HOLDER v. HUMANITARIAN LAW PROJECT ET AL.

Supreme Court of the United States
130 S. Ct. 2705 (2010)

Chief Justice Roberts delivered the opinion of the Court.

Congress has prohibited the provision of "material support or resources" to certain foreign organizations that engage in terrorist activity. *18 U.S.C. § 2339B(a)(1).* That prohibition is based on a finding that the specified organizations "are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct." Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), § 301(a)(7), ... The plaintiffs in this litigation seek to provide support to two such organizations. Plaintiffs claim that they seek to facilitate only the lawful, nonviolent purposes of those groups, and that applying the material-support law to prevent them from doing so violates the Constitution. In particular, they claim that the statute is too vague, in violation of the *Fifth Amendment*, and that it infringes their rights to freedom of speech and association, in violation of the *First Amendment*. We conclude that the material-support statute is constitutional as applied to the particular activities plaintiffs have told us they wish to pursue. We do not, however, address the resolution of more difficult cases that may arise under the statute in the future. . . .

This litigation concerns *18 U.S.C. § 2339B*, which makes it a federal crime to "knowingly provid[e] material support or resources to a foreign terrorist organization." Congress has amended the definition of "material support or resources" periodically, but at present it is defined as follows:

> "[T]he term 'material support or resources' means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.". . .

The authority to designate an entity a "foreign terrorist organization" rests with the Secretary of State. . . . She may, in consultation with the Secretary of the Treasury and the Attorney General, so designate an organization upon finding that it is foreign, engages in "terrorist activity" or "terrorism," and thereby "threatens the security of United States nationals or the national security of the United States." *§§ 1189(a)(1), (d)(4).* "'[N]ational security' means the national defense, foreign relations, or economic interests of the United States." *§ 1189(d)(2).* An entity designated a foreign terrorist organization may seek review of that designation before the D. C. Circuit within 30 days of that designation. *§ 1189(c)(1).*

In 1997, the Secretary of State designated 30 groups as foreign terrorist organizations. See *62 Fed. Reg. 52650*. Two of those groups are the Kurdistan Workers' Party (also known as the Partiya Karkeran Kurdistan, or PKK) and the Liberation Tigers of Tamil Eelam (LTTE). The PKK is an organization founded in 1974 with the aim of establishing an independent Kurdish state in southeastern Turkey. . . . The LTTE is an organization founded in 1976 for the purpose of creating an independent Tamil state in Sri Lanka. . . . The District Court in this action found that the PKK and the LTTE engage in political and humanitarian activities. . . . The Government has presented evidence that both groups have also committed numerous terrorist attacks, some of which have harmed American citizens. . . . The LTTE sought judicial review of its designation as a foreign terrorist organization; the D. C. Circuit upheld that designation. . . . The PKK did not challenge its designation. . . .

Plaintiffs in this litigation are two U.S. citizens and six domestic organizations: the Humanitarian Law Project (HLP) (a human rights organization with consultative status to the United Nations); . . . . . In 1998, plaintiffs filed suit in federal court challenging the constitutionality of the material-support statute, *§ 2339B*. Plaintiffs claimed that they wished to provide support for the humanitarian and political activities of the PKK and the LTTE in the form of monetary contributions, other tangible aid, legal training, and political advocacy, but that they could not do so for fear of prosecution under *§ 2339B*. . . .

Given the complicated 12-year history of this litigation, we pause to clarify the questions before us. Plaintiffs challenge *§ 2339B*'s prohibition on four types of material support -- "training," "expert advice or assistance," "service," and "personnel." They raise three constitutional claims. First, plaintiffs claim that *§ 2339B* violates the *Due Process Clause of the Fifth Amendment* because these four statutory terms are impermissibly vague. Second, plaintiffs claim that *§ 2339B* violates their freedom of speech under the *First Amendment*. Third, plaintiffs claim that *§ 2339B* violates their *First Amendment* freedom of association. . . .

Plaintiffs claim, as a threshold matter, that we should affirm the Court of Appeals without reaching any issues of constitutional law. They contend that we should interpret the material-support statute, when applied to speech, to require proof that a defendant intended to further a foreign terrorist organization's illegal activities. That interpretation, they say, would end the litigation because plaintiffs' proposed activities consist of speech, but plaintiffs do not intend to further unlawful conduct by the PKK or the LTTE.

We reject plaintiffs' interpretation of *§ 2339B* because it is inconsistent with the text of the statute. *Section 2339B(a)(1)* prohibits "knowingly" providing material support. It then specifically describes the type of knowledge that is required: "To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization . . ., that the organization has engaged or engages in

terrorist activity . . ., or that the organization has engaged or engages in terrorism . . . ." *Ibid.* Congress plainly spoke to the necessary mental state for a violation of *§ 2339B*, and it chose knowledge about the organization's connection to terrorism, not specific intent to further the organization's terrorist activities. . . . Plaintiffs' interpretation is also untenable in light of the sections immediately surrounding *§ 2339B*, both of which do refer to intent to further terrorist activity. . . .

Finally, plaintiffs give the game away when they argue that a specific intent requirement should apply only when the material-support statute applies to speech. There is no basis whatever in the text of *§ 2339B* to read the same provisions in that statute as requiring intent in some circumstances but not others. It is therefore clear that plaintiffs are asking us not to interpret *§ 2339B*, but to revise it. . . . We cannot avoid the constitutional issues in this litigation through plaintiffs' proposed interpretation of *§ 2339B*. . . .

We turn to the question whether the material-support statute, as applied to plaintiffs, is impermissibly vague under the *Due Process Clause of the Fifth Amendment*. . . . Of course, the scope of the material-support statute may not be clear in every application. But the dispositive point here is that the statutory terms are clear in their application to plaintiffs' proposed conduct, which means that plaintiffs' vagueness challenge must fail. Even assuming that a heightened standard applies because the material-support statute potentially implicates speech, the statutory terms are not vague as applied to plaintiffs. . . .

Most of the activities in which plaintiffs seek to engage readily fall within the scope of the terms "training" and "expert advice or assistance." Plaintiffs want to "train members of [the] PKK on how to use humanitarian and international law to peacefully resolve disputes," and "teach PKK members how to petition various representative bodies such as the United Nations for relief." . . . A person of ordinary intelligence would understand that instruction on resolving disputes through international law falls within the statute's definition of "training" because it imparts a "specific skill," not "general knowledge." . . . Plaintiffs' activities also fall comfortably within the scope of "expert advice or assistance": A reasonable person would recognize that teaching the PKK how to petition for humanitarian relief before the United Nations involves advice derived from, as the statute puts it, "specialized knowledge." *§ 2339A(b)(3).* In fact, plaintiffs themselves have repeatedly used the terms "training" and "expert advice" throughout this litigation to describe their own proposed activities, demonstrating that these common terms readily and naturally cover plaintiffs' conduct. . . .

Plaintiffs argue that this construction of the statute poses difficult questions of exactly how much direction or coordination is necessary for an activity to constitute a "service." . . . See Reply Brief for Petitioners in No. 09-89, p. 14 (hereinafter Reply Brief for Plaintiffs) ("Would any communication with any member be sufficient? With a leader? Must the 'relationship' have any formal elements, such as an employment or contractual relationship? What about a relationship through an intermediary?"). The

problem with these questions is that they are entirely hypothetical. Plaintiffs have not provided any specific articulation of the degree to which *they* seek to coordinate their advocacy with the PKK and the LTTE. They have instead described the form of their intended advocacy only in the most general terms. . . .

Deciding whether activities described at such a level of generality would constitute prohibited "service[s]" under the statute would require "sheer speculation" -- which means that plaintiffs cannot prevail in their preenforcement challenge. . . . It is apparent with respect to these claims that "gradations of fact or charge would make a difference as to criminal liability," and so "adjudication of the reach and constitutionality of [the statute] must await a concrete fact situation." . . .

Plaintiffs claim that Congress has banned their "pure political speech." . . . It has not. Under the material-support statute, plaintiffs may say anything they wish on any topic. They may speak and write freely about the PKK and LTTE, the governments of Turkey and Sri Lanka, human rights, and international law. They may advocate before the United Nations. As the Government states: "The statute does not prohibit independent advocacy or expression of any kind." . . . *Section 2339B* also "does not prevent [plaintiffs] from becoming members of the PKK and LTTE or impose any sanction on them for doing so." . . . Congress has not, therefore, sought to suppress ideas or opinions in the form of "pure political speech." Rather, Congress has prohibited "material support," which most often does not take the form of speech at all. And when it does, the statute is carefully drawn to cover only a narrow category of speech to, under the direction of, or in coordination with foreign groups that the speaker knows to be terrorist organizations. . . .

The *First Amendment* issue before us is more refined than either plaintiffs or the Government would have it. It is not whether the Government may prohibit pure political speech, or may prohibit material support in the form of conduct. It is instead whether the Government may prohibit what plaintiffs want to do -- provide material support to the PKK and LTTE in the form of speech.

Everyone agrees that the Government's interest in combating terrorism is an urgent objective of the highest order. . . . Plaintiffs' complaint is that the ban on material support, applied to what they wish to do, is not "necessary to further that interest." . . . The objective of combating terrorism does not justify prohibiting their speech, plaintiffs argue, because their support will advance only the legitimate activities of the designated terrorist organizations, not their terrorism. . . .

Whether foreign terrorist organizations meaningfully segregate support of their legitimate activities from support of terrorism is an empirical question. When it enacted *§ 2339B* in 1996, Congress made specific findings regarding the serious threat posed by international terrorism. . . . One of those findings explicitly rejects plaintiffs' contention that their support would not further the terrorist activities of the PKK and LTTE: "[F]oreign organizations that engage in terrorist activity are so tainted by their

criminal conduct that *any contribution to such an organization* facilitates that conduct." . . .

In analyzing whether it is possible in practice to distinguish material support for a foreign terrorist group's violent activities and its nonviolent activities, we do not rely exclusively on our own inferences drawn from the record evidence. We have before us an affidavit stating the Executive Branch's conclusion on that question. The State Department informs us that "[t]he experience and analysis of the U.S. government agencies charged with combating terrorism strongly suppor[t]" Congress's finding that all contributions to foreign terrorist organizations further their terrorism. . . . In the Executive's view: "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." . . .

That evaluation of the facts by the Executive, like Congress's assessment, is entitled to deference. This litigation implicates sensitive and weighty interests of national security and foreign affairs. The PKK and the LTTE have committed terrorist acts against American citizens abroad, and the material-support statute addresses acute foreign policy concerns involving relationships with our Nation's allies. . . . We have noted that "neither the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people." *Boumediene v. Bush,* [Casebook, p. 117]. It is vital in this context "not to substitute . . . our own evaluation of evidence for a reasonable evaluation by the Legislative Branch." . . .

Our precedents, old and new, make clear that concerns of national security and foreign relations do not warrant abdication of the judicial role. We do not defer to the Government's reading of the *First Amendment*, even when such interests are at stake. We are one with the dissent that the Government's "authority and expertise in these matters do not automatically trump the Court's own obligation to secure the protection that the Constitution grants to individuals." . . . But when it comes to collecting evidence and drawing factual inferences in this area, "the lack of competence on the part of the courts is marked," . . . , and respect for the Government's conclusions is appropriate.

One reason for that respect is that national security and foreign policy concerns arise in connection with efforts to confront evolving threats in an area where information can be difficult to obtain and the impact of certain conduct difficult to assess. The dissent slights these real constraints in demanding hard proof -- with "detail," "specific facts," and "specific evidence" -- that plaintiffs' proposed activities will support terrorist attacks. . . . That would be a dangerous requirement. In this context, conclusions must often be based on informed judgment rather than concrete evidence, and that reality affects what we may reasonably insist on from the Government. The

material-support statute is, on its face, a preventive measure -- it criminalizes not terrorist attacks themselves, but aid that makes the attacks more likely to occur. The Government, when seeking to prevent imminent harms in the context of international affairs and national security, is not required to conclusively link all the pieces in the puzzle before we grant weight to its empirical conclusions. . . .

All this is not to say that any future applications of the material-support statute to speech or advocacy will survive *First Amendment* scrutiny. It is also not to say that any other statute relating to speech and terrorism would satisfy the *First Amendment*. In particular, we in no way suggest that a regulation of independent speech would pass constitutional muster, even if the Government were to show that such speech benefits foreign terrorist organizations. We also do not suggest that Congress could extend the same prohibition on material support at issue here to domestic organizations. We simply hold that, in prohibiting the particular forms of support that plaintiffs seek to provide to foreign terrorist groups, *§ 2339B* does not violate the freedom of speech....

Plaintiffs' final claim is that the material-support statute violates their freedom of association under the *First Amendment*. Plaintiffs argue that the statute criminalizes the mere fact of their associating with the PKK and the LTTE, thereby running afoul of decisions like *De Jonge v. Oregon,* 299 U.S. 353 (1937), and cases in which we have overturned sanctions for joining the Communist Party, ...

The Court of Appeals correctly rejected this claim because the statute does not penalize mere association with a foreign terrorist organization. As the Ninth Circuit put it: "The statute does not prohibit being a member of one of the designated groups or vigorously promoting and supporting the political goals of the group. . . . What *[§ 2339B*] prohibits is the act of giving material support . . . ."

Plaintiffs also argue that the material-support statute burdens their freedom of association because it prevents them from providing support to designated foreign terrorist organizations, but not to other groups. . . . Any burden on plaintiffs' freedom of association in this regard is justified for the same reasons that we have denied plaintiffs' free speech challenge. It would be strange if the Constitution permitted Congress to prohibit certain forms of speech that constitute material support, but did not permit Congress to prohibit that support only to particularly dangerous and lawless foreign organizations. Congress is not required to ban material support to every group or none at all. . . .

The Preamble to the Constitution proclaims that the people of the United States ordained and established that charter of government in part to "provide for the common defence." As Madison explained, "[s]ecurity against foreign danger is . . . an avowed and essential object of the American Union." The Federalist No. 41, p. 269 (J. Cooke ed. 1961). We hold that, in regulating the particular forms of support that plaintiffs seek to provide to foreign terrorist organizations, Congress has pursued that objective consistent with the limitations of the *First* and *Fifth Amendments*.

The judgment of the United States Court of Appeals for the Ninth Circuit is affirmed in part and reversed in part, and the cases are remanded for further proceedings consistent with this opinion.

JUSTICE BREYER, with whom JUSTICES GINSBURG and SOTOMAYOR join, dissenting.

Like the Court, and substantially for the reasons it gives, I do not think this statute is unconstitutionally vague. But I cannot agree with the Court's conclusion that the Constitution permits the Government to prosecute the plaintiffs criminally for engaging in coordinated teaching and advocacy furthering the designated organizations' lawful political objectives. In my view, the Government has not met its burden of showing that an interpretation of the statute that would prohibit this speech- and association-related activity serves the Government's compelling interest in combating terrorism. And I would interpret the statute as normally placing activity of this kind outside its scope. . . . .

. . . . [T]hese cases require us to consider how to apply the *First Amendment* where national security interests are at stake. When deciding such cases, courts are aware and must respect the fact that the Constitution entrusts to the Executive and Legislative Branches the power to provide for the national defense, and that it grants particular authority to the President in matters of foreign affairs. Nonetheless, this Court has also made clear that authority and expertise in these matters do not automatically trump the Court's own obligation to secure the protection that the Constitution grants to individuals. . . . In these cases, for the reasons I have stated, I believe the Court has failed to examine the Government's justifications with sufficient care. It has failed to insist upon specific evidence, rather than general assertion. It has failed to require tailoring of means to fit compelling ends. And ultimately it deprives the individuals before us of the protection that the *First Amendment* demands. . . . That is why, with respect, I dissent.