

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
District Court File No. 15-49 (MJD/FLN)

United States of America,)	
)	
Plaintiff,)	NOTICE BY THE UNITED STATES
)	OF LEGAL AUTHORITY
v.)	RELEASED SINCE THE FILING OF
)	THE GOVERNMENT’S RESPONSE
Hamza Ahmed, et al.)	TO THE DEFENDANTS’ PRETRIAL
)	MOTIONS
Defendants.)	

The United States of America, through its attorneys, Andrew M. Luger, United States Attorney for the District of Minnesota, and John Docherty and Andrew R. Winter, Assistant United States Attorneys, respectfully draws the attention of the Court and the parties to a case decided, after the initial legal memoranda on motions were filed, by the United States Court of Appeals for the Eighth Circuit.

On Friday, August 21, 2015 the United States filed its Response to Defendants’ Pretrial Motions (Docket No. 228). One of the points made by the United States in that pleading was that defendants are statutorily barred, 8 U.S.C. § 1189(a)(8), from contesting the rectitude of the Secretary of State’s decision pursuant to Section 219 of the Immigration and Nationality Act to designate an organization as a “foreign terrorist organization”. The United States noted that this statutory bar had been upheld against constitutional challenge, and as support for that proposition cited *United States v. Afshari*, 392 F. 3d 1031 (9th Cir. 2004). Government’s Response, Docket No. 228, at page 54.

On Tuesday, August 25, 2015 - several days after the filing of the government’s response to the defendants’ pretrial motions - the Eighth Circuit issued its opinion in

United States v. Amina Ali and Hawo Hassan, No. 13-2208. In that opinion, the Eighth Circuit held “. . . like our sister circuits, we hold that it comports with due process to prohibit a criminal defendant from challenging the validity of the Secretary of State’s designation of a foreign terrorist organization.” *United States v. Amina Ali and Hawo Hassan*, slip op. at 11.

By this pleading, the government respectfully draws the attention of the Court and the parties to this newly-released legal authority upholding the constitutionality of 8 U.S.C. § 1189(a)(8) against a constitutional due process challenge. The government by this pleading also serves notice that based on both the text of 8 U.S.C. § 1189(a)(8), the Eighth Circuit’s holding in *Amina Ali* quoted above, and the Ninth Circuit’s earlier *Afshari* decision, already cited in the government’s response to defendants’ pretrial motions, the government will object at the hearing to any evidence whose introduction is sought to further an attempt to second-guess the Secretary of State’s designation of ISIL as a foreign terrorist organization.

Dated: August 28, 2015

Respectfully Submitted,

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s/ John Docherty

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