



# HOW THE DOJ MISUSES MATERIAL SUPPORT STATUTES

Laws prohibiting material support for terrorism and terrorist organizations, enacted in 1994 and 1996, and amended by the USA PATRIOT Act, are proving to be frontline weapons in the government's arsenal of anti-terrorist measures. However, the Justice Department's approach often acts more as a sword against civil liberties than as a shield against terrorism.

## What is Material Support?

- Originally it meant providing anything of value to a terrorist organization, including but not limited to: weapons, money, personnel, and training.
  - Sections of the USA PATRIOT Act increased penalties and expanded the definition of material support to include providing expert advice and assistance. Currently, only medicine and religious materials are specifically excluded.
  - Courts found the definitions of "personnel," "training," and "expert advice and assistance" to be unconstitutional because the average person cannot tell what they mean.
- Congress added cosmetic changes to these definitions, but the changes will sunset at the end of 2006.
- Current penalties range from fines up to \$200,000 and/or a maximum of fifteen years in prison. If a death results from the person's action, the penalty may increase to a maximum of life in prison. A bill to further increase material support penalties is pending in Congress.
  - These laws are retroactive and apply regardless of whether the person's support of an organization predated its designation as a "foreign terrorist organization".

## Material Support Uses

### Trials

**2003** After arresting Soliman Biheiri on minor immigration violations, the government implied that material support charges would follow. He was held without bail but the additional charges failed to materialize. Following his conviction on immigration violations, the court denied a Department of Justice (DOJ) request to enhance Biheiri's sentence because there was no evidence that he had provided material support.

**2004** The DOJ asked a federal judge in Detroit to overturn the convictions of three defendants after finding DOJ prosecutors withheld evidence from the defense. Two of the convictions were for material support. Attorney General John Ashcroft had originally called the men a "terrorist sleeper cell."

**2004** An Idaho jury acquitted Sami Omar Al-Hussayen, a Saudi graduate student, of charges that he provided material support to terrorists after posting the "inflammatory" statements of others on an Islamic website. Jurors decided that the statements fell within the First Amendment's free speech protections. Following the acquittal, U.S. Attorney Tom Moss admitted that it is "difficult to prove" a material support case.

### Plea Bargains

**2003** Enaam Arnaout, head of the Benevolence International Fund (BIF), was indicted on material support charges. He later pleaded guilty to a lesser racketeering charge for using BIF funds to provide boots, tents, uniforms, and an ambulance to the Bosnian Army and boots to Chechen civilians and fighters during the fall of 1995. Since there was no evidence that Arnaout supported terrorism, the judge denied a DOJ request to enhance the sentence.

**2003** In Buffalo, the DOJ held the "Lackawanna Six" without bail after charging them under the material support law. According to the Washington Post, the DOJ gave them two choices: plead guilty or be named enemy combatants and face indefinite detention. Fearing that their clients would be sent to Guantanamo Bay if the trial went their way, defense attorneys advised them to plead guilty.

# How These Laws Violate the Bill of Rights

## First Amendment:

### Protects the Right to Religious Expression

- The State Department designates foreign terrorist organizations (FTO) based on whether they “threaten national security or economic interests.” The Department provides notice of such designation only by listing the names of the organizations in the Federal register. This lack of formal notice renders impotent the thirty-day window in which to challenge a designation. Out of five challenges, the court has denied four and sent one back to a lower court.

## Take Action Now!

- Contact members of the Senate Intelligence Committee, especially a member from your state, and voice your concerns: <http://intelligence.senate.gov/members.htm>
- Find out whether anyone in your community has been charged or convicted of material support. If they have, determine whether the charge or conviction is controversial.
- Contact the National Lawyer’s Guild or ACLU chapter near you to help with a local case that needs attention or advocacy.

- Muslims fulfilling their obligation to contribute to Muslim charities during the holy month of Ramadan risk inadvertently supporting a current or future FTO. In 2004, in order to avoid this, Muslim leaders asked the DOJ for a list of acceptable charities. The DOJ responded that their request was “impossible to fulfill” and that it was “not in a position to put out lists of any kind, particularly of any organizations that are good or bad.”

### Protects the Right to Freedom of Association

- The government can charge someone under the material support statute even if his or her intent was to provide humanitarian assistance or to advise **against** violence. (See H.L.P. v. Ashcroft, 352 F.3d 382 (9<sup>th</sup> Cir. 2003))
- In a 2003 district court case, when asked to explain the difference between simply being a member of a group and being a “quasi-employee,” the DOJ responded: “You know it when you see it.” (See U.S. v. Sattar, 272 F. Supp. 2d. 348 (S.D. N.Y. 2003))

## Fifth Amendment:

### Prevents Deprivation of Life, Liberty, or Property Without Due Process of Law

- A person accused of material support does not have the right to challenge an FTO designation, even if he or she never intended to support terrorist activities.
- Normally a person is innocent until proven guilty. A material support charge places the burden on the accused to prove that he or she **either did not know or should not reasonably have known** that he or she supported terrorist activity.

## Sixth Amendment:

### Preserves the Right to Confront and Present Evidence

- Material support laws allow the DOJ to present secret evidence and to prohibit a challenging organization from presenting evidence.
- The 9/11 Commission stated that the government shutdown of two Illinois Muslim charities, Benevolence International Foundation (BFI) and the Global Relief Foundation (GRF), raised troubling civil liberties questions. Following the 9/11 attacks, the government froze the assets of the charities for ten months despite the lack of “compelling evidence” of supporting terrorism. This sort of action only requires the signature of one Treasury official. When organizations have challenged these freezes, the DOJ has relied on hearsay and newspaper articles as justification for its actions.