) (<http://www.state.gov/r/pa/prs/ps/2012/12/201759.htm>).

throats of over 100 Christians and at least one soldier leading to a firefight in Baga, Borno state.¹²⁵

II. Foreign Terrorist Organization Designation

A. Procedures and Effects of Foreign Terrorist Organization Designation

Boko Haram is the scourge of Northern Nigeria and tangentially the West African Subregion. It has terrorized multiple states in the North; it has engaged in killings meant to eradicate Christians and to eliminate Muslims who do not share its fanatical views on Sharia law and its literalist, extremist interpretation of the Quran; it has destroyed livestock, marketplace vendors and wares, businesses, churches, and homes, plunging an already-desperate economy in the North into further decline and disrepair; it is responsible for some northern Nigerian borders to be closed to Cameroon, Niger, and Chad, further crippling economic progress for the nineteen northern states of Nigeria and truncating cross-border trade; and finally, Boko Haram has committed acts of terrorism against the international community with its bombing of the United Nations compound in Abuja and kidnapping and assassination of Western citizens working in Nigeria. Due to its connections with Al-Qaeda terrorist affiliates such as Al-Qaeda in the Islamic Maghreb (AQIM), Al-Shabaab in Somalia, and possibly Al-Qaeda in the Arabian Peninsula (AQAP), Boko Haram has repositioned itself as a regional threat and is building up to better engage in global jihad, threatening not only Nigeria but the entire Sahel region and the United States.

It is for this reason that Boko Haram must be stopped before it is allowed to progress any further. It has already shown incredible growth and evolution within three years, and its number of victims in the first half of 2013 is already over 500 people.¹²⁶ If there is to be any hope of containing and mitigating the ruinous famine threatening the Sahel region through the stabilizing and economic influence of Nigeria, Boko Haram must be prevented from further destroying the people and economy of Nigeria.

¹²⁵ "Three Christians Decline to Accept Islam, Slowly Beheaded," *Live Leak*, Aug. 6, 2009. Available at: http://www.liveleak.com/view?i=57e_1249588264http://www.liveleak.com/view?i=57e_1249588264.

¹²⁶ "Sect Member Dies, Prison Break Frees 40 in Nigeria," *Fox News*, June 24, 2012. Available at: <http://www.foxnews.com/world/2012/06/24/sect-key-member-killed-in-nigeria-northeast/>.

The Secretary of State may designate an organization as a Foreign Terrorist Organization (FTO), if the Secretary finds that the organization is a foreign organization; the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) or terrorism (as defined in section 2656f(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism); and the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

Once an organization's FTO designation has been published in the Federal Register, the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any foreign organization included in the notification to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury, Act of Congress, or order of court.¹²⁷ The Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 8 U.S.C. §1189 (amended 2004), allows the Secretary of State to designate an entity as a "foreign terrorist organization."¹²⁸ The effects of designation are the following: (1) the blocking and freezing of any assets which the organization has on deposit with any financial institution in the United States;¹²⁹ (2) exclusion of the organization's representatives from the United States;¹³⁰ and (3), imposition of criminal penalties on any persons who "knowingly provide material support or resources" to such an organization.¹³¹ As described in detail below, Boko Haram meets the required criteria for being listed as an FTO.

1. Foreign Organization

The *organization must be foreign*.¹³² Boko Haram was originally organized in Borno State, Nigeria around 2002.¹³³ The organization's headquarters were first in Maiduguri where the group's original leader, Mohammed Yusuf, built a mosque and complex.¹³⁴ After the complex was destroyed in 2009, the group decamped and currently, the exact location of the organization's headquarters is unknown. The majority of the group's attacks have been in

¹²⁷ *Id.* §1189 (2)(C).

¹²⁸ See *People's Mojahedin Org. of Iran v. Dep't of State*, 327 F. 3d 1238, 1239 (2003).

¹²⁹ 18 U.S.C. § 2339B(a)(2) (2004).

¹³⁰ 8 U.S.C. § 1182(a)(3)(B)(i)(IV)- (V) (2000).

¹³¹ 18 U.S.C. § 2339B(a)(1) (2004).

¹³² *Id.* §1189 (a)(1)(A).

¹³³ "The 9/7 Boko Haram Attack on Bauchi Prison: A case of intelligence failure," Onuoha, *supra* note 18; "Boko Haram: The Northern Nigeria (Hausaland) (2)," Sani, *supra* note 20

¹³⁴ "Nigeria: Timeline of Boko Haram attacks and related violence," *supra* note 12.

northeastern Nigeria, but their attacks have expanded as far southward as Abuja and even Kogi State. The group further has hide-outs all over northern Nigeria.

2. Engages in Terrorist Activity

The organization *must engage in terrorist activity or retains the capability and intent to engage in terrorist activity.*¹³⁵ The term "terrorist activity" means any activity, which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18) or upon the liberty of such a person.

(IV) An assassination.

(V) The use of any—

(a) biological agent, chemical agent, or nuclear weapon or device, or

(b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

*(VI) A threat, attempt, or conspiracy to do any of the foregoing.*¹³⁶

To "engage in a terrorist activity" means according to §1189:

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

(II) to prepare or plan a terrorist activity;

¹³⁵ 8 U.S.C. §1189(a)(1)(B).

¹³⁶ 8 U.S.C. §1182(a)(3)(B)(iii)(I)-(VI).

(III) to gather information on potential targets for terrorist activity;

(IV) to solicit funds or other things of value for—

(aa) a terrorist activity;

(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

(V) to solicit any individual—

(aa) to engage in conduct otherwise described in this subsection;

(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

(aa) for the commission of a terrorist activity;

(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi) or to any member of such an organization; or

(dd) to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.¹³⁷

¹³⁷8 U.S.C. §1182(a)(3)(B)(iv)

Boko Haram not only has the capability and intent to engage in terrorist activities but actually engages in and commits terrorist activities per the statutory requirements. Boko Haram has engaged in five of the six listed terrorist activities which examples of will be provided below. Boko Haram has assisted and conspired with AQIM in seizing, detaining, and threatening to kill at least one individual, it has attacked internationally protected persons in its bombing on the United Nations compound in Abuja; it has conducted a dozen or more assassinations; it has used explosives, firearms, and other weapons with the intent to directly or indirectly endanger the safety of one or more individuals or to cause substantial damage to property; and it has made numerous threats to do the activities listed previously.

First, a group of Boko Haram members thought to be led by Khalid al-Barnawi conspired with AQIM to kidnap German engineer Edgar Fritz Rapauch, and when security forces stormed the hideout where Boko Haram members were keeping Rapauch, they killed Rapauch.¹³⁸ Khalid al-Barnawi is also strongly suspected of being involved in the kidnapping for ransom and eventual murder of Briton Chris McManus and Italian Franco Lamolinara.¹³⁹

Secondly, Boko Haram used a vehicle-borne improvised explosive device (VBIED) and suicide bomber to attack the United Nations headquarters in Abuja. The attack resulted in the deaths of 26 people and the blast injured 115 more. The following international agencies lost members in the attack: UNICEF, UNAIDS, WHO, UNODC, UNDP.¹⁴⁰

Thirdly, Boko Haram has claimed responsibility for numerous assassinations, including that of Borno State gubernatorial candidate for the All Nigeria's Peoples Party, ANPP, Alhaji Modu Fannami Gubio, along with six others,¹⁴¹ and Muslim cleric Malam Dala in September of 2011.¹⁴² Boko Haram assassinated the former Deputy Inspector General of Police, DIG Abubakar

¹³⁸ "Kidnapped German, Six Gunmen Killed as JTTF Invades Boko Haram's Den," AbdulSalam Muhammad, supra note 192; "Boko Haram Duo Linked to Kidnapping of Foreigners," *The Nation*, June 22, 2012. Available at: <http://www.thenationonlineng.net/2011/index.php/news-update/51263-boko-haram-duo-linked-to-kidnapping-of-foreigners.html>.

¹³⁹ "Nigeria Rescue Bid: kidnapped Briton and Italian killed," *BBC News*, supra note 163.

¹⁴⁰ "UN Releases Names of Abuja Bomb Attack Casualties," supra note 95.

¹⁴¹ "We Killed the Guber Candidate, 6 Others –Boko Haram," *Vanguard*, February 3, 2011. Available at: <http://www.vanguardngr.com/2011/02/we-killed-the-guber-candidate-6-others-boko-haram/>.

¹⁴² "Nigeria: Timeline of Boko Haram attacks and related violence," supra note 12.

Saleh Ningi, in Kano on June 5, 2012.¹⁴³ More recently Boko Haram extended its global reach by assassinating a Mayor in the neighboring country of Cameroun.¹⁴⁴

Fourthly, Boko Haram has used explosives (often Improvised Explosive Devices, or IEDs) and firearms with the intent to directly endanger the safety of individuals. Boko Haram is responsible for killing well over 2000 people since 2009 and with the group's almost-daily attacks the number is ever increasing. Over 500 people have been killed by Boko Haram in the first half of 2013 alone.¹⁴⁵ Further, Boko Haram has used various dangerous materials, such as explosives, to cause substantial damage to property. It has bombed police stations, banks, churches, media offices, private shops, and military bases in the last few years.¹⁴⁶ It has also burned numerous schools.¹⁴⁷

Finally, Boko Haram has threatened to continue their deadly attacks if the government refuses to meet its demands. In May 2012, the group threatened to continue its deadly attacks with sights now aimed at bombing government-owned properties, offices and residential quarters, in the 19 northern states and Abuja. It further stated that all government buildings should be evacuated.¹⁴⁸ And in January of 2012, Boko Haram gave an ultimatum and demanded that all Southerners and Christians in the northern states of Nigeria leave within three days.¹⁴⁹

Further, Boko Haram engages in terrorism as defined in Annual Country Reports on Terrorism, 22 U.S.C. 2656f(d)(2) : "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents." Boko Haram's attacks have been premeditated, as they often occur soon after the group has announced some sort of threat, and as seen in the coordination required for its January 2012 attacks in Kano and

¹⁴³ The retired DIG, his driver and a police orderly were shot dead by two gunmen on a motorcycle along Sauna Kawagi Road in Kano metropolis on his way from his farm. Boko Haram later claimed responsibility for the attacks. "Boko Haram Claims Murder of ex-DIG Ningi," *Punch*, June 7, 2012. Available at: <http://www.punchng.com/news/boko-haram-claims-murder-of-ex-dig-ningi/>.

¹⁴⁴

¹⁴⁵ "Sect Member Dies, Prison Break Frees 40 in Nigeria," supra note 206.

¹⁴⁶ See preceding narrative account and attached timeline.

¹⁴⁷ "Nigeria: Boko Haram targeting schools," supra note 158.

¹⁴⁸ Boko Haram issued a warning on May 17, 2012 and it has continued to attack government and security forces buildings and Christians since then. "Boko Haram Threatens to Bomb Government Buildings in 19 Northern States, Abuja," supra note 190.

¹⁴⁹ "Islamist Militants in Nigeria Warn Christians to Leave North Within 3 Days," supra note 129.

June 17 attacks on five churches across Kaduna state.¹⁵⁰ Boko Haram's attacks have also been politically motivated: Boko Haram has sent strong messages publically, through the news media and other outlets, that it is warring against the federal government of Nigeria and wants to cause instability in the nation and overthrow the government so it can then implement Sharia law in all of Nigeria.¹⁵¹ Boko Haram targets police, military forces, Christians, Southerners, Westerners and foreigners, Muslims they have disagreements with, and any private citizen who happens to be in the way of Boko Haram. The group's spokesperson has stated that everyone must abide by sharia law: "There are no exceptions. Even if you are a Muslim and you don't abide by sharia, we will kill you. **Even if you are my own father, we will kill you.**"¹⁵²

As the above information proves Boko Haram is a "terrorist organization," as defined by 8 U.S.C. §1182 (a)(3)(B)(vi)(III).¹⁵³

3. Threatens the Security of the United States Nationals and National Security of the United States

Boko Haram is a present and increasing *threat to the United States and national security*. The terrorist group has deliberately singled out the United States numerous times as being a corrupting influence on Nigeria and a force that needs to be extinguished. General Carter Ham, former head of U.S. military's Africa Command, has stated that Boko Haram, as well as AQIM and Al-Shabaab in Somalia, each present a "significant threat not only in the nations in which they primarily operate but regionally and... to the United States." He further

¹⁵⁰ Mamah and Omonobi, supra note 140; "Two More Churches Hit by Bombs," supra note 198.

¹⁵¹ "We will consider negotiation only when we have brought the government to their knees," the spokesman, Abu Qaqa, said in the group's first major interview with a western newspaper. "Once we see that things are being done according to the dictates of Allah, and our members are released [from prison], we will only put aside our arms – but we will not lay them down. You don't put down your arms in Islam, you only put them aside." "Boko Haram Vows to Fight Until Nigeria Establishes Sharia Law," Monica Mark, *The Guardian*, January 27, 2012. Available at: <http://www.guardian.co.uk/world/2012/jan/27/boko-haram-nigeria-sharia-law>.

¹⁵² "Boko Haram Vows to Fight Until Nigeria Establishes Sharia Law," Monica Mark, *The Guardian*, January 27, 2012. Available at: <http://www.guardian.co.uk/world/2012/jan/27/boko-haram-nigeria-sharia-law>.

¹⁵³ "Terrorist organization" means an organization "that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv)."

said, “Those three organizations have very explicitly and publicly voiced intent to target Westerners and the U.S. specifically.”¹⁵⁴

After the August 2011 United Nations headquarters bombing at Abuja, Boko Haram released a video in which the suicide bomber said he was undertaking the mission to send a message to the United States’ President Obama and “other infidels.”¹⁵⁵

Boko Haram opposes any “Western” culture that goes against the “pure” teachings of Islam. One of the core ideals that cements Boko Haram together as an organization is Boko Haram’s view that its enemies are all who do not adhere to the teachings of Islam (according to Boko Haram’s version), and most especially the West.

Boko Haram’s founder and first leader, Yusuf, said that “It is the religion of Bush” that he is abusing and that “whatever [Allah] said we should do that we will do and we are willing and enthusiastic about it...Allah said ‘kill them!’ this is the understanding I have and no other one.”¹⁵⁶ He further said “What are your feelings over what is happening in Iraq, Palestine, Kashmir and in this nation in different places, Zangon Kataf, Kafanchan and the rest, are you not angry? You will never find fortitude and peace until the day you fight a Holy War (JIHAD) on behalf of the servant of Allah.”¹⁵⁷

The current leader, Abubakar Shekau, said:

what I tell Muslims in the Nation and the world at large is that this war is a war between the Muslims and the Infidels. For this fact where ever you are you should know **that it is not an ethnic war, it is not an ignorant war, it is not a war for money, it is not a war for any other reason. No, it is a religious war!** This war is not meant to end in either a day, a week or a year, but the end of this war is when we are all dead the whole of us and none of us is left to continue the war or it is the religion that will dictate what is to be done and this may decipher the end of this war. Of course it is not possible that this war may end, because it is not enough to conclude that because we are no more that the

¹⁵⁴ “African Islamist Groups Seen as U.S. Threat: General,” David Alexander, *Reuters*, September 15, 2011. Available at: <http://www.reuters.com/article/2011/09/15/us-usa-defense-africa-idUSTRE78E13920110915>.

¹⁵⁵ “Nigeria: UN building – video of Boko Haram vomber released,” Simon Imobo-Tswam, *The Moment*, September 19, 2011. Available at: <http://allafrica.com/stories/201109191700.html>.

¹⁵⁶ *Boko Haram: Inciting messages of intolerance against Christians*: a direct transcript from the video preaching of Imam Abu Muhammad Abubakar Bin. Muhammad Shekau, 11.

¹⁵⁷ *Ibid.* at 11-12.

war has ended because it is God that said so. This is a war against Muslims and infidels Yes! And we are ever ready to face any one that will take any step against us be it individuals, group of persons or government or whoever may be because we know those we aim at in this war. Therefore, we are warning every Muslim that adherents of Islam under non grounds should help any infidel in this war. If, by any chance, any Muslim helps any infidel in this war he should know that he is a dead person, yes!¹⁵⁸

Musa Tanko, spokesman of the Boko Haram sect, said in an interview given to *Agence France Presse* in March 2010 that **"Islam doesn't recognise international boundaries, we will carry out our operations anywhere in the world if we can have the chance."**

"The United States is the number one target for its oppression and aggression against Muslim nations particularly in Iraq and Afghanistan and its blind support to Israel in its killings of our Palestinian brethren," Tanko said.¹⁵⁹

Shekau, the current leader of Boko Haram said in a video released January 27, 2012 that **"From former President George Bush to Obama, the Americans have always been fighting and destroying Islam.... They have labeled us as terrorists and they are paying for it."**¹⁶⁰ He thus continued and explicitly supported the idea of making the United States an enemy of Islam and therefore, of Boko Haram. Shekau said in praise of Al Qaeda in Iraq in 2010, **"Do not think jihad is over. Rather jihad has just begun. O America, die with your fury."**¹⁶¹

When the U.S. designated Shekau as a global terrorist in 2012, he responded to this designation in a YouTube video saying of President Obama "You said I'm a global terrorist, then you are a terrorist in the next world," and then he warned President Obama saying "you should repent and forsake Christianity."

¹⁵⁸ Ibid. at 1-3.

¹⁵⁹ "Nigerian Islamist Sect Threaten to Widen Attacks," Aminu Abubakar, March 29, 2010. Available at: <http://www.google.com/hostednews/afp/article/ALeqM5j1FA1NJrS-ES89YWeX4f--kcQGmA>.

¹⁶⁰ "Abu Shekau Issues Video Message to Nigerian President," *Jamestown Foundation*, January 31, 2012, Vol. 3, Iss. 1. Available at: http://www.unhcr.org/refworld/country,,THE_JF,,NGA,,4f2a76fe2,0.html.

¹⁶¹ "Suicide bomber hits UN office in Nigerian capital," Bill Roggio, *The Long War Journal*, August 26, 2011. Available at: http://www.longwarjournal.org/archives/2011/08/suicide_bomber_hits_3.php.

Based upon the evidence presented above and based upon other statements not referred to here it is obvious that Boko Haram has deep-seated ideological, theological, philosophical and actual hatred for the United States as its “enemy.”

a. Boko Haram’s Connections with Other Designated Foreign Terrorist Organizations

While Boko Haram alone creates a threat to the United States, it becomes a much more potent threat when it has established connections to other more sophisticated terrorist organizations which are now a widely recognized threat to U.S. security. Boko Haram’s continued growth, proficiency in bomb making, influx in suicide bombings, supply of weapons and money suggests that it is getting support from other terrorist organizations. In fact of all the suicide attacks worldwide for 2012 Nigeria ranked 4th on the list accounting for 10.9% of the total suicide bomber attacks. (Statistical break-down: Afghanistan (33.2%), Iraq (19.1%), Pakistan (13.2%), Nigeria (10.3%), Yemen (7.7%), Syria (6.8%), and Somalia (4.7%)).¹⁶²

Al-Qaeda and Al-Shabaab in Somalia have both voiced desires to establish a presence in Nigeria. It is likely that they, as well as other terrorist organizations, are accomplishing this through Boko Haram.

That Boko Haram has connections with terrorist organizations such as AQIM and Al-Shabaab exponentially elevates its potency as a rapidly evolving national threat, proliferate to destabilize the region, and then become a deeply entrenched threat to Western nations, specifically America.

Boko Haram even claims ties with AQIM and other Al-Qaeda groups. These claims were confirmed in April 2012 when documents found in the house in which Bin Laden was killed showed that Boko Haram leaders had been in contact with top officials of Al-Qaeda in the previous 18 months. Since that discovery Abu Qaqa a spokesperson for Boko Haram told reporters in November of 2012 that **“We [Boko Haram] are together with Al-Qaeda. They are promoting the cause of Islam, just as we are doing. Therefore they help us in our struggle and we help them too.”** Further Abu Mus’ab Abdel-Wadoud, the emir of AQIM published a statement on a website saying to Boko Haram “We are ready to train your people in weapons, and give whatever support we can in men, arms, and munitions to enable you to defend our

¹⁶² “Country Reports on Terrorism 2012,” *Annex of Statistical Information*, May 2013. Available at: www.start.umd.edu.

people in Nigeria.” Additionally, in August 2011 leaders of Boko Haram visited Al-Qaeda in Saudi Arabia, and Nigeria-based security sources who track Boko Haram claim that members of the group have been going to the training camps of Algerian AQIM for the past six years. More recently the *Washington Post* reported that U.N. and regional government officials said Boko Haram traveled to northern Mali to train in AQIM camps and fight alongside the jihadists.

Evidence of such training and affiliations can be seen in the advancement of arms which Boko Haram uses. In early March, Boko Haram fighters in pick-up trucks mounted with heavy guns targeted an army barracks in Borno state. A few days later, Nigerian soldiers raiding a Boko Haram base found more vehicles that had been transformed into fighting machines, suggesting that Boko Haram “has already learned new methods of fighting from the Islamists militants in Mali Even if France and its West African allies have driven AQIM out of northern Mali, Ansaru and Boko Haram are likely self-sustainable and able to continue attacks.”¹⁶³

Boko Haram stated of its relations with the terrorist organization Al-Shabaab in Somalia in June 2011 that, “Very soon, we will wage jihad . . . we want to make it known that our jihadists have arrived in Nigeria from Somalia where they received real training on warfare from our brethren who made that country ungovernable . . .” Then two days before the United Nations attack in Abuja Boko Haram issued a similar statement saying “Very soon, we will wage jihad our jihadists have arrived in Nigeria from Somalia where they received real training on warfare from our brethren who made that country ungovernable.” It is noteworthy that Somali terrorists had forced the U.S. out of that country after they killed several U.S. troops on a U.N. peacekeeping mission. After the bombing a spokesperson for Boko Haram told *Voice of America* news that they had just returned from training in Somalia.¹⁶⁴

All of this conclusively points to the fact that prior to the attack Boko Haram members received training from Al-Qaeda and Al-Shabaab in Somalia. Boko Haram has also successfully

¹⁶³ Nigerian Islamist Militants return from Mali with weapons, skills. *Washington Post*, May 31, 2013, http://www.washingtonpost.com/world/africa/nigerian-islamist-militants-return-from-mali-with-weapons-skills/2013/05/31/d377579e-c628-11e2-9cd9-3b9a22a4000a_story.html.

¹⁶⁴ Boko Haram Attacks Leave 11 People Dead in Northeastern Nigeria, *Newstime Africa*, June 8, 2011, www.newstimesafrica.com/archives/20512.

strengthened its ties with other terrorist organizations by developing an increased online presence and using the internet to issue statements and gain support.

In an April 2012 meeting of the House Foreign Affairs Committee, Daniel Benjamin, from the office of the Coordinator for Counterterrorism acknowledged that “we remain concerned by reported communications, training, and weapons links between AQIM, Boko Haram, Al-Shabaab, and Al-Qaeda in the Arabian Peninsula.”

General Carter Ham, ex-head of the United States Military Africa Command has said what is worrisome is “a clearly stated intent by Boko Haram and by Al-Qaeda in the Islamic Maghred to coordinate and synchronize their efforts.” He noted that there is a “clear intent and desire” by both groups to do so. Further elaborating on Boko Haram’s affiliations with other terrorist groups he said that there could be a loose partnership with Al-Shabaab, the implications of which are that Boko Haram’s reach could extend thousands of miles across the African continent.

David Petraeus, ex-director of the Central Intelligence Agency said that Boko Haram’s connection with AQIM is disturbing, especially when both Boko Haram and AQIM have been individually growing and developing a wider range and area of attacks.

According to Algerian Deputy Foreign Minister Abdelkader Messahel, Boko Haram has most certainly established connections with Al-Qaeda. Claiming that intelligence reports as well as both groups’ methods of operations demonstrate that Boko Haram has connections with Al-Qaeda. Algeria has the largest intelligence gathering operation on Al-Qaeda out of all the countries in the region, and thus this assessment of relationship status between Boko Haram and Al-Qaeda is highly credible.

The foreign minister for Niger, Mohamed Bazoum, at a regional security summit, said that there is no “doubt that there is confirmed information that shows a link between Boko Haram and AQIM, and it consists primarily of the training given to elements of Boko Haram One group has been received in AQIM basis here in the Sahel and another group got training, based on information we’ve gotten, with the Shabaabs in Somalia.”

Further influence from AQIM on Boko Haram can be seen in the recent influx in suicide bombings. Scott Stewart with Stratfor Global Intelligence has noted for an organization who has

no history of such operations to emerge into an organization capable of completing numerous suicide operations is quite significant and is compelling evidence of outside influence, training, and resources as it is highly unusual for a militant group to achieve such an operational upgrade without extraneous assistance.

Due to its connections with AQIM and other Al-Qaeda terrorist affiliates, Al-Shabaab in Somalia, and possibly Al-Qaeda in the Arabian Peninsula (AQAP), Boko Haram has repositioned itself as a regional threat as it is building up to better engage in global jihad, threatening not only Nigeria but the entire Sahel region and the United States.

b. Potential Threats: Energy and Aviation Sectors

According to 8 U.S.C. §1189(d)(2), “national security” means “the national defense, foreign relations, or economic interests of the United States.” Boko Haram could potentially threaten the United States’ economic interests by disrupting Nigeria’s oil production. Nigeria is the largest oil producer in Africa and the fourth largest oil supplier to the United States.¹⁶⁵ As of September 2011, America was importing 529,000 gallons of oil from Nigeria each day.¹⁶⁶ Nigeria, as a member of the Organization of the Petroleum Exporting Countries (OPEC), impacts global oil production. Any disruptions to Nigerian oil production will impact domestic refining in the United States and affect global oil markets.¹⁶⁷ A well-coordinated attack by Boko Haram could potentially halt all oil imports to the U.S. and cut off eight percent of U.S. oil imports, causing oil prices to skyrocket domestically and significantly increase worldwide.¹⁶⁸ Boko Haram has patterned itself largely after Al Qaeda, and if the group stays true to imitating Al Qa’eda’s tactics, the next step will be to target oil facilities like Al Qaeda did in 2006 in Saudi Arabia.¹⁶⁹

Although aviation has not yet been a Boko Haram target, it could easily become so since Nigeria is a major destination for Western travelers and an open skies agreement between the United States and Nigeria has established direct flights from Lagos to John F. Kennedy

¹⁶⁵ “Crude Oil and Total Petroleum Imports Top 15 Countries,” U.S. Energy Information Administration, September 2011 data. Available at:

http://www.eia.gov/pub/oil_gas/petroleum/data_publications/company_level_imports/current/import.html.

¹⁶⁶ Ibid.

¹⁶⁷ “Boko Haram: Emerging threat to the U.S. homeland,” supra note 236, at 16.

¹⁶⁸ Ibid.

¹⁶⁹ “Boko Haram: Emerging threat to the U.S. homeland,” supra note 236, at 16-17.

International Airport in New York City, Atlanta and Washington DC.¹⁷⁰ It would be entirely plausible that Boko Haram could attempt to take advantage of the numerous Western passengers that come through Nigeria and the security weaknesses that such volume of Western traffic creates.¹⁷¹ Nigeria's security measures at the Lagos airport are already particularly vulnerable as much of the equipment is outdated and the security forces have not had necessary training in identifying and preventing terrorist threats.¹⁷²

In addition to threatening the United States homeland, Boko Haram poses a threat to United States citizens who are traveling to Nigeria. There are reports that Boko Haram kidnapped Chris McManus - from England and Franco Lamolinara from Italy in May 2011.¹⁷³ The two men were kidnapped in Kebbi State, as they were working on a construction project. Although Boko Haram never claimed credit for the kidnapping, Nigerian President Jonathan said the group was responsible for the kidnappings.¹⁷⁴ Both men were brutally killed in a failed rescue attempt.¹⁷⁵ AQIM has been kidnapping Westerners since 2007 and has kidnapped over 20 hostages, making millions of dollars off of their ransoms.¹⁷⁶ That Boko Haram has connections to AQIM suggests the probability that it will follow suit and begin targeting more Westerners for kidnappings. On June 1, 2012, Nigerian Joint Security Forces stormed a Boko Haram hideout, unaware that German engineer Edgar Fritz Raupach, a hostage AQIM had previously demanded ransom for, was being held in the hideout.¹⁷⁷ Raupach was brutally stabbed to death and shot when his captors realized they were not going to escape.¹⁷⁸ This

¹⁷⁰ "Boko Haram: Emerging threat to the U.S. homeland," supra note 236, at 17.

¹⁷¹ Ibid.

¹⁷² "Following the attempted Christmas Day attack in 2009, investigations revealed that four full-body scanners given to Nigeria by the United States in 2008 had gone unused; top officials were found to have been unaware of their placement in Nigeria's four main airports. Nigerian airports began to use body scanners actively in 2010" according to the Congressional Report, "Boko Haram, Emerging Threat to the U.S. Homeland," supra note 236, at 16, citing to http://www.msnbc.msn.com/id/34645445/ns/us_news-airliner_security/t/us-scanners-wentunused-nigeria-airport/#.TsQzi1ZBU8k.

¹⁷³ "Nigeria Rescue Bid: kidnapped Briton and Italian killed," *BBC News*, supra note 163.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ "AQIM, Kidnapping, and Murder: a brief history," Alex Thurston, *The Christian Science Monitor's Africa Monitor*, January 19, 2011. Available at: [http://www.csmonitor.com/World/Africa/Africa-Monitor/2011/0119/AQIM-kidnapping-and-murder-a-brief-history/\(page\)/2](http://www.csmonitor.com/World/Africa/Africa-Monitor/2011/0119/AQIM-kidnapping-and-murder-a-brief-history/(page)/2).

¹⁷⁷ "Kidnapped German, Six Gunmen Killed as JTTF Invades Boko Haram's Den," AbdulSalam Muhammad, supra note 192.

¹⁷⁸ Ibid.

demonstrates that AQIM and Boko Haram have worked out a system for kidnappings and hostage taking that will increase the threat posed to American citizens traveling to or working in Nigeria or surrounding countries. Boko Haram will benefit from training in hostage taking from AQIM and at the least, will continue to provide a holding place for hostages AQIM has abducted, and could begin branching out on its own and creating more insecurity for Westerners, especially Americans, in Nigeria.

Boko Haram therefore presents a very clear threat to the United States homeland as it has established connections with terrorist organizations such as AQIM and Al-Shabaab which are larger, well-funded, and have declared intent to destroy the United States. AQIM and Al-Shabaab are both affiliates of Al Qaeda and thus aligned with Al Qaeda's goals and ideology, a core principle of Al Qaeda's teaching that it is "the duty of all Muslims to kill U.S. citizens—civilian and military—and their allies everywhere."¹⁷⁹ Boko Haram has already demonstrated intent and capability to attack international civil servants with the 2011 bombing at the United Nations compound in Abuja which included at least one U.S. citizen U.N. staff and one U.S. official visitor, and the group's leaders have stated the desire to destroy the United States specifically.¹⁸⁰ With its continuing expansion and support from other well-established terrorist organizations such as AQIM, Boko Haram poses a threat to Westerners in Nigeria and the surrounding Sahel region countries and those living in the United States.

The United States has woefully underestimated terrorist organizations before and just narrowly escaped the killing of almost 300 passengers by a Nigerian member of AQAP who unsuccessfully attempted to detonate explosives in his underwear while on a plane headed from Nigeria via Amsterdam to Detroit in December 2009.¹⁸¹ This soon will be the situation with Boko Haram if the threat they pose continues to be ignored.

¹⁷⁹ Issued in a statement in February 1998 under the banner of "the World Islamic Front for Jihad Against the Jews and Crusaders." Taken from the National Counterterrorism Center. Available at:

http://www.nctc.gov/site/groups/al_qaida.html.

¹⁸⁰ "It is the religion of Bush that I am abusing and you went ahead making pointless and unending meaningless speeches against one man... As for us we will carry out the commandment of Allah and whatever he said we should do that we will do and we are willing and enthusiastic about it. Even if we are not capable, if we find those who are capable we will impose them to do it. Allah said 'Kill them!' this is the understanding I have and no other one."

"Boko Haram: Inciting Messages of Intolerance Against Christians: a direct transcript from the video preaching of Imam Abu Muhammad Abubakar Bin. Muhammad Shekau, supra note 4, at 11.

¹⁸¹ "Al Qaeda Link Investigated as Clues Emerge in Foiled Terror Attack," *CNN*, December 28, 2009. Available at:

Boko Haram is responsible for widespread destruction of lives and property, and has blatantly committed and claimed credit for numerous terrorist acts and threatens to continue to do so.¹⁸² The Nigeria-based group is foreign; it has engaged in hundreds of terrorist attacks, multiple threats of terrorist attacks, and other acts of terrorism that have killed over 2000 people; and it is a threat to United States national security as it has openly stated hatred for the United States and intent to destroy it. Many have predicted the fall of Boko Haram in the past only to be proven wrong when Boko Haram shows up stronger than before. The terrorist organization has proven resilient and only developed increased ferocity to wage its rampage of death and heightened capability to unleash destruction in the past decade of its existence.

III. Judicial Review

A. Designation and Appeal Procedure

The Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 8 U.S.C. §1189 (amended 2004), allows the Secretary of State to designate an entity as a “foreign terrorist organization.”¹⁸³To complete designation, the Secretary compiles an administrative record and based off that record, determines whether the organization meets the statutory criteria for designation as a foreign terrorist organization.¹⁸⁴ The Secretary must find, based on the administrative record that: (A) “The organization is a foreign organization”; (B) “the organization engages in terrorist activity” and (C) “the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.”¹⁸⁵

Once the Secretary has decided to designate an organization an FTO, she must provide notice by classified communication, to the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate an organization under this subsection, together

http://articles.cnn.com/2009-12-28/justice/airline.terror.attempt_1_al-qaeda-explosive-device-yemeni/.

¹⁸² “Sect Member Dies, Prison Break Frees 40 in Nigeria,” *Fox News*, supra note 206; 935 people had been killed by Boko Haram since 2009 by January 2012. “Nigeria’s Boko Haram Killed 935 People Since 2009,” *Reuters*, January 24, 2012. Available at: <http://www.reuters.com/article/2012/01/24/us-nigeria-sect-idUSTRE80N1GX20120124>.

¹⁸³ See *People’s Mojahedin Org. of Iran v. Dep’t of State*, 327 F. 3d 1238, 1239 (2003).

¹⁸⁴ *People’s Mojahedin Org.*, 327 F. 3d at 1239.

¹⁸⁵ 8 U.S.C. §1189 (a)(1)(A)-(C).

with the findings made with respect to that organization, and the factual basis therefore seven days prior to publishing the designation in the Federal Register.¹⁸⁶ The Secretary shall then publish the designation in the Federal Register.¹⁸⁷

The organization being designated has no right to comment on the administrative record nor does it have a right to present evidence to be included in the administrative record.¹⁸⁸ The Secretary may consider classified information when making a designation. Such classified information is not subject to disclosure under the Act except to a reviewing court *ex parte* and *in camera*.¹⁸⁹

Once a designation has been made under the Act, it persists for two years, and the Secretary may re-designate the foreign organization as a foreign terrorist organization for successive two-year periods.¹⁹⁰ A designated organization may seek judicial review of its designation as a foreign terrorist organization in the United States Court of Appeals for the District of Columbia Circuit if it does so within 30 days after publication of designation in the Federal Register.¹⁹¹

Judicial review of a designation under 8 U.S.C. §1189 (c)(2) must be based on the administrative record only, with the exception that the Government must submit to the court and certain members of Congress, for *ex parte* and *in camera* review, classified information used in making the designation.¹⁹² The Court shall “hold unlawful and set aside a designation, amended designation, or determination in response to a petition for revocation” which the court finds to be:

“(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”;

“(B) contrary to constitutional right, power, privilege, or immunity”;

“(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right”;

“(D) lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under paragraph (2)”;

¹⁸⁶ AEDPA, 8 U.S.C. §1189 (2)(A)(i).

¹⁸⁷ *Id.* §1189 (2)(A)(ii).

¹⁸⁸ *People’s Mojahedin Org.*, 327 F. 3d at 1240.

¹⁸⁹ 8 U.S.C. §1189(a)(3)(B).

¹⁹⁰ *Id.* § 1189(a)(4)(B).

¹⁹¹ *Id.* §1189 (c)(1).

¹⁹² *Id.* §1189 (c)(2).

*“(E) not in accord with the procedures required by law.”*¹⁹³

Most often, the review will be based on a question of the substantiality of the administrative record or what Constitutional protections are due the entity, if any. It is rare that procedural error will be a reason for review, but if it is a reason, it will only provide grounds for revocation of designation if the procedural error was not harmless, or material to the outcome of the case.¹⁹⁴

B. Designation of Boko Haram as a Foreign Terrorist Organization would not be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

Because abundant material exists in news media accounts, open source intelligence, and unclassified documents that Boko Haram meets the three criteria for being designated a Foreign Terrorist Organization (FTO), the Secretary of State’s designation would most likely stand. Whether designation is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law is determined by the strength of the administrative record and whether it contains substantial support for finding that the organization meets the criteria for being an FTO.

Wide deference is given to the Secretary’s designation. Any classified information relied upon by the Secretary in making her decision is allowed to remain secret, except from certain members of Congress and the D.C. Circuit Court of Appeals.¹⁹⁵ Judicial review is confined to the material assembled by the Secretary before publication of the designation.¹⁹⁶ There is no restriction in legislation from acting on the basis of third hand accounts, press stories, material on the internet, or hearsay regarding the organization’s activities; the administrative record then, may consist of little else besides such material.¹⁹⁷ However, that does not license the Secretary to designate any foreign group a foreign terrorist organization; the Secretary must

¹⁹³ *Id.* §1189 (c)(3).

¹⁹⁴ *Chai v. Dep’t of State*, 466 F. 3d 125, 132-33 (D.C. Cir. 2006) (citing *PDK Labs., Inc. v. U.S. Drug Enforcement Admin.*, 362 F.3d 786, 799 (D.C.Cir.2004)).

¹⁹⁵ *People’s Mojahedin Org. of Iran v. Dep’t of State*, 182 F. 3d 17, 19 (1999); see 8 U.S.C. §1189(c)(2).

¹⁹⁶ *Id.*; see 8 U.S.C. §1189(c)(2).

¹⁹⁷ *People’s Mojahedin Org. of Iran v. Dep’t of State*, 182 F. 3d at 19.

have “reasonable grounds to believe that an organization has engaged in terrorist acts—assassinations, bombings, hostage-taking and the like—before she can place it on the list.”¹⁹⁸

C. *Abundant material exists in what would be the administrative record to show that it is reasonable to believe the group is an FTO.*

When reviewing an FTO designation, the appellate court cannot “lay out the facts” since what is contained in the Secretary of State’s administrative record from named and un-named sources are not able to be evaluated for validity by the D.C. Circuit Court of Appeals.¹⁹⁹ The court is unable to evaluate whether the third finding mandated by §1189(a)(1) – “C the terrorist activity of the organization that threatens the security of United States nationals or the national security of the United States because that is “nonjusticiable.”²⁰⁰ *Chicago & Southern Air Lines, Inc. v. Waterman Steamship Corp.*, 333 U.S. 103, 111 (1948) holds that it is beyond the judicial function for foreign policy decisions of the Executive Branch to be reviewed by a court because they are political judgments, “decisions... which the Judiciary has neither aptitude, facilities, nor responsibility and have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.”²⁰¹

All that may be reviewed by the court, therefore, are the first two findings: that the organization is “foreign” and that it “engages in terrorist activity.”²⁰² Whether designation is arbitrary, capricious, an abuse of discretion or lacking substantial supports in the administrative record, or somehow not in accordance with rules of procedure may be determined by the court. Therefore the court may review the constitutionality of designation.

If there is substantial support in the administrative record, a designation will not be considered arbitrary or lacking support. In *People’s Mojahedin Organization of Iran v. Dep’t of State*, the organization designated as an FTO had assassinated six Americans, supported takeover of the U.S. and Iranian embassies, opposed the release of hostages, exploded time

¹⁹⁸ *Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1137 (9 Cir. 2000); See 8 U.S.C. § 1182(a)(3).

¹⁹⁹ *People’s Mojahedin Org. of Iran v. Dep’t of State*, 182 F. 3d at 19.

²⁰⁰ *Id.* at 23.

²⁰¹ *Id.* at 23.

²⁰² *Id.* at 24; *People’s Mojahedin Organization of Iran v. Dep’t of State*, 613 F. 3d 220, 223 (D.C. Cir. 2010).

bombs, and took credit for over 25 attacks.²⁰³ The Secretary's administrative report contained information that each of the organizations appealing the designation had engaged in bombing and killing in order to "further their political agendas," and that "any one of the incidents attributed to the [organizations] would have sufficed under the statute."²⁰⁴

However, even when there is uncertainty regarding whether or not the petitioning organization did in fact commit the acts referenced in the administrative record, the court has held that the record only needs to indicate "sufficient basis" for the designation. In *Kahane Chai v. Dept. of State*, 466 F. 3d 125, 129 (D.C. Cir. 2006), the court held that the record only need indicate that there is "a sufficient basis for a reasonable person to conclude that [petitioner] was likely behind such a threat." The court said that even though the record does not "expressly tie [petitioner] to a threat of assassination," the Secretary may still designate it as an FTO as long as there was sufficient basis to believe the petitioner was behind the threat.²⁰⁵ The record showed that Chai praised Baruch Goldstein, who was responsible for massacring Arab worshippers, and advertised a summer camp for children, which included a pilgrimage to visit Goldstein's grave.²⁰⁶ Even though the record did not identify any one group as being responsible for the threats, evidence suggesting Kach was involved in the underlying crime consisted of a man described in a cable from the American Consulate in Jerusalem to the Secretary of State as "a leader" of the organization— was "reportedly arrested in connection with the attempted bombing."²⁰⁷ The court held that the Secretary could reasonably conclude that an organization was responsible for the death threats made against officers if the organization was known to approve of terrorist tactics, was possibly linked to the attempted bombing of a school, and was demonstrably interested in the latter affair.²⁰⁸

If Boko Haram is designated as an FTO, plenty of material now exists in news media articles and accounts that would suffice to provide a substantial amount of evidence that creates a sufficient basis for a reasonable person to conclude that Boko Haram has been behind

²⁰³ *Id.* at 20

²⁰⁴ *Id.* at 24-25.

²⁰⁵ *Chai*, 466 F. 3d at 129.

²⁰⁶ *Id.* at 130.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

attacks that have claimed thousands of lives as well as threats of terrorist attacks. There is even more support for FTO designation for Boko Haram than for Kach. Unlike *Chai*, in which the record did not explicitly tie the petitioner to a threat of assassination, abundant material exists for the administrative record to explicitly tie Boko Haram to the attacks on the police headquarters in Abuja, the U.N. compound bombing in Abuja, bombing of *This Day* and other news media buildings, and numerous church bombings because the group has officially claimed responsibility for the attacks.²⁰⁹ It has also issued threats and warnings before it has carried out attacks which prove that it has intended to execute the attacks and which expressly connect the organization to their heinous crimes.

Like *People's Mojahedin Organization of Iran (1999)*, abundant unclassified material exists to support the reasonable conclusion that Boko Haram is behind the terrorism they have both threatened and claimed responsibility for. Like MEK, Boko Haram has claimed credit for numerous attacks; but where MEK claimed credit for a little over 25 attacks, Boko Haram has claimed credit for at least 195 attacks since 2009 and the victims of these attacks are often are civilians.²¹⁰ Boko Haram more than meets the criteria for engaging in terrorist acts and it has, like MEK, claimed responsibility for most of the larger attacks attributed to the sect. The evidence is beyond circumstantial - it is concrete as the perpetrator has repeatedly admitted to the crimes and even boasted about their successes.

Like Kach in *Chai*, Boko Haram is a complex organization that does not consist of a simple organizational scheme.²¹¹ And in *Chai*, even though the administrative record did not expressly tie the Kach group to the administrative record, enough information existed to allow a reasonable basis to conclude that Kach had completed the terrorist activities mentioned. In this case, Boko Haram has actually claimed credit for numerous attacks as stated previously, and there is much in the way of third party reports and media accounts to provide a reasonable

²⁰⁹ "Boko Haram Claims Responsibility for Nigeria Church Bombings" *CNN*, June 18, 2012. Available at: <http://www.cnn.com/2012/06/18/world/africa/nigeria-church-bombings/>.

²¹⁰ The group claimed credit for the series of attacks over four days in 2009, the jail break, six assassinations, May 2011 bombings (4 attacks), June 2011 police headquarters bombing, August 2011 UN bombing, November 2011 attacks, December 2011 Christmas bombing, January 2012 Kano attacks, burning of over 12 schools between February and March 2012, the bombing of *THIS DAY* newspaper in April 2012, and three series of attacks on churches in 3 Sundays in June 2012, equaling 5 attacks in June. See attached narrative for more information.

²¹¹ There is definite organization in the group, but there are numerous men on the ground with a select leadership of Shekau and a few other key figures who control the majority of the group's major activities. (?)

basis for concluding that Boko Haram has been behind both the threats it has been accused of issuing and the actions taken after such threats. Part of the reasonable basis consists of President Jonathan of Nigeria and high-ranking security officials attributing the attacks to Boko Haram, and there are numerous documented accounts of attacks that are similar to those that Boko Haram has claimed credit for.

Therefore, even if the administrative record consisted of nothing more than news media accounts of Boko Haram's violence, the designation will not be revoked on the grounds that there is not substantial basis in the administrative record because the organization claimed responsibility for over 195 attacks and the deaths of over 2,000 people since 2009, and high ranking Nigerian security forces and government officials have attributed much of the violence and attacks specifically to Boko Haram, giving the Secretary of State plenty of information to come to the conclusion that Boko Haram is foreign and engaged in terrorism.

D. Boko Haram has no presence in the U.S. or substantial connection with the U.S. and thus has no Constitutional rights.

FTO designation may be revoked if the reviewing court determines that, according to 8 U.S.C. §1189 (c)(3), designation is "contrary to constitutional right, power, privilege, or immunity." In order for designation to be contrary to constitutional right, power, privilege, or immunity, the organization in question must have property or presence in the United States.²¹²

In *People's Mojahedin Organization of Iran* (2003), the court held that "A foreign entity without property or presence in this country has no constitutional rights, under the due process clause or otherwise."²¹³ When a foreign entity does have "a sufficient connection" to the United States, it has the right to be heard "at a meaningful time and in a meaningful manner," before being deprived of a protected interest in liberty or property.²¹⁴ Meaningful time and manner involves only providing to the entity to be designated an FTO notice that the

²¹² *People's Mojahedin Org. of Iran*, 182 F. 3d at 22.

²¹³ *Id.*

²¹⁴ *Chai*, 466 F. 3d at 132 (quoting *Nat'l Council of Resistance of Iran v. Dep't of State*, 251 F.3d 192, 208 (D.C. Cir. 2001)).

designation is impending and a copy of the unclassified portion of the administrative record.²¹⁵ The organization must be given an opportunity to present in writing evidence to rebut the evidence in the record or otherwise to ward off the entity's impending designation²¹⁶ unless doing so before designation would jeopardize national security or foreign policy goals, in which case notice must be provided after designation.²¹⁷

In *People's Mojahedin Organization of Iran* (1999), the Liberation Tigers of Tamil Eelam (LTTE) and Mujahedin e Khalq (MEK) were determined not to have any Constitutional rights, under the due process clause or otherwise, because they did not have any presence in the U.S. – none of the U.S. financial institutions held any of their property and they were uncontestedly foreign.²¹⁸ Only once it was determined that the National Council of Resistance of Iran (NCRI) was an alias of the People's Mojahedin Organization of Iran (PMOI), then because the NCRI was determined to have a presence in the United States, the PMOI by virtue of association as an alias of NCRI was determined to also have a Constitutional right to due process. Because of the LLTE and MEK however, initially were found to be foreign and have no presence in the United States, Constitutional rights could not be claimed by the groups, and they could only contest the FTO designation under statutory grounds consisting of whether the Secretary followed statutory procedures, or whether she made the requisite findings, or whether the administrative record substantially supported her findings.²¹⁹

Like the LLTE and MEK, Boko Haram has no Constitutional rights because it has no presence or property in the United States that is known at the time of this writing. Because Boko Haram does not have presence or property in the United States, it does not have any Constitutional rights, and it cannot then contest its FTO designation under due process or any other Constitutional right claim, therefore it is unnecessary to define what courts have found due process to consist of regarding FTO designation. Boko Haram's contesting claims can be based only upon whether there is sufficient basis in the record for the Secretary of State to

²¹⁵ *People's Mojahedin Org. of Iran*, 182 F. 3d at 1242 (quoting *Nat'l Council of Resistance of Iran v. Dep't of State*, 251 F. 3d 192, 208 (D.C. Cir. 2001)).

²¹⁶ *Chai*, 466 F. 3d at 132.

²¹⁷ *National Council of Resistance of Iran v. Dept. of State*, 251 F. 3d 192, 208 (2001).

²¹⁸ *People's Mojahedin Organization of Iran v. Dep't of State*, 182 F. 3d 17, 22 (D.C. Cir. 1999).

²¹⁹ *Id.*

reasonably determine that the entity meets the criteria to be designated an FTO according to 8 U.S.C. §1189, and whether the Secretary has indicated which part of the statute is met with the information in the administrative record which she has chosen to use.²²⁰

Therefore, should Boko Haram be designated an FTO, if the organization appealed its designation within 30 days after publication of its designation in the Federal Register, its designation would most likely not be revoked because 1) there is substantial support in the material that will be used to compile what will be the administrative record (news articles, open source intelligence, unclassified materials) to support the Secretary's finding that Boko Haram was foreign, engaged in terrorist activities or terrorism, and that it was a threat to the United States national security; 2) because there would be substantial support in the administrative record (even if said record consisted solely of news media articles), the designation cannot be said to be arbitrary or capricious; and 3) Boko Haram is a foreign entity and not entitled to any Constitutional rights.

CONCLUSION

Boko Haram has threatened U.S. interests and attacked U.S. Citizens. Two Americans, one a U.N. official and another a U.S. official, survived the U.N. HQ bombing in August 2011. The U.S. embassy in Nigeria has continually warned of threats to Western targets in Abuja such as hotels.

The State Department is unable to open a consulate in Kano because of the insecurity orchestrated by Boko Haram. The January 20 attacks in Kano that claimed over 200 lives is the highest single day casualty in any global conflict and exceeded Iraq, Afghanistan, Sudan and only tied with Syria.

The U.S. Agency for International Development has been unable to effectively monitor program and projects involving millions of tax-payer funds in the north due to the difficulty of conducting site visits under such dangerous conditions.

²²⁰ That it is foreign, that it engages in acts of terrorism or terrorist activities, and that it is a threat to United States national security or security of United States nationals. 8 U.S.C. §1189 (a)(1)(C).

Visiting U.S. officials have been restricted in their ability to travel within Nigeria due to the precarious security situation brought about by Boko Haram. The embassy has an embargo on travel outside of the capital city to northern Nigeria.

The Secretary of State visited Nigeria for all of 3 hours in August 2012 possibly partly because of security concerns. During this visit she upgraded the Abuja diplomatic post to a three R & R status in consideration of the elevated hazard rating. Boko Haram has undoubtedly had a grievous impact on U.S. foreign relations and diplomatic activity in Nigeria with concomitant negative effects on U.S. interests.

Human Rights Watch and the International Criminal Court in reports released in October and November 2012 have declared that Boko Haram may have committed crimes against humanity in its pernicious persecution of Christians and the bombing of churches.²²¹

Boko Haram launched its first violent offensive on Christmas eve 2003. Ten years later it has evolved into a sophisticated, globally linked, suicide-bomber terrorist entity with global aspirations. It is therefore imperative that the U.S. designate it for what it is – a foreign terrorist organization.

²²¹ “Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria” HRW 2012