

Supreme Court's hard line on supporting terrorists is the right line

The court's Holder ruling was a crucial victory in the fight against terrorism.

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In [Holder v. Humanitarian Law Project](#), the Supreme Court last month rightly upheld the ban on “material support” for designated foreign terrorist organizations to include seemingly benign support and training. The importance of this ruling lies not just in holding that this preventive criminal provision is constitutional but in the reaffirmation of America's most basic counterterrorism policy.

This policy seeks not only to prevent terrorist attacks against US interests, but to delegitimize foreign organizations whose terrorist activities taint all that they do, regardless of the cause. If a group uses terrorism, then anything it does to advance its cause – even if legitimate in isolation – is illegitimate and cannot be supported directly. It is the use of terrorism as a tactic – a non-state organization's purposeful targeting of noncombatants and civilians with violence for political purposes – that US policy targets.

In rejecting the plaintiff's arguments, the Court reaffirmed the longstanding US counterterrorism policy predating 9/11 – President Clinton signed it in to law, the Patriot Act expanded it, the Bush administration refined it, and the Obama administration defended it.

The plaintiffs asserted that the material support ban in the law was unconstitutionally vague and violated their First Amendment rights to provide designated foreign terrorist organizations (FTOs) with training and skills in peaceful dispute resolution and international political advocacy. The Court rightly rejected those claims. Though the case was argued through the lens of First and Fifth Amendment rights, the plaintiff's case was ultimately an assault on the policies that undergird the law.

Chief Judge Roberts and the majority understood this: “At bottom, plaintiffs simply disagree with the considered judgment of Congress and the Executive that providing material support to a designated foreign terrorist organization – even seemingly benign support – bolsters the terrorist activities of that organization.”

In this context, the constitutional arguments melt away. The law does not prohibit individuals from independently advocating a terrorist group's cause nor does it ban mere association or membership in an FTO. The law clearly states the government does not need to prove that

someone offering material support to an FTO knows this support is going to facilitate violent activity. It is a straightforward policy: supporting or collaborating with FTOs listed by the State Department is off limits, period.

Application of this policy requires quarantining and strangling those non-state organizations that use terrorism as a tactic. This necessarily goes beyond providing money and materiel that facilitate terrorist attacks. It means giving direct support to help any such organization advance its cause.

This is critical in light of how modern terrorist organizations actually operate. Many run active business, media, charitable, and political arms – often hiding the true purpose of those operations. Groups like Hamas, Hezbollah, and the [Kurdistan Workers' Party \(PKK\)](#) use such operations to build support among communities, raise money, and move operatives. The now defunct Liberation Tigers of Tamil Eelam (LTTE) infiltrated Tamil diaspora communities to extort funding and to obtain lethal weaponry.

For terrorists, money is fungible. Firewalls between their branches are porous. Political and peaceful tactics are often covers for terrorist activity or relief from pressure. It is relatively simple for terrorist groups and their supporters to shield and portray their activities as purely innocent political or social activity.

No one would argue seriously that an American citizen should be allowed to provide Al Qaeda with political advocacy training. It is more complicated, though, to apply this policy to FTOs engaged in political or charitable activities but that also purport to represent an oppressed minority. The line between a terrorist organization and a movement of national liberation can be a thin one – especially with groups like those chosen by the plaintiffs – the PKK and LTTE, which putatively represent Kurdish and Tamil minorities, respectively.

This line is defined and crossed, though, by the groups' willingness to use terrorist tactics to achieve their political purposes. The ultimate political cause may be just, but the resort to terrorism taints the entire organization.

The essence of the US counterterrorism policy undergirding the material support law is to delegitimize terrorism and thus relegate it to the category of international crimes like slavery and piracy.

The US approach is consistent – applied to terrorist groups of all types around the world – and the State Department's FTO list has moral weight and consequences FTOs want to avoid. Other countries like Turkey and Spain apply this approach to terrorist organizations within their borders, the PKK and ETA, respectively. They have a different approach when dealing with terrorist groups outside their borders, like Hamas and Hezbollah. The consistent US approach keeps us in good stead with our allies, even if they disagree with us in particular instances.

We built our counterterrorism approach on this bedrock policy. In this case, the Congress, the Executive, and now the Supreme Court have the law just right.

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