

Material Support Laws: Combating Terrorism or Terrorizing Peace?

Alternatively hailed as a bulwark in our nation's war on terrorism and denounced as a descent into a new era of McCarthyism, the Supreme Court's June 21, 2010, decision in *Holder v. Humanitarian Law Project* could have a significant effect on the efforts of U.S. based humanitarian and peacemaking organizations, particularly those serving in the most volatile regions of the world. Critics of the decision worry that it will have a chilling effect on human rights and peacemaking efforts, rather than simply enhancing the Government's efforts at combating and preventing terrorism.

The plaintiffs wanted to provide training in human rights advocacy and peacemaking to several designated terrorist organizations. But the Supreme Court held that Federal statutory prohibitions on the provision of "material support or resources" to foreign terrorist organizations did not violate the plaintiffs' speech or associational rights. The Court also held that specific intent to further terrorist activities is not required under the applicable statute; mere knowledge that the organization being supported is designated as a terrorist group or has committed terrorist acts is sufficient for criminal conviction.

The Court further held that the definition of "material support or resources" in the statute, which uses such terms as "training," "expert advice or assistance," "service," and "personnel," gives "a person of ordinary intelligence fair notice of what is prohibited." According to the Court, and as advocated by the Government, even support in the form of intangibles, such as the seemingly innocuous human rights training that the plaintiffs sought to provide, frees up terrorists' resources to further their unlawful activities. Combined with the Government's interest in denying blacklisted groups legitimacy, this was deemed sufficient to trump the plaintiffs' First Amendment interests.

The Court did, however, carefully clarify that the statute does not include a prohibition on independent advocacy. Therefore, although not allowed to provide "material support or resources" to foreign terrorist organizations, individuals or organizations may advocate independently in favor of those organizations. Unfortunately, since the Court did not address the question of precisely where the fine line between independent advocacy and providing support or resources falls, it is unclear how lower courts will apply the decision to future cases.

Although the Supreme Court made clear that it was not deciding whether future applications of the statute prohibiting "material support" of terrorist organizations would also survive Constitutional scrutiny, all entities and individuals having any interactions with groups or nations on the Office of Financial Asset Control ("OFAC") [watch list](#) would be well advised to conduct a top to bottom review of their anti-terrorism policies and practices and confirm applicable OFAC authorizations or licenses.

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