

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

98-56062

HUMANITARIAN LAW PROJECT, RALPH FERTIG, ILANKAI THAMIL SANGAM,
TAMILS OF NORTHERN CALIFORNIA, TAMIL WELFARE AND HUMAN RIGHTS
COMMITTEE, FEDERATION OF TAMIL SANGAMS OF NORTH AMERICA, WORLD
TAMIL COORDINATING COMMITTEE, and NAGALINGHAM JEYALINGAM,

Plaintiffs-Appellants,

-against-

JANET RENO, as Attorney General of the United States, UNITED STATES DEPARTMENT OF
JUSTICE, MADELINE ALBRIGHT, as United States Secretary of State, and UNITED STATES
DEPARTMENT OF STATE,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA THE HONORABLE AUDREY B. COLLINS, Judge Presiding

**BRIEF OF *AMICUS CURIAE*
THE ANTI-DEFAMATION LEAGUE
IN SUPPORT OF DEFENDANTS-APPELLEES**

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STATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether, consistent with the First Amendment to the U.S. Constitution, Congress may prohibit persons subject to U.S. jurisdiction from knowingly providing money, weapons, explosives and other designated forms of material support or resources to designated foreign terrorist organizations.

INTEREST OF THE *AMICUS CURIAE*¹

The Anti-Defamation League (“ADL”), one of the nation’s oldest civil rights organizations, was founded in 1913 to promote good will among all races, ethnic groups and religions. ADL is dedicated to exposing and countering bigotry of every kind, and to promoting and protecting civil rights and liberties.

ADL implements its mandate by educating and informing the general public about prejudice and discrimination. It has filed *amicus* briefs in a broad range of cases – from separation of church and state, to racial discrimination, to free speech – in order to defend the Constitutional rights and liberties of all Americans.² In addition, in recent years, ADL has been at the forefront in monitoring extremists, hate groups, terrorists and others whose actions pose threats not only to the mutual respect and tolerance upon which our diverse society is based but, ominously, to the physical safety and security of Americans and others throughout the world.

¹ This brief is submitted with the consent of the parties, pursuant to Fed. R. App. P. 29. Letters reflecting such consent are being filed simultaneously with the filing of this brief.

² For a historical chronology of civil rights litigation in which 12 has participated, see Jill Snyder and Eric Goodman Friend of the Court 1947-1982 (1983). Information on more recent cases may be found in ADL’s publication, Civil Rights Report; ADL in the Courts: Litigation Docket 1997 (1997), and earlier editions.

In pursuing its historical fight against racism, anti-Semitism and other forms of bigotry, ADL has always relied on the free speech guaranties of the First Amendment, adhering to the philosophy that the best antidote for “bad speech” is more speech, and that when hatred and bigotry are exposed, the vast majority of Americans will reject them. Indeed, ADL could not carry out its mission absent the protections provided for its own speech by the First Amendment, and has never advocated any form of official censorship of the speech of any person or organization.

By the same token, ADL recognizes the difference between speech and conduct, and the difference between protected speech and facilitation of violence. Thus, while ADL’s utmost respect for the First Amendment has never wavered, we have been at the forefront in advocating for implementation of constitutionally sound laws to protect our society from the evil that results when hateful beliefs turn into hateful conduct.³ In this respect, ADL agrees with Justice Goldberg’s observation that “the Constitution ... is not a suicide pact.”⁴

³ See, e.g., Wisconsin v. Mitchell, 508 U.S. 476 (1993) (citing *amicus* brief of ADL and upholding Wisconsin’s “hate crimes” statute against First Amendment challenge).

⁴ Haig v. Agee, 453 U.S. 280, 309-310 (1981) (quoting Kennedy v. Mendoza-Martinez, 372 U.S. 144, 160 (1963)).

As the recent murderous attacks on the U.S. embassies in Kenya and Tanzania demonstrate, some “political organizations” choose to promote their agenda through violence, rather than through speech. Terrorists who blow up embassies, shoot at crowds of shoppers, or hold diplomats hostage, are entitled to no constitutional protection for such conduct. Nor are their supporters, whose contributions make such actions possible. The Constitution does not prevent the Government from addressing these evils, through statutes such as the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), by prohibiting Americans from providing material support to foreign terrorist organizations who perpetrate them.⁵ Such monetary and other material support, often from U.S. individuals, is the fuel which powers the terrorist engine, and Congress is well within its Constitutional mandate in seeking to cut it off.

Thus, *amicus* believes that it adds two significant elements to the court’s consideration of the important issues in this case. First, although ADL is a national organization dedicated to promoting and preserving civil rights, and we

⁵ ADL is on record as an early and strong supporter of the AEDPA. “I was really pleased to see the help that we have had and the positive work that we got from the Anti-Defamation League... They have been very, very concerned about this.” 142 Cong. Rec. S3363 (daily ed. Apr. 16, 1996) (statement of Sen. Hatch on consideration of AEDPA Conference Report).

take a back seat to no one in our staunch support of the freedoms of speech and association, we are convinced that the guaranties of the First Amendment do not render constitutionally infirm Section 303 of the AEDPA. We respectfully submit that providing the Court with ADL's perspective on this provision of the AEDPA warrants this *amicus* filing.

In addition, and perhaps of even greater significance, because ADL has monitored the operation of certain foreign terrorist organizations, such as Hamas and Hizballah, we can offer the court a brief but chilling picture of the elaborate "social service" networks maintained by such organizations -- networks which in fact feed, nurture, and energize their terroristic activities. As Congress found, there is simply no way to compartmentalize the supposedly "good" works of such terrorists from the bad, and it is therefore entirely appropriate for the United States to bar the provision of material support to these foreign terrorist organizations, regardless of how one wishes or claims to believe that support will be used.

ADL firmly believes that the AEDPA is an important tool for combating terrorism, and that it is consistent with the First Amendment, and we urge this court to so hold.

STATEMENT OF THE CASE

Amicus Curiae adopts the Statement of the Case set forth in the brief of defendants-appellees.

SUMMARY OF THE ARGUMENT

As most Americans are well aware, Congress' concern with the menace of international terrorism is neither theoretical nor academic. Ever more frequently we read and hear of Americans and others brutally murdered by foreign terrorists -- including not only the terrorist organizations to whom plaintiffs-appellants herein wish to provide support, but others such as Hamas, the middle-eastern terrorist regime whose suicide bombers indiscriminately target innocent citizens on public streets. Congress has made a finding that material support from U.S. donors facilitates and promotes terrorism, and it does so whether or not that support is ostensibly directed to the "humanitarian" elements of these foreign terrorist organizations.

There is ample evidence demonstrating the urgency of this problem and the wisdom of Congress' solution of prohibiting persons subject to U.S. jurisdiction from sending money and other material support to terrorists. In Part I of this brief we summarize information about the extensive social service infrastructure maintained by Hamas, a designated foreign terrorist organization,

and the way in which the terrorist operations of Hamas and similar organizations are supported and enhanced by such programs. While we recognize that plaintiffs-appellants' challenge to the AEDPA arises from their interest in the LTTE and the PKK, and not Hamas, if their challenge to the AEDPA's constitutionality were to succeed, Hamas is among those organizations that would benefit. Accordingly, ADL believes that information concerning this particular designated foreign terrorist organization will be of use to the court.

In Part II.A, we argue that even if the conduct outlawed by the AEDPA would, in some other contexts, implicate First Amendment values, the knowing provision of material support to foreign terrorist organizations is not "protected speech." Rather, because of the violence and harm that is inextricably linked to such "speech," it is outside the realm of the First Amendment.

Even if the law recognizes some level of First Amendment protection for knowingly providing material support to foreign terrorist organizations, however, we argue in Part II.B that the district court did not err in ruling that the O'Brien test applied. As the district court recognized, the AEDPA is a content-neutral restriction on what is, at most, a combination of "speech" and "non-speech." Applying the O'Brien analysis, the AEDPA's restrictions easily pass constitutional muster, because the government's interest in limiting fundraising

for terrorists is unrelated to the suppression of free expression, and its restrictions are no greater than necessary in light of the important interests Congress seeks to address.

Finally, we argue in Part II.C that because the national security interests underpinning the AEDPA are compelling, and because no more narrowly drawn statute would address Congress' finding that any funding to terrorists amounts to funding of terrorism, the AEDPA even passes a "strict scrutiny" analysis.

The court's consideration of the constitutionality of the AEDPA's material support provision should be animated both by an appreciation of the degree of evil Congress is seeking to address, and a recognition that Congress' findings and enactments in the area of national security and foreign relations are entitled to substantial deference. While ADL cherishes the freedom of speech and association protected by our First Amendment, we respectfully urge this court to find that those values are not offended by the AEDPA's prohibition on knowingly providing material support to foreign terrorist organizations.

ARGUMENT

I. “HUMANITARIAN” AND “SOCIAL SERVICE” COMPONENTS OF FOREIGN TERRORIST ORGANIZATIONS ARE INSEPARABLY LINKED TO THEIR ABILITY TO ENGAGE IN TERRORIST ACTS.

Like guns, bombs, and rockets, money can be a lethal weapon. Terrorists depend on private donations, using them to purchase weapons and fund violent attacks against innocent persons throughout the world. Even when money is donated allegedly for “humanitarian” purposes, it remains a dangerous commodity. Money is fungible. When individuals funnel money or other material support to terrorist groups ostensibly for nonviolent purposes, it serves to free up other money that can then be used to purchase weapons or in other ways to facilitate terrorism. Or, money that is donated, allegedly for humanitarian or educational programs, may well be diverted to directly support terrorist training and violent acts. Moreover, social service programs or schools operated by foreign terrorist organizations and funded by “humanitarian” aid often operate as part of a culture of hate and violence. Such programs can and do nurture potential terrorists, setting and keeping them on the path to violence, destruction and murder.

In enacting the AEDPA, Congress understood the necessity for an absolute ban on providing support for designated foreign terrorist organizations which would be as comprehensive as possible. Congress recognized that the social service networks of foreign terrorist organizations are inextricably connected to the terrorist programs of these organizations. Therefore, they reasoned, it is not sufficient to stop the flow of money explicitly intended by the donor for purchasing arms and funding violence. All aid to terrorists must be banned.

As explained in the government's brief and in its papers presented to the district court below, including the Declaration of Kenneth R. McKune,⁶ the Liberation Tigers of Tamil Eelam ("LTTE") and the Kurdistan Workers' Party ("PKK") are foreign terrorist organizations which precisely fit this mold.

Another group classified by the Secretary of State as a foreign terrorist organization pursuant to the AEDPA, see 62 Fed. Reg. 52650 (1997), is Hamas. We focus herein on this organization because ADL believes that its seamless

⁶ Declaration of Kenneth R. McKune ("McKune Dec."), Associate Coordinator for Counterterrorism, U.S. Department of State, dated Apr. 21, 1998, contained in the government's Supplementary Excerpts of Record ("SER") at 4-15.

linking of overt terrorism with social programs, and the resulting necessity to completely eliminate U.S. material support, is illustrative of the activities of foreign terrorist organizations and their supporters which Congress is trying to combat.

Hamas, or “Islamic Resistance Movement,” is a terrorist organization which “seeks the establishment of a Palestinian identity and homeland.” In re Extradition of Mousa Mohammed Abu Marzook, 924 F. Supp. 565, 568 (S.D.N.Y. 1996). It does so through “education, health care, and other social services,” but also engages in monstrous acts of terrorism, including “indiscriminate bombing of buses laden with civilians and other such types of attacks targeted at civilians.” Id. at 568, 577. For example, in October, 1994, an alleged Hamas agent detonated a bomb attached to his body on a Tel Aviv bus, killing twenty-two civilians and injuring forty-six others. Id. at 584. A few days earlier, also in October, 1994, two Hamas terrorists fired automatic weapons into a crowded downtown pedestrian mall in Jerusalem, killing two people and injuring eighteen others. Id. at 584.

As we show below, the structure and operation of organizations such as Hamas demonstrate that the decision by Congress to ban all fundraising for foreign terrorists is well justified. First (as do the LTTE and the PKK), Hamas

offers a variety of health and welfare services in order to enhance its credibility and political strength within its constituency, and thereby enhance its ability to conduct terrorist operations. In the case of Hamas, such services include clinics, kindergartens, summer camps and sports clubs. See Khaled Abu Toameh, “From Cradle to Grave,” The Jerusalem Report, Sept. 4, 1997, at 34, 35. In return for its services, it asks for community members’ support; such support, for example, could include harboring a suicide bomber shortly before his deadly mission.

Second, it is impossible to verify the final destination or ultimate use of a “charitable” contribution within the budget of a terrorist organization. Even if a donor’s purported intent is to purchase blankets, not bombs, there is no guarantee that the money or support will be used that way. “Once the charity money hits its foreign destination, it is very difficult to determine where it really goes,” according to Oliver B. Revell, a Texas security consultant who previously served as the Deputy Director of the FBI. James Brooke & Elaine Sciolinio, “U.S. Muslims Say their Aid Pays for Charity, Not Terror,” N.Y. Times, Aug. 16, 1995, at A1.

Hamas raises \$30 to \$60 million annually, including money collected in the United States. See Nicholas Goldberg, “The Enigmatic Face of Hamas,” N.Y.

Newsday, Oct. 14, 1997, at A3. Under the leadership of Mousa Abu Marzook, the chief of Hamas' political bureau, who lived and was educated in the United States, hundreds of thousands of dollars have been moved from the United States to the Middle East. Marzook claimed that the money he solicited was used solely for kindergartens, mosque kitchens, schools, hospitals, orphanages, and clinics. See Jan Hoffman, "Palestinian Held by the U.S. Now Faces Legal Limbo," N.Y. Times, Apr. 6, 1997, at A1; Brooke, supra. The Israelis, however, "have said some of the money collected for [these] charitable organizations filters to Hamas's military activities." Hoffman, supra.

Third, social services programs themselves can lead to other dangerous involvements; they may instill in individuals a desire and a willingness to commit horrific acts. It is well known that Hamas "has steadfastly rejected the peace process" between the Israelis and the Palestinians. William Drozdiak, "Social Programs in Gaza Win Support for Hamas," Washington Post, Aug. 18, 1997, at A14. Accordingly, its leaders use its "humanitarian" facilities as forums for

spewing anti-Israel propaganda and mobilizing support for violence against Israelis and others.⁷ One writer explains:

“These [social-service] centers also serve other functions. In 1995, for example, Israeli security forces raided the Science and Technology College in Abu Dis, east of Jerusalem, and found piles of instruction manuals on the use of arms, including instructions on the assembly of homemade bombs. There were also booklets of advice on standing up to Israeli interrogations.”

Toameh at 35.

The religious, educational, and social welfare aspects of these groups certainly can help create an environment that nurtures volunteer suicide bombers. Even a Hamas kindergarten in Gaza promotes murder: A sign posted on the wall declares that “Jihad [holy war] is Our Way.” Goldberg, supra. Nearby, there is also a colored piece of paper with the pictures of the four- and five-year-olds posted under the words “[d]ying for the Sake of God is Our Highest Goal.” Id.

One man told a journalist interviewing Palestinians in Gaza that “ Hamas uses the terrible social conditions here better than any other political group to

⁷ The New York Times writes, “ Hamas also used schools, mosques, jails and funerals to spread the gospel about their jihad, or holy war, and to recruit young suicide bombers with the lure of martyrdom.” Brooke, supra. The rhetoric of Hamas continues to be violent. For instance, in July 1998, Hamas leader Sheik Ahmad Yasin, addressing a rally, declared that “struggle in all its forms and resistance to the occupation should be escalated.” Special Dispatch No. 2 (Middle East Media Research Institute, Washington, D.C.), Jul. 20, 1998.

recruit the young [for terrorism] How can you tell a young boy not to go to mosque?” Judith Colp Rubin, “Unmasking Hamas,” Jewish Week, Oct. 28, 1994, at 1. Visiting the Palestine Mosque, the largest Hamas-controlled mosque in Gaza, at Friday prayers, the journalist notes:

“[T]housands of people spill out onto the sand-filled roads listening to a fiery sermon urging a continuation of the Intifada against Israel. A group of about 40 boys -- barefoot and wearing tattered clothes -- stands outside. One shows a photograph of a Palestinian warrior carrying two large guns After services, the children hear lectures about the history of the glorious Islamic empire that would once again reign and see films of the heroes battling Israel. They learn that according to Islam, those who die as martyrs are guaranteed entry to heaven.”

Id.

After using the schools, mosques, and clubs to recruit individuals to serve as suicide bombers, Hamas supports their families once the attack has been carried out. For instance, “the family of every one of the Hamas ... warriors ... killed in an action against Israel gets a lump sum payment of 1,000 Jordanian dinars (about \$1,500).” Id. Lifetime annuities are established for the families of terrorist bombers. These annuities to the families of suicide bombers have been described as “one of the most important uses of charitable donations to Hamas.” See John Kifner, “Alms and Arms: Tactics in a Holy War,” N.Y. Times, Mar. 15, 1996, at A1.

That Hamas raises funds in the United States is beyond question. The extent of its substantial links to the United States became readily apparent in December 1992, when the Israeli authorities arrested Dr. Mahmud ar-Rumayhi, the local liaison for two Palestinian-Americans living in the Chicago area. On January 25, 1993, the Israelis then arrested these two operatives, Muhammad Abd al-Hamid Salah and Muhammad Hilmi Jarad, on charges of distributing more than a half-million dollars to local Hamas activists. A witness to Mr. Salah's confession recounted:

“Salah had also given the Gaza commander money during his most recent trip, he told the Israelis -- about \$100,000 -- and the money was used for ... M-16s, Kalashnikovs, Uzi submachine guns, and pistols on the Israeli black market. Some of the money was also earmarked for securing at least twenty underground shelters for hiding fugitives and for purchasing equipment to forge student identity cards so that Hamas could smuggle wanted men out of Gaza into neighboring Egypt.”

Judith Miller, God Has Ninety-Nine Names, at 383 (1996).

The amount of money raised in the United States, as well as the nature and scope of Hamas' activity on our shores, however, cannot be reliably documented. “Hamas keeps its expenditures and its sources of income secret, but it is known that much of the money is brought in, in cash, by couriers from abroad.” Toameh at 35. In 1994, Israel arrested several Palestinians emigrants

with U.S. citizenship “who had smuggled in hundreds of thousands of dollars in cash they’d collected for Hamas.” Id.⁸

As has been demonstrated above, it is impossible to distinguish between the “humanitarian” and military activities of foreign terrorist groups such as Hamas. The AEDPA’s material support restrictions represents a significant step forward in addressing the “stealth” funding of terrorism by halting the flow of money and other support to terrorists and their organizations. Summing up the problem, a noted terrorism analyst has explained: “Hamas activists continue to feign innocence in regard to their activity in the U.S. They refuse to admit that their activity is a combination of political and cultural activity, which creates not only a social infrastructure but a framework for terrorism as well.” Reuven Paz,

⁸ Activists in the United States not only help fund terrorist actions, in some cases they directly supply terrorists with the tools they need to enhance their ability to engage in terrorism. For example, on July 23, 1998, Fawzi Mustapha Assi, a resident of Dearborn, Michigan, was charged with unlawfully providing support to a foreign terrorist organization under the AEDPA. Assi allegedly attempted to deliver seven night vision goggles, a thermal imaging camera, and two global positioning modules to a representative of the terrorist Hizballah organization in Lebanon. See David Josar, “Engineer Denies Links to Hezbollah,” Detroit News, Jul. 28, 1998. (Hizballah is a “designated foreign terrorist organization” pursuant to 62 Fed. Reg. 52650 (1997)) If plaintiffs-appellants’ position in the present case is correct, then Assi’s actions would be constitutionally protected by the First Amendment from prosecution under the AEDPA, so long as it cannot be proven beyond a reasonable doubt that his intentions were evil rather than just mercenary.

“ [Hamas Responds to the American Counter-Terrorist Laws](http://www.ict.org.il/articles/Hamas_art3.htm)” (visited Sept. 11, 1998) <http://www.ict.org.il/articles/Hamas_art3.htm>.

II. SECTION 303 OF THE AEDPA DOES NOT VIOLATE THE FIRST AMENDMENT.

A. The Constitution of the United States does not protect as “speech” the conduct which is criminalized by the AEDPA.

Freedom of speech is the touchstone of individual liberty – and yet, if the First Amendment is to allow our nation to function as a free democratic society, it cannot be used to invalidate laws proscribing violent conduct even if such violent conduct is arguably based upon philosophical, religious or political beliefs. Simply put, “political speech” inextricably intertwined with violence is not constitutionally protected. See NAACP v. Claiborne Hardware Co., 458 U.S. 886, 916 (1982).

Without this necessary limitation on the protection afforded by the First Amendment, our government would be powerless to outlaw a parade of horrendous acts simply because the perpetrators of those acts argue that they incorporate some form of expression. Hate crimes, abortion clinic bombings,

and paramilitary training camps,⁹ for example, would be legalized in the name of free speech. Our society will not and need not tolerate this.

In light of this legitimate and inherent limitation on the scope of First Amendment protection, plaintiff-appellants are wrong in their assertion that the AEDPA is an unconstitutional infringement on the right of free speech or association. The *knowing* contribution of material support to foreign terrorist organizations is inextricably intertwined with violence. As Congress has acknowledged in enacting the AEDPA, “foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that *any* contribution to such an organization facilitates that conduct.” AEDPA, Pub. L. No. 104-132, § 301(a)(7), 110 Stat. 1214-1319 (1996) (findings reprinted at 18 U.S.C.A. § 2339B note) (emphasis added). Given this finding, the AEDPA must be upheld. “Clearly nothing in the Constitution provides the right to engage in violence against fellow citizens or foreign nations. Aiding and financing foreign terrorist bombings is not constitutionally protected activity.” 142 Cong. Rec.

⁹ See, e.g., Wisconsin v. Mitchell, 508 U.S. 476 (1993) (upholding hate crimes legislation); United States v. Soderna, 82 F.3d 1370 (7th Cir.) (suggesting that it may be constitutional to punish more severely crimes against employees of abortion clinics than against employees of

(Cont'd on following page)

S3360 (daily ed. Apr. 16, 1996) (statement of Sen. Hatch on consideration of AEDPA Conference Report).

Even if *knowingly* providing material support to terrorist organizations is characterized as “speech,” it must be relegated to that narrow category of speech that finds no protection under the First Amendment. Any slight redeeming First Amendment values that the knowing contribution of material support may implicate due to plaintiffs-appellants’ alleged intentions to further only “humanitarian” goals of terrorist organizations is clearly outweighed by the serious and deadly problems visited upon the United States’ interests by international terrorism. Indeed, this court has recognized that certain kinds of “speech” may “adversely affect foreign policy interests to such a degree that the speech is completely unprotected [by the First Amendment].” Bullfrog Films, Inc. v. Wick, 847 F.2d 502, 512 (9th Cir. 1988) (quoting with approval from the District Court’s decision in Bullfrog, and citing Haig v. Agee, 453 U.S. 280 (1981)). “[T]he clearest example of the kind of compelling government interest that would lead to such a result is where the speech poses a clear and direct

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pregnancy clinics because generally there is more violence perpetrated against abortion clinics),

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threat to national security.” Id. (emphasis added). See also Vietnamese Fishermen’s Assoc. v. Knights of the Ku Klux Klan, 543 F. Supp. 198, 208 (S.D. Tex. 1982) (where the court found that the threat of violence defendants communicated through their paramilitary operations constituted an “irrefutable and dangerous ‘communication’ that . . . resemble[d] the use of ‘fighting words,’ and therefore [was] not protected by the First Amendment”).

Plaintiffs-Appellants contend that the AEDPA violates the First Amendment because it makes a crime of conduct squarely held to be a protected associational activity, namely providing money and/or other “physical assets” to political organizations. (Pl.-App. Br. at 18-20 n.5). While it is true that the Supreme Court has held in the context of U.S. federal elections that contributions to candidates for political office are a protected form of association, Buckley v. Valeo, 424 U.S. 1, 16-17, 24-25 (1976), it is simplistic and dangerous to believe that the knowing contribution of money and other physical assets which facilitate the criminal conduct of foreign terrorist organizations are therefore a likewise form of protected association.

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cert. denied, 117 S. Ct. 507 (1996).

“The right to free association ... is not an absolute The [United States Supreme] Court has long been willing to uphold limitations on free association conducted for an illegitimate purpose.” Palestine Information Office v. Shultz, 853 F.2d 932, 941 (D.C. Cir. 1988) (citing Norwood v. Harrison, 413 U.S. 455, 470 (1973)). “The First Amendment’s protection of the right of association does not carry with it the ‘right’ to finance terrorist, criminal activities.” H.R. Rep. No. 383, 104th Cong., 1st Sess., at 144 (1995).

The very real connection the contributions of money and other support at issue have to the violent and criminal acts of the organizations which receive them makes these contributions easily distinguishable from the monetary contributions that have been recognized as a protected form of association. Any contribution to a terrorist organization, whether designated for an ostensibly humanitarian goal or not, is a contribution that furthers illegal and violent activity.¹⁰ As such, these contributions cannot be equated to the constitutionally protected contributions to political candidates at issue in Buckley. Just as “demonstrations [which] turn

¹⁰ See Congressional findings, AEDPA, Pub. L. No. 104-132, §301(a)(7), 110 Stat. 1214-1319 (1996) (reprinted at 18 U.S.C.A. §2339B note). As explained in the Government’s brief, these findings are entitled to substantial deference by this court. Moreover, ADL is independently

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violent [must] lose their protected quality as expression under the First Amendment,” Grayned v. City of Rockford, 408 U.S. 104, 116 (1972), so too must these contributions bear the label of “unprotected” due to their inextricable connection to the violence committed by their recipients. “Violence or other types of potentially expressive activities that *produce special harms distinct from their communicative impact* ... are entitled to no constitutional protection.” Wisconsin v. Mitchell, 508 U.S. 476, 484 (1993) (quoting Roberts v. United States Jaycees, 468 U.S. 609, 628 (1984)) (emphasis added).

Plaintiffs-Appellants describe the conduct in which they wish to engage as simply “collective expression.” (Pl. -App. Br. at 20 n.6). But it is more than “collective expression” -- it is collective expression that carries violent physical consequences. Treating this form of “collective expression” as protected is akin to affording political assassination protection under the First Amendment because the assassin acts with the intent to make a political statement. Indeed, to allow plaintiffs-appellants to knowingly make contributions to terrorist organizations is indistinguishable from allowing them to knowingly provide the

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aware that foreign terrorist organizations’ “social service” functions are part and parcel of their

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bullets for the assassin’s gun. This form of expression “do[es] not enjoy the protecting cover of speech in the constitutional sense,” United States v. Soderna, 82 F.3d 1370, 1375 (7th Cir.) (quoting United States v. Hayward, 6 F.3d 1241, 1250 (7th Cir. 1993)), cert. denied, 117 S. Ct. 507 (1996).

B. In the alternative, analyzed under the O’Brien standard, the AEDPA’s prohibition against providing material support to foreign terrorist organizations is constitutionally acceptable.

Even if this court finds that the prohibitions of Section 303 of the AEDPA limit “expressive conduct” which is entitled to a degree of Constitutional protection, it should hold, as did the district court below, that this statute is subject only to the intermediate O’Brien standard, which it easily satisfies. United States v. O’Brien, 391 U.S. 367 (1968).¹¹

In O’Brien, the Court reiterated that “when ‘speech’ and ‘nonspeech’ elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental

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overall terroristic program. See supra Part I.

¹¹ Congress, too, is apparently of the view that the AEDPA’s funding restriction is subject to, and satisfies, the O’Brien standard. See, e.g., H.R. Rep. No. 383, 104th Cong., 1st Sess., at 146-47 (1996) (report of the House Judiciary Committee, noting that O’Brien is the “test to be utilized”).

limitations on First Amendment freedoms.” Id. at 376. As was the case with the law under consideration in O’Brien, which prohibited the knowing destruction of draft registration cards, the AEDPA “plainly does not abridge free speech on its face.” Id. at 375. Rather, as Congress explained, “[t]he prohibition is on the act of donation.” H.R. Rep. No. 383, 104th Cong., 1st Sess., at 144 (1995).

Contrary to the insistence of plaintiffs-appellants, the Supreme Court has never established a blanket rule that providing material support to any putatively “political” foreign organization is “pure speech.” Even in the factually distinguishable case upon which plaintiffs-appellants most rely, Buckley v. Valeo, 424 U.S. 1 (1976),¹² the Court upheld substantial regulation of political donations

¹² Plaintiffs-Appellants’ insistence that this statute is simply a variant of that considered in Buckley is “imaginative but misguided.” Ward v. Rock Against Racism, 491 U.S. 781, 800 n.7. Inter alia, to accept their proffered analogy, this court would have to agree that donations of *money* to candidates for *U.S. national political office* are not distinguishable from donations of “*currency or other financial securities ... lodging ... safehouses ... false documentation or identification, communication equipment, facilities, weapons, lethal substances, explosives ... transportation and other physical assets*” to *foreign terrorist organizations*. 18 U.S.C.A. § 2339B(g)(4) (referring to definition at 18 U.S.C.A. § 2339A(b)). Plaintiffs-Appellants themselves argue that there is no constitutionally cognizable distinction between providing money to terrorists and providing weapons to terrorists, so long as the donator has good intentions. (Pl. - App. Br. at 20 n.5). Nothing in Buckley requires this court to consider as sacrosanct such transactions. See Farrakhan v. Reagan, 669 F. Supp. 506, 511 (D.D.C. 1987) (prohibition against financial transactions with Libya content neutral, applying O’Brien test and rejecting religious’ organization’s claim of right to associate with Libya), aff’d, 851 F.2d 1500 (D.C. Cir. 1988).

in Federal election campaigns. See id. at 20-38. Moreover, the Buckley Court recognized that “[s]ome forms of communications made possible by the giving and spending of money involve speech alone, some involve conduct primarily, and some involve a combination of the two.” Id. at 16. The AEDPA is content-neutral, and thus not subject to strict scrutiny, because it does not “single[] out certain speech for differential treatment based on the ideas expressed.” Foti v. City of Menlo Park, 146 F.3d 629, 636 (9th Cir. 1998). Accordingly, O’Brien applies.

The O’Brien test is well known, and requires a showing that:

- (1) the regulation is within the power of the government;
- (2) the regulation furthers an important or substantial government interest;
- (3) the governmental interest is unrelated to the suppression of free expression; and
- (4) the incidental restriction on the alleged First Amendment freedoms is no greater than is essential to further the important interest.

O’Brien, 391 U.S. at 377. As the district court already found, the AEDPA’s Section 303 clearly meets this standard. We address below each prong of the O’Brien test.

(1) There can be no serious doubt that the AEDPA is within the power of the government. The *sine qua non* of legislative and executive power is in the

area of national security and foreign relations. See, e.g., U.S. Const. art. I, § 8, cl. 3, 11, 18; art II, § 2, cl. 2; Haig v. Agee, 453 U.S. 280, 307 (1981); Palestine Information Office v. Shultz, 853 F.2d 932, 940 (D.C. Cir. 1988).¹³

(2) Similarly, the government’s interest in addressing the threats posed by international terrorism, including through prohibiting fundraising in the United States, is certainly “important” or “substantial.” The AEDPA itself includes findings that “international terrorism is a serious and deadly problem that threatens the vital interests of the United States.” AEDPA, Pub. L. No. 104-132, § 301(a)(1), 110 Stat. 1214-1319 (1996) (findings reprinted at 18 U.S.C.A. § 2339B note). Congress also made a specific finding that “foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.” Id. As a matter of law, the government’s interest in “national security” is a “compelling” one. See, e.g., Haig, 453 U.S. at 307 (“no governmental interest is more compelling than

¹³ Congress found, inter alia, that “international terrorism affects the interstate and foreign commerce of the United States.” AEDPA, Pub. L. No. 104-132, § 301(a)(4), 110 Stat. 1214-1319 (1996) (findings reprinted at 18 U.S.C.A. § 2339B note).

the security of the nation”).¹⁴ The court is also respectfully referred to Part I of this brief, supra.¹⁵

(3) Moreover, the government’s interest in addressing the threats posed by foreign terrorist organizations is wholly unrelated to suppression of free expression. As addressed in Part II.A., supra, Section 303 regulates conduct – the act of knowingly providing material support to foreign terrorist organizations. While plaintiff-appellants argue that the government has “targeted” certain groups, the fact is that the government is acting, in a viewpoint neutral way, to prevent such groups from “targeting” Americans and American interests. The standards by which foreign terrorist organizations are designated, AEDPA § 302, and the applicability of the material support provision, AEDPA § 303, are based only upon conduct. They apply uniformly to any person who would knowingly

¹⁴ There is, of course, no meaningful distinction to be drawn in this context between “national security” and “foreign relations.” See Haig, 453 U.S. at 307 (“foreign policy and national security considerations cannot be neatly compartmentalized”); Id. at 308 (recognizing a compelling interest in “American foreign relations and foreign policy”). The court should give no moment to plaintiffs-appellants’ strained argument that the government has an insufficient interest here in “mere” foreign relations. (Pl.-App. Br. at 35).

¹⁵ See also McKune Dec. ¶ 8 at SER 10 (“Given the purposes, organizational structure, and clandestine nature of foreign terrorist organizations, it is highly likely that any material support to these organizations will ultimately inure to the benefit of their criminal terrorist functions – regardless of whether such support was ostensibly intended to support non-violent, non-terrorist activities.”).

provide material support to a foreign terrorist organization. “Congress is not ... selectively choosing which citizens can contribute funds and which cannot... The ban is designed to protect our nation’s security, and applies uniformly and equally to all persons within the United States, regardless of political, philosophical, or religious affiliation.” H.R. Rep. No. 383, 104th Cong., 1st Sess., at 146 (1995).

Courts have endorsed this rationale in the context of foreign relations many times. See, e.g., Regan v. Wald, 468 U.S. 222 (1984) (incidental burden on associational rights with Cubans under travel ban justified by foreign policy concerns); Zemel v. Rusk, 381 U.S. 1 (1965) (same); Freedom to Travel Campaign v. Newcomb, 82 F.3d 1431 (9th Cir. 1996) (same); Walsh v. Brady, 927 F.2d 1229 (D.C. Cir 1991) (same); Veterans & Reservists for Peace in Vietnam v. Regional Comm’r of Customs, 459 F.2d 676 (3d Cir.) (incidental infringement on free speech of regulation licensing import of North Vietnamese literature upheld in light of compelling interest in depriving China and North Vietnam of economic benefit), cert. denied, 409 U.S. 933 (1972); Teague v.

Regional Comm’r of Customs, 404 F.2d 441, 445 (2d Cir. 1968) (same), cert. denied, 395 U.S. 930 (1969).¹⁶

(4) Finally, the AEDPA’s material support restrictions are no greater than necessary in light of the important interests at which they are directed. It is settled law that this prong of the O’Brien test does not require the government to use the “least restrictive or intrusive means” of regulation, “so long as the [the important interest] ... would be achieved less effectively absent the regulation.” Ward v. Rock Against Racism, 491 U.S. 781, 798-99 (1989).¹⁷ Here, however, it

¹⁶ Although this court has noted that “there is no ‘sliding scale’ of First Amendment protection under which the degree of scrutiny fluctuates in accordance with the degree to which the regulation touches on foreign affairs,” Bullfrog Films, Inc., 847 F.2d at 512, many courts, including this one in the Bullfrog case, have recognized that in the context of its legitimate national security and foreign relations role, the necessity for the government to justify its incidental infringement of constitutional rights is somewhat attenuated. See, e.g., Haig, 453 U.S. at 308 (“Assuming, arguendo, that First Amendment protections reach beyond our national boundaries ...”); Bullfrog, 847 F.2d at 509 n.9 (recognizing that the First Amendment may not “protect[] communications with foreign audiences to the same extent as communications within our borders”); Freedom to Travel Campaign, 82 F.3d at 1438-39 (freedom to travel internationally, a liberty interest, “is not accorded the same stature as the freedom to travel among the states”); Palestine Information Office, 853 F.2d at 941 (recognizing “broad governmental discretion” in claims that “touch upon a right to associate with foreign entities”).

¹⁷ An alternative formulation to the O’Brien standard is that applicable to “time, place and manner” restrictions. See, e.g., Rock Against Racism, 491 U.S. at 798 (noting that “the O’Brien test ‘in the last analysis is little, if any, different from the standard applied to time, place or manner restrictions’” (citation omitted)).

is hard to imagine how the material support provision could be any more narrowly crafted.¹⁸

Congress found that foreign terrorist organizations “are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.” AEDPA, Pub. L. No. 104-132, § 301(a)(7), 110 Stat. 1214-1319 (1996) (findings reprinted at 18 U.S.C.A. § 2339B note). See also H.R. Rep. No. 383, 104th Cong., 1st Sess., at 147 (1995) (“[t]here is no other mechanism, other than an outright prohibition on contributions, to effectively prevent such organizations from using funds raised in the United States to further their terrorist activities abroad”); 142 Cong. Rec. S3359-60 (daily ed. Apr. 16, 1996) (statement of Sen. Hatch on consideration of AEDPA Conference Report) (“This provision is aimed at cutting off the dollars and, thus, the lifeblood of foreign terrorist organizations that are wreaking havoc and destroying lives all over the world.”). It is readily apparent that Congress did not consider that a partial or lesser solution was appropriate. This court should respect that finding. See Department of the Navy v. Egan, 484 U.S. 518, 529 (1988) (in context of national security, court is not qualified to “determine what constitutes an

¹⁸ On this point, see also discussion in Part II.C., infra.

acceptable margin of error in assessing the potential risk” the government is seeking to regulate).

C. Even if the material support for foreign terrorist organizations prohibited by the AEDPA is considered to be “pure speech,” it satisfies “strict scrutiny” analysis.

As the district court correctly found, even if a strict scrutiny analysis is applied to the AEDPA’s prohibition on knowing contributions to foreign terrorist organizations, the AEDPA still passes constitutional muster. Humanitarian Law Project v. Reno, No. CV 98-1971, 1998 WL 385955, at *29 n. 20 (C.D. Cal. Jun. 8, 1998).

A statute survives strict scrutiny if the governmental interest served by the statute is “compelling” and if the statute is narrowly drawn to achieve the ends for which it was drafted. Perry Educ. Ass’n v. Perry Local Educators Ass’n, 460 U.S. 37, 45 (1983). As discussed in Part II. B., supra, it is clear that the governmental interest served by the AEDPA is a compelling one. Indeed, “no governmental interest is more compelling than the security of the nation.” Haig v. Agee, 453 U.S. 280, 307 (1981). Despite plaintiffs-appellants’ arguments to the contrary (which are treated in turn below), it is equally clear that the AEDPA is crafted as narrowly as possible to serve the governmental interests at stake.

1. Contributions to foreign terrorist organizations are inextricably intertwined with violence, thus making it impossible to enact a more narrowly tailored prohibition on material support.

As explained previously, it is impossible to ensure that support ostensibly directed to the allegedly humanitarian elements of foreign terrorist organizations will not be directed to the illegal and violent elements of the organizations.

Hence, nothing less than the complete prohibition authorized by Congress in the AEDPA will serve the nation's interest in fighting international terrorism.

Plaintiffs-Appellants blindly reject this fact and Congress' related finding. But the reality is that in the context of foreign terrorist organizations money is fungible -- even support of a foreign terrorist group's "lawful" activities ultimately only serves to free up resources that can be used to support illegal activities. (Pl-App. Br. at 35). Plaintiffs-Appellants counter the "money is fungible" position by arguing that if the government is allowed to prevail on this basis, it will result in the corollary that "*all* support of a group frees up resources that could be used for illegal activities and therefore *all* associational support to *any* group that engages in illegal activities could be criminalized." (Pl-App. Br. at 36) (emphasis added). This assertion is little more than dramatic hyperbole.

It need not be decided whether the government’s “freeing up” argument is legitimate in relation to any groups other than foreign terrorist organizations.

While one might find a more narrowly tailored alternative to the blanket prohibition of material support effective in regulating the aiding and financing of certain groups’ domestic criminal activity, there simply is no such alternative that would prove effective in the context of foreign terrorist organizations.¹⁹

In connection with the designated foreign terrorist organizations at issue in the present case, the Office of the Coordinator for Counterterrorism²⁰ has determined, inter alia, that:

“Funds raised ostensibly for charitable purposes have in the past been redirected by some terrorist groups to fund the purchase of arms and explosives. . . . Sri Lankan officials have publicly stated

¹⁹ Plaintiffs-Appellants’ argument suggests that this court must analyze the AEDPA in the same manner as it would a challenge to a law alleged to infringe upon one’s right to associate with a domestic organization. This is wrong. In Palestine Information Office v. Shultz, 853 F.2d 932, 941 (D.C. Cir. 1988) the D.C. Court of Appeals refused to accept plaintiffs’ reliance upon caselaw arising in the domestic context as determinative on the issue of whether American citizens and resident aliens had a First Amendment right to operate a foreign entity’s mission in the United States: “No court has ever found in the right to freedom of association a right to represent a foreign entity on American soil. The cases cited by appellants for this proposition are inapposite because, *arising in the domestic context*, they do not speak to the crucial issue of representation of foreign entities.” (emphasis added). See also supra note 16.

²⁰ This office was established within the Office of the Secretary of State in 1985 and is responsible for coordinating overseas counterterrorism policy and responding to international terrorist incidents. The office receives reporting and analysis from U.S. intelligence and law enforcement agencies, and from various foreign sources and embassies. McKune Dec. at ¶ 2 at SER 4-5.

that funds raised by the LTTE in London have been used to acquire weapons and explosives. Leaders of LTTE fundraising efforts have publicly admitted that they are not so ‘naïve’ as to assume that funds collected by the LTTE will be used only for ‘humanitarian’ purposes advertised by the LTTE.”

McKune Dec. at ¶ 10 at SER 11. In relation to other designated terrorist organizations, the Office of the Coordinator for Counterterrorism has unearthed similar evidence that has led to the following conclusion:

“[F]unds raised [by these terrorist organizations] for purportedly legitimate purposes are used to support the establishment of logistical infrastructure (communications, housing and the like) and intelligence networks that are shared both by those group members involved in civilian activities and those involved in terrorist activities.”

Id. These findings prove that the government is justified in its determination that the very nature of foreign terrorist organizations dictates that the absolute prohibition of material support is the most narrowly tailored manner to protect our national security interests from the threat of international terrorism. This Court may accept that rationale without simultaneously endorsing governmental authority to enact like measures with respect to organizations other than foreign

terrorist organizations. Plaintiffs-Appellants’ “slippery-slope” argument is a red-herring.²¹

The position that the AEDPA is as narrowly drafted as circumstances will allow is supported by the decision of the United States District Court for the District of Columbia in Farrakhan v. Reagan, 669 F. Supp. 506 (D.C. Cir. 1987), aff’d, 851 F.2d 1500 (D.C. Cir. 1988). In Farrakhan, Muhammad Mosque, Inc. and Louis Farrakhan challenged the constitutionality of President Reagan’s decision to impose wide-ranging economic sanctions against Libya for its connection to terrorist bombings at airports in Rome and Vienna. The sanctions virtually cut-off all economic relationships between the United States and Libya and prohibited all transactions relating to travel to or within Libya. Id. at 508. Farrakhan, who traveled to Libya subsequent to the imposition of the sanctions,

²¹ Plaintiffs-Appellants also suggest that 18 U.S.C.A. § 2339A(a), which “criminalizes aid to a long list of specific terrorist acts” is proof that “the government has more narrowly tailored ways to respond to support for terrorism.” (Pl.-App. at 35 n.13). This argument is misplaced. Accepting, *arguendo*, plaintiffs-appellants’ assertion that § 2339B is broader than § 2339A, the decision to enact § 2339B (a statute criminalizing knowingly providing material support to designated foreign terrorist organizations) two years after it had enacted § 2339A (a statute criminalizing the provision of material support with the intent of violating certain other provisions of the United States Code) may evidence nothing more than Congress’ recognition that its earlier law standing alone was insufficient to protect our country from terrorism. Moreover, it is questionable whether § 2339B is truly broader than § 2339A, since it only prohibits material

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and Muhammad Mosque, which had received a \$5 million loan from an agency of the Libyan government that it could not repay without violating the sanctions, argued that the sanctions interfered with their First Amendment rights.

The court upheld the Libyan sanctions as constitutional and explained that these were the least restrictive means for serving the government's "compelling interest in national security and the end of Libya's alleged participation in 'state sponsored' terrorism." Farrakhan, 669 F. Supp. at 510. The Court stated:

"To find the First Amendment free speech guarantees mandated that Muhammad Mosque be allowed to send money to Libya would be to open the door for any group or individual to send money anywhere as an act of symbolic speech. In the face of the national security interest lying behind the sanction regulations, we conclude that there is *no alternative* that would allow organizations to speak through contributions while still allowing the government to effectuate its legitimate and compelling interests in national security."

Farrakhan, 669 F. Supp. at 512 (emphasis added). The district court also noted that the fact that Muhammad Mosque claimed that the monies it proposed to send to Libya were the legitimate repayment of debt mandated by the Mosque's

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support to those terrorist organizations that have been designated by the Secretary, as opposed to § 2339A, which is not restricted to designated terrorist organizations.

religious dictates did not render the enforcement of the sanctions as applied to Muhammad Mosque unconstitutional:

“[W]e cannot ascertain what will happen to the money once it reaches Libya. Conceivably, the money could be used for purely innocuous purposes, or it could be used directly or indirectly, to subsidize the types of anti-United States activity that the sanction regulations aim to prevent. ... Even if both Muhammad Mosque and the Islamic Call Society were to represent to this court that the loan repayments or contributions would not flow to purposes inimical to United States security interests, we would have no assurance that, once the money entered Libyan jurisdiction, it would not be seized, appropriated, taxed, or otherwise diverted to other purposes. ... [There are] no assurances that Muhammad Mosque’s money will not, in fact, inure to purposes injurious to this country. ... [W]e cannot say that Muhammad Mosque’s [First Amendment] interest[s] ... outweigh[] the legitimate and compelling security interest of the United States.”

Farrakhan, 669 F. Supp. at 511-512.

The Farrakhan Court found the blanket prohibition authorized by the sanctions to be narrowly tailored because it was impossible to ensure that the monies Muhammad Mosque desired to send to Libya would not ultimately further terrorist goals. In this respect, the instant case is no different. It simply cannot be guaranteed that the money and physical assets plaintiffs-appellants desire to provide designated foreign terrorists will only be used to further humanitarian goals as opposed to illegal and violent terrorist activities. Indeed,

the only evidence before this court is to the contrary. Hence, as was the case in Farrakhan, the decision of our government in relation to foreign policy enacted in the interest of national security must be granted deference and must be upheld. See Regan v. Wald, 468 U.S. at 242 (1984) (“classical deference to the political branches in matters of foreign policy” is owed); Haig, 453 U.S. at 292 (“Matters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention.”).

2. The “medicine and religious articles” exception is not a “telltale” sign that the AEDPA is not narrowly drafted.

Plaintiffs-Appellants contend that the AEDPA’s exception for “medicine and religious articles” fatally undermines the government’s position that it is necessary to bar all material support to designated foreign terrorist organizations. (Pl.-App. Br. at 36). Again, they are wrong. If anything, the fact that the government exempted these items suggests that Congress set out to craft as narrow a statute as possible. In any event, plaintiffs-appellants’ argument is disingenuous -- no doubt their opposition to the AEDPA would be no less vociferous if these articles had not been exempted. Moreover, these exemptions may provide plaintiffs-appellants with the opportunity to make some type of humanitarian contribution, which is what they contend is their goal.

3. Plaintiffs-Appellants’ reliance on the ADC cases is misplaced.

Plaintiffs-Appellants also argue that the AEDPA cannot pass strict scrutiny analysis because it lacks a “specific intent” requirement. To support this argument, they rely on American-Arab Anti-Discrimination Comm. v. Reno, 70 F.3d 1045 (9th Cir. 1995) (“ADC I”) and American-Arab Anti-Discrimination Comm. v. Reno, 119 F.3d 1367 (9th Cir. 1997), cert. granted, 118 S. Ct. 2059 (1998) (“ADC II”). These cases are inapposite to the issue now before the

court. They do not involve the AEDPA; they address allegations of selective enforcement of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIA”). As such, the ADC cases do not even involve a facial challenge to the IIRIA -- they are an “as applied” challenge under facts which are different than those at issue here.

In ADC II, this court’s decision to uphold the preliminary injunction sought by the plaintiffs was largely premised upon the fact that “even after the government made its supplemental evidentiary submission, there was ‘no evidence in the record that could have led a reasonable person to believe that any of the plaintiffs had the specific intent to further the PFLP’s unlawful aims.’” ADC II, 119 F.3d at 1376. In the case of the AEDPA, however, Congress has specifically found that *any* funds or physical assets contributed to designated foreign terrorist organizations ultimately will further criminal and violent activity. This finding, coupled with the “knowing” element included in § 303 of the AEDPA, renders plaintiffs-appellants “specific intent” argument misplaced.

4. Plaintiffs-Appellants are not prohibited from all forms of association with foreign terrorist organizations.

Finally, the constitutionality of the AEDPA is also apparent because the Act does not prohibit plaintiffs-appellants from engaging in all forms of

association with foreign terrorist organizations, nor from advocating the ends they claim that they support, nor from providing humanitarian aid for the purposes discussed in their Complaint. In Buckley, the Supreme Court upheld campaign contribution limitations under the strict scrutiny standard because it was satisfied that the opponents to the law were still free to engage in independent political expression:

“The Act’s \$1,000 contribution limitation focuses precisely on the problem of large campaign contributions -- the narrow aspect of political association where the actuality and potential for corruption have been identified -- while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources. Significantly, the Act’s contribution limitations in themselves do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties.”

Buckley, 424 U.S. at 28-29.

Similarly, the AEDPA’s prohibition on providing material support to foreign terrorist organizations does not prohibit plaintiffs-appellants from participating in other forms of political expression and association on behalf of the PKK’s and LTTE’s allegedly legitimate goals. As the district court explained by way of example, “plaintiffs-[appellants] are free to spend money themselves,

such as distributing information about the plight of the Kurds and Tamils; are free to associate with others to express their advocacy of the PKK's and LTTE's political and humanitarian goals; and are free to provide direct humanitarian aid to individuals who need it." Humanitarian Law Project, 1998 WL 385955, at *29 n.

20.

CONCLUSION

For the foregoing reasons, *amicus* respectfully urges this Court to uphold the constitutionality of the AEDPA's material support prohibitions.

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CERTIFICATE OF COMPLIANCE

Pursuant to Ninth Circuit Court Rule 32(e)(4), I certify that the foregoing brief is proportionally spaced, with a typeface of 14 points, contains 9071 words, according to the word processing system used to prepare this brief, and does not have an average of more than 280 words per page, including footnotes and quotations.

Linda Dakin-Grimm