

THE MATERIAL SUPPORT OF HILLARY CLINTON AND TAREK MEHANNA

18 USC 2339(A) and 18 USC 2339(B) proscribe the material support of terrorism and designated foreign terrorist organizations. In short, it is the “material support” law:

the 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;

During oral argument on the now seminal defining case as to the astounding reach of this statute, *Holder v. HLP*, now Supreme Court Justice Elena Kagan argued, as Solicitor General, that even humanitarian lawyers could be charged and convicted under the wide ranging provisions:

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.

Kagan argued for an interpretation so broad that even the filing of an amicus brief would be violative of the material support prohibitions and the Supreme Court so held.

So, surely, the DOJ is going to heed the words and intent of the right honorable Justice Kagan over this report then, right?

The Iraqi government has promised to shutter Camp Ashraf – the home of the Iranian dissident group Mujahedeen e-Khalq (MEK) – by Dec. 31. Now, the United Nations and the State Department are scrambling to move the MEK to another location inside Iraq, which just may be a former U.S. military base.

The saga puts the United Nations and President Barack Obama's administration in the middle of a struggle between the Iraqi government, a new and fragile ally, and the MEK, a persecuted group that is also on the State Department's list of foreign terrorist organizations.

The Marxist-Islamist group, which was formed in 1965, was used by Saddam Hussein to attack the Iranian government during the Iran-Iraq war of the 1980s, and has been implicated in the deaths of U.S. military personnel and civilians. The new Iraqi government has been trying to evict them from Camp Ashraf since the United States toppled Saddam in 2003. The U.S. military guarded the outside of the camp until handing over external security to the Iraqis in 2009. The Iraqi Army has since tried twice to enter Camp Ashraf, resulting in bloody

clashes with the MEK both times.
(emphasis added)

Well, no, there will be no prosecution for aiding and abetting *these* terrorists. Now, in all seriousness and fairness, Secretary of State Clinton is probably exempted under 18 USC 2339(B)(j) which provides:

No person may be prosecuted under this section in connection with the term "personnel", "training", or "expert advice or assistance" if the provision of that material support or resources to a foreign terrorist organization was approved by the Secretary of State with the concurrence of the Attorney General. The Secretary of State may not approve the provision of any material support that may be used to carry out terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act).

Still, the point being the hypocrisy of the US Government who on one hand is willing to prosecute even attorneys trying to give humanitarian legal assistance to alleged terrorist organizations to help reform them, but is on the other hand willing to actively and affirmatively work to provide a former US military base and accoutrements to shelter a known and designated violent terrorist group, one that has a history of killing Americans, both military and civilian.

While there may be an exemption for the State Department itself, there certainly is not for other US citizens and officials who have, for years, directly aided and abetted the MEK within the definition of "material support. Again, from Josh Rogin's report in FP's *The Cable* linked above:

As part of its multi-million dollar lobbying effort, the MEK has paid dozens

of top U.S. officials and former officials to speak on its behalf, sometimes at rallies on the State Department's doorstep. MEK supporters have been stationed outside the State Department non-stop for months now, and are even showing up at Congressional hearings.

Their list of advocates, most who have admitted being paid, includes Congressman John Lewis (D-GA), former Pennsylvania Gov. Ed Rendell, former FBI Director Louis Freeh, former Sen. Robert Torricelli, Rep. Patrick Kennedy, former CIA Deputy Director of Clandestine Operations John Sano, former National Security Advisor James Jones, former Vermont Gov. Howard Dean, former New York Mayor Rudolph Giuliani, former Joint Chiefs Chairman Gen. Richard Myers, former White House Chief of Staff Andy Card, Gen. Wesley Clark, former Rep. Lee Hamilton, former CIA Director Porter Goss, senior advisor to the Romney campaign Mitchell Reiss, Gen. Anthony Zinni, former Pennsylvania Gov. Tom Ridge, former Sen. Evan Bayh, and many others.

The Department of Justice has just convicted a man, Tarek Mehanna, in Massachusetts for, in significant part, material support in the form of posting videos on the internet. Adam Serwer has a nice description of the parameters of the Mehanna case at Mother Jones that includes this analysis:

"This case is being used by the government to really narrow First Amendment activity in dangerous new ways," says Nancy Murray of the Massachusetts branch of the American Civil Liberties Union. "It might be speech that horrifies people, but it's the nature of the First Amendment to protect that speech, unless it's leading

to imminent lawless action.”

Civil liberties advocates say the case represents a slippery slope. In the 2010 case *Holder v. Humanitarian Law Project*, which decided whether or not providing nonviolent aid (such as legal advice) to terrorist groups constitutes material support for terrorism, the Supreme Court ruled that even protected speech can be a criminal act if it occurs at the direction of a terrorist organization. Based on that ruling, you could be convicted of materially supporting terrorism merely for translating a document or putting an extremist video online, depending on your intentions.

Adam’s article is worth a full read to gain a glimpse of the fine line in material support cases.

Well, it is a fine line in some cases, not so much if it concerns *our* terrorists. You know, the *good terrorists* the US Government favors. Tarek Mehanna may think this a pretty inconsistent posture.