

SHOULD WE PROSECUTE ACTING SOLICITOR GENERAL NEAL KATYAL NOW?

The Supreme Court today ruled largely with the government in a case broadly interpreting the material support statute.

At issue was whether human rights groups could work with organizations on the Foreign Terrorist Organization list in pursuit of humanitarian or non-violent goals. More broadly, SCOTUS reviewed whether things like providing expert advice to designated terrorist organizations could be prosecuted under the statute.

The answer of six Justices – everyone but Breyer, Ginsburg, and Sotomayor – was “yes.”

To understand the absurd implications of this, remember that Neal Katyal provided his expert advice to a person alleged to be a member of designated terrorist group when he represented Salim Hamdan.

Here’s what the Center for Constitutional Rights – which argued the case – described the decision.

Today, the U.S. Supreme Court ruled 6-3 to criminalize speech in *Holder v. Humanitarian Law Project*, the first case to challenge the Patriot Act before the highest court in the land, and the first post-9/11 case to pit free speech guarantees against national security claims. Attorneys say that under the Court’s ruling, many groups and individuals providing peaceful advocacy could be prosecuted, including President Carter for training all parties in fair election practices in Lebanon. President Carter submitted an amicus brief in the case.

Chief Justice Roberts wrote for the majority, affirming in part, reversing in part, and remanding the case back to the lower court for review; Justice Breyer dissented, joined by Justices Ginsburg and Sotomayor. The Court held that the statute's prohibitions on "expert advice," "training," "service," and "personnel" were not vague, and did not violate speech or associational rights as applied to plaintiffs' intended activities. Plaintiffs sought to provide assistance and education on human rights advocacy and peacemaking to the Kurdistan Workers' Party in Turkey, a designated terrorist organization. Multiple lower court rulings had found the statute unconstitutionally vague.

David Cole had this to say about the decision.

We are deeply disappointed. The Supreme Court has ruled that human rights advocates, providing training and assistance in the nonviolent resolution of disputes, can be prosecuted as terrorists. In the name of fighting terrorism, the Court has said that the First Amendment permits Congress to make human rights advocacy and peacemaking a crime. That is wrong

And Jimmy Carter, who submitted an amicus brief as the Founder of the Carter Center, had to say.

We are disappointed that the Supreme Court has upheld a law that inhibits the work of human rights and conflict resolution groups. The 'material support law' – which is aimed at putting an end to terrorism – actually threatens our work and the work of many other peacemaking organizations that must interact directly with groups that have engaged in violence. The vague language of the law leaves us wondering if we

will be prosecuted for our work to
promote peace and freedom.

I'll have more to say about the First Amendment
aspects of the decision once I get done reading
it.