

THIS RAID ON PEACE ACTIVISTS BROUGHT TO YOU BY ELENA KAGAN

This article not only describes the hundreds of people who protested FBI raids of peace activists last week, but it provides more detail on what the FBI was looking for.

Agents were seeking “evidence relating to activities concerning the material support of terrorism,” the FBI said. Chicago FBI spokesman Ross Rice declined on Monday to discuss what agents were looking for, citing an “ongoing criminal investigation.” There have been no arrests.

Search warrants and subpoenas indicate authorities are looking for connections between the activists and groups including the Revolutionary Armed Forces of Colombia (FARC), the Popular Front for the Liberation of Palestine (PFLP) and Hezbollah. The U.S. government considers those groups to be terrorist organizations.

[snip]

Sundin said Monday she met FARC rebels when she visited Colombia in 2000, but noted that the Colombian government was holding peace talks at the time with the rebels, who held public forums where she met them. She said she has had no contacts with FARC since.

Kelly and Sundin acknowledged they’re active in the Freedom Road Socialist Organization, a group named in several warrants that openly supports FARC and PFLP and shares their Marxist ideologies. Two groups use the name after a 1999 split. They said their Freedom Road is a small group, but that

they weren't sure how many supporters it has. Kelly edits its newspaper.

These descriptions suggest that the FBI is raiding a bunch of peace activists it tracked during the RNC Convention to establish attenuated ties between them and at least three groups on the Foreign Terrorist Organization list.

What's particularly interesting is the description of the work these activists were doing in Palestine and Colombia.

"We meet with human rights activists in other countries to get understanding of situations they face," said Yorek.

Sundin said committee members use the trips to gather information that the group then uses in presentations to the public back in the United States.

"All trips always been very public," Sundin said.

Aby said that in Palestine, committee members met with the Palestinian Women's Commission and another group that advocates for Palestinian prisoners in Israeli jails. In Colombia, she said members met with representatives of Colombian unions.

"In Colombia, you're considered to be a FARC supporter if you're a member of a union," Aby said. Critics of current Colombian President Juan Manuel Santos or former president Alvaro Uribe were also considered supporters of the FARC by Colombian authorities.

That is, after meeting with groups that the authorities in the country have an incentive to claim are terrorist groups, they come back to the US and publicize the conditions in the country.

Law Professor Peter Erlinder has said repeatedly precisely what I've been thinking about these raids since they happened: SCOTUS' decision in Holder v. Humanitarian Law Project probably made such activities (which appear to have all happened before the decision in the case) illegal.

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), 110 Stat. 1247, note following 18 U. S. C. §2339B (Findings and Purpose). 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.

Obviously, the six justices (the conservatives plus Stevens) who made peace activism material support for terrorism deserve the bulk of the

blame for this decision. But this was also the argument where then Solicitor General Elena Kagan advocated for the broadest interpretation of the statute.

JUSTICE KENNEDY: Do you stick with the argument made below that it's unlawful to file an amicus brief?

GENERAL KAGAN: Justice Kennedy –

JUSTICE KENNEDY: I think I'm right in saying it that that was the argument below.

GENERAL KAGAN: Yes, I think that would be a service. In other words, not an amicus brief just to make sure that we understand each other. The Petitioners can file amicus briefs in a case that might involve the PKK or the LTTE for themselves, but to the extent that a lawyer drafts an amicus brief for the PKK or for the LTTE, that that's the amicus party, then that indeed would be prohibited.

And lo and behold, just three months after this decision, the FBI is investigating a bunch of peace activists for their efforts to foster peace in areas contested by these terrorist organizations.

Now, I have no idea what Kagan thinks about this raid (though she used Hezbollah as her example in the argument, not the Tamil Tiger groups actually named in the suit, and Hezbollah is one of the organizations named in the warrants). But even during the argument, she sustained a fiction that the Court's interpretation of material support to include peace efforts would be an unlikely use of prosecutorial discretion.

GENERAL KAGAN: First, because with respect to overbreadth, all of those uncertain or even unconstitutional applications will be but a thimbleful, compared to the ocean full of completely

legitimate applications of this statute.

[snip]

GENERAL KAGAN: Of course, that's a different thing as to how prosecutorial judgment is used to decide which are the high-priority cases and which are the low-priority cases.

Or maybe she just badly misinterpreted what FBI's priorities really were.