Providing Material Support to a Foreign Terrorist Organization:

The Pentagon, the Department of State, the People's Mujahedin of Iran,

& The Global War on Terrorism

By Margaret D. Stock[1]

"The United States will make no concessions to terrorist demands
and strike no deals with them. We make no distinction between
terrorists and those who knowingly harbor or provide aid to them."
--National Security Strategy of the United States (2002)

A. Introduction

In 1996, Congress declared that any non-citizen who provides material support to any organization designated by the U.S. Department of State as a "Foreign Terrorist Organization" ("FTO") should be inadmissible to the United States and deportable. Congress also made it a felony offense for any U.S. person to provide material support to any FTO. Later, Congress extended extraterritorial jurisdiction for such offenses.

In 1997, Secretary of State Madeleine Albright designated the People's Mujahedin of Iran (PMOI) as a Foreign Terrorist Organization, and the group remains on the FTO list today. The Department of Justice has been prosecuting and deporting persons who provide material support to the PMOI.

At the same time, the Department of Defense has designated Iraq-based members of the PMOI as "protected persons" under the Fourth Geneva Convention, and is maintaining PMOI

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members at Camp Ashraf in Iraq. At Camp Ashraf, and in full awareness of DOS's designation of the PMOI as a Foreign Terrorist Organization, U.S. military personnel provide "material support" to the PMOI. Thus, as a technical matter, non-citizen U.S. soldiers who have served at Camp Ashraf are inadmissible to and deportable from the United States; they can also be denied U.S. citizenship and other immigration benefits. Additionally, all U.S. military personnel at Camp Ashraf can potentially be prosecuted criminally for providing "material support" to the PMOI. As a practical matter, such prosecutions are unlikely to occur—but the laws against providing material support to foreign terrorist organizations are being openly violated by Pentagon personnel.

This bizarre situation illustrates several problems with current federal "material support to terrorism" legislation: The law is overly broad, in that it criminalizes without exception even behavior that is officially authorized in support of U.S. military and foreign policy objectives. Next, the conflict between the State Department and the Pentagon over the PMOI makes the United States look hypocritical in the eyes of the world: The Pentagon is supporting an organization that the U.S. Executive Branch officially says is a terrorist organization, even as it fights a Global War on Terrorism and accuses other countries of being state sponsors of terrorism. Finally, inconsistency on this issue is just plain silly: As coordinate members of the Executive Branch, the State Department and the Department of Defense should be in agreement on what organizations are Foreign Terrorist Organizations. If they are not, two different branches of the Executive Branch are working at cross-purposes, with potentially disastrous security and foreign policy ramifications. At the very least, Congress should amend the Immigration & Nationality Act ("INA") and the criminal code to provide an exception to the "material support" laws where U.S. foreign policy and military leaders publicly direct such support in the case of a particular group and in the context of a Congressionally-authorized military conflict.

B. The "Foreign Terrorist Organization" Designation

1. Passage of AEDPA

In 1996, spurred on by the bombings of the World Trade Center and the Oklahoma City federal building, Congress enacted the Anti-Terrorism and Effective Death Penalty Act ("AEDPA").[2] AEDPA sought to "prevent persons within the United States, or subject to the jurisdiction of the United States, from providing material support or resources to foreign organizations that engage in terrorist activities."[3] In pursuit of that goal, AEDPA created a new section of the Immigration & Nationality Act, Section 219, authorizing the U.S. Secretary of State to designate certain organizations as FTOs.[4] Under INA §219(a), the Secretary of State

> is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that--
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> (A) the organization is a foreign organization;
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> (B) the organization engages in terrorist activity . . . or terrorism . . . or retains the capability and intent to engage in terrorist activity or terrorism; and
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> (C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.[5]

This law has withstood challenges that it is an unconstitutional infringement of First Amendment and Fifth Amendment rights.[6] Additionally, the D.C. Circuit

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[2] Anti-Terrorism & Effective Death Penalty Act of 1996, Pub. L. 104-132, 110 Stat. 1214-1319 (1996).
[3] AEDPA §301(b), codified at 8 USC §1189(a).
[4] AEDPA §302(a) (creating Section 219 of the Immigration & Nationality Act).
[5] INA §219(a)(1), 8 USC §1189(a)(1). Prior to passage of AEDPA, the Immigration Act of 1990 had created the first "material support" bar to entry. This change excluded any alien who "engaged in a terrorist activity" and defined "terrorist activity" to include "[t]he providing of any type of material support" to an individual who has committed or plans to commit terrorist activity. *See* Immigration Act of 1990, §601(a), Nov. 29, 1990, P.L. 101-649, 104 Stat. 4978.
[6] *See, e.g., Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1133 (9th Cir. 2000) (giving money to a terrorist organization is not protected speech); *United States v. Hammoud*, 381 F.3d 316 (4th Cir. 2004)(en banc) (rejecting argument that material support statute denies due process because it prohibits collateral attacks on FTO designations); *but see Nat'l Council of Resistance of Iran v. Dep't of State*, 346 U.S. App. D.C. 131, 251 F.3d 192, 196, 200 (D.C. Cir. 2001) (finding that designation did deny a group due process, but denying relief because designation would expire shortly).

Court of Appeals has specifically held that the Secretary has unreviewable discretion to decide whether a particular organization "threatens the security" of the United States.[7] Court challenges to Part (C) of the statute have failed on the ground that this "national security" determination by the Secretary is a political question.

2. Identifying Terrorist Organizations

According to the State Department, "FTO designations play a critical role in our fight against terrorism and are an effective means of curtailing support for terrorist activities and pressuring groups to get out of the terrorism business."[8] The State Department claims that these designations "deter donations or contributions to, and economic transactions with, named entities and individuals" as well as heightening "public awareness and knowledge of terrorist organizations."[9]

To fulfill the State Department's duties under this statute, the Secretary has charged the Office of the Coordinator for Counterterrorism in the State Department (S/CT) with the task of monitoring terrorist groups worldwide and identifying potential FTOs. In making its evaluation, S/CT is required to look not only at a group's past activities, but also at whether the group may engage in future terrorist activities or has "the capability and intent" to carry out terrorist activities. The S/CT is permitted to look at classified and unclassified materials when making this determination; it can also consider "third hand accounts, press stories, material on the Internet or other hearsay regarding the organization's activities."[10]

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[7] *People's Mojahedin Organization of Iran v. U.S. Dep't of State*, 337 U.S. App. D.C. 106, 182 F.3d 17, 23 (D.C. Cir. 1999) ("Of the three findings mandated . . . the third—'(C) the terrorist activity of the organization threatens the security of United States nationals or the national security of the United States'—is nonjusticiable.").
[8] State Department Fact Sheet, available at http://www.state.gov/s/ct/rls/fs/2003/17067.htm (last visited April 21, 2006); *see also* U.S. Dep't of State, Country Reports on Terrorism 2005 (April 2006), at 34.
[9] U.S. Dep't of State, Country Reports on Terrorism 2005 (April 2006), at 34.
[10] *PMOI v. U.S. Dep't of State*, 182 F.3d 17, 19 (D.C. Cir. 1999).

3. Definitions

Crucial to DOS's determination that an organization should be designated as an FTO is the definition of "engaging in terrorist activity." The statute defines "engaging in terrorist activity" as committing "in an individual capacity or as a member of an organization, an act of terrorist activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government in conducting a terrorist activity at any time."[11]

As a basic matter, any foreign organization that engages in either "terrorist activity" or "terrorism" could potentially qualify as an FTO. Congress chose to define these terms very broadly. The INA defines "terrorist activity" as

> any activity which is unlawful under the laws of the place where it is committed (or which, if committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:
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> (I) The highjacking [sic] or sabotage of any conveyance (including an aircraft, vessel, or vehicle).
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> (II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.
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> (III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.
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> (IV) An assassination.
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> (V) The use of any--
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> (a) biological agent, chemical agent, or nuclear weapon or device, or
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> (b) explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.
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> (VI) A threat, attempt, or conspiracy to do any of the foregoing.[12]

[11] As defined in INA 212(a)(3)(B).
[12] INA §212(a)(3)(B), 8 USCS §1182(a)(3)(B).

(Emphasis added.) Thus, an act as common and simple as fighting another person with a knife, if punishable under the criminal code of the country in which the fight takes place, constitutes "terrorist activity" under this law. This definition has withstood challenges that it is vague and/or unconstitutionally overbroad.[13]

An organization that engages in "terrorism" can also qualify for FTO status. To define "terrorism" for purposes of this statute, Congress referenced section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, which defines "terrorism" as "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents."[14] Interestingly, the statute says that either engaging in "terrorist activity" or "terrorism" will allow a foreign organization to be designated as an FTO—and the statute appears to be a bit redundant, as the definition of "terrorist activity" is so broad that it is hard to think of any act—except perhaps politically-motivated fist-fighting—that would constitute "terrorism" and not also fall within the definition of "terrorist activity." It is also important to note that having the potential to engage in terrorist activity or terrorism is enough, even if a group has never actually committed any such act.

4. Designating Terrorist Organizations

When S/CT believes that a group should be designated as an FTO, S/CT will prepare an "administrative record" detailing information on the group's activities.[15] As stated above, S/CT may rely on both classified and unclassified information to compile the record.[16] If the activities of the group indicate that it meets the statutory criteria for designation, the Secretary of State, in

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[13] *See, e.g., McAllister v. Att'y Gen'l of the U.S.,* 2006 U.S. App. LEXIS 8701 (3rd Cir., Apr. 10, 2006) (holding that the statute is neither vague nor overbroad in that it does not infringe on Constitutionally-protected behavior; rejecting argument that statute is overbroad because it encompasses common crimes that no reasonable person would consider to be terrorist acts).
[14] 22 U.S.C. §2656f(d)(2)).
[15] INA §219(a)(3)(A), 8 USC §1189(a)(3)(A).
[16] INA §219(a)(3)(B), 8 USC §1189(a)(3)(B).

consultation with the Attorney General and the Secretary of the Treasury, will decide whether to formally designate the group, and will notify Congress.[17] Congress has seven days to review the designation.[18] Upon the expiration of the seven-day waiting period, the Secretary of State will publish notice of the designation in the Federal Register, at which point the designation takes effect.[19] An organization designated as an FTO may seek judicial review of the designation in the United States Court of Appeals for the District of Columbia Circuit not later than 30 days after the designation is published in the Federal Register.[20]

FTO designations remain in effect unless revoked by an Act of Congress; alternatively, the Secretary of State can revoke a designation if circumstances have changed, or "the national security of the United States warrants revocation."[21] The designated FTO may file a petition with the Secretary of State asking for such revocation, but it must wait until two years have passed since the original designation, or two years from a prior petition for revocation, and it must prove that circumstances have changed such that revocation is warranted.[22] A designation may also be set aside by a Court order.[23]

Although the law gives any organization designated as an FTO the right to appeal the designation in the United States Court of Appeals for the District of Columbia, this right is fairly limited and based solely on the administrative record.[24] The law does not allow any collateral challenges to the designation: "If a designation . . . has become effective . . . a defendant in a criminal action or an alien in a removal proceeding shall not be permitted to raise any question

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17 INA §219(a)(2)(A)(i), 8 USC §1189(a)(2)(A)(i).
18 *Id.*
19 INA §219(a)(2)(A)(ii) & (a)(2)(B), 8 USC §1189(a)(2)(A)(ii) & (a)(2)(B).
20 INA §219(c)(1), 8 USC §1189(c)(1).
21 INA §219(a)(5) & (6), 8 USC §1189(a)(5) & (6).
22 INA §219(a)(4)(B), 8 USC §1189(a)(4)(B).
23 INA §219(c)(3), 8 USC §1189(c)(3).
24 INA §219(c)(2) & (3), 8 USC §1189(c)(2) & (3); *see also U.S. v. Afshari*, 2006 U.S. App. LEXIS 9572 (9th Cir., Apr. 17, 2006) (discussing the limitation nature of review under the statute).

concerning the validity of the issuance of such designation or redesignation as a defense or an objection at any trial or hearing."[25]

C. Legal Consequences of FTO Designation

1. Criminal Provisions

The designation of an organization as an FTO carries severe legal ramifications: First, it is a felony—punishable by a possible lifetime jail sentence[26]—for a person in the United States or subject to the jurisdiction of the United States to knowingly provide "material support or resources" to a designated FTO.[27] "Material support or resources" includes "currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials."[28] The person need not be a member of the organization. The law criminalizes any conspiracies, attempts, and threats to commit terrorist acts as well.[29] Congress has also specifically granted extraterritorial federal jurisdiction over these offenses.[30]

2. Immigration Provisions

In addition to potential criminal penalties, this law creates serious immigration consequences for non-citizens who support FTOs. Non-citizen representatives and members of a designated

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[25] INA §219(a)(8), 8 U.S.C. §1189(a)(8).
[26] 18 USCS §2339B(a)(1) ("Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life.").
[27] 18 U.S.C. §2339B.
[28] AEDPA §§303, 323 (enacting 18 USC §2339A(b) and §2339B(g)(4) ("'material support or resources' has the same meaning as in section 2339A")). The statute defines "training" as "instruction or teaching designed to impart a specific skill, as opposed to general knowledge" and "expert advice or assistance" as "advice or assistance derived from scientific, technical or other specialized knowledge." 18 USC §2339A(b)(2) & (3).
[29] 18 USC §2339B(a)(1).
[30] AEDPA §303(a) (enacting 18 USC §2339B(d)).

FTO are inadmissible to and removable from the United States.[31] INA §212(a)(3)(B)(i) states that any alien who "has engaged in a terrorist activity" is inadmissible to the United States—and "engaged in terrorist activity" includes the act of giving "material support" to an FTO. The definition of "material support" in this section of the law is broader than in the criminal section, and does not contain an exemption for medicine or religious materials.[32] Persons who provide material support are also removable[33] and may be barred from becoming United States citizens if they are found not to be of "good moral character" or if they are placed in removal proceedings to be deported for having engaged in terrorist activities.[34] The law does not require that a person charged with immigration violations under this material support provision have actual knowledge of any unlawful acts of the FTO or have any intent to further any unlawful acts.[35]

3. Financial Sanctions

Lastly, the law imposes serious economic sanctions on FTOs. Under Executive Order (EO) 13224,[36] the U.S. Government can block the assets of individuals and organizations that provide support to FTOs. American financial institutions must freeze the assets of FTOs. The statute also serves to implement United Nations Security Council Resolution 1267—which requires states to impose sanctions on groups and individuals associated with Osama Bin Laden, Al Qaeda, and the

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[31] *See* 8 U.S.C. §§1182 (a)(3)(B)(i)(IV)-(V), 1227 (a)(1)(A).
[32] INA §212(a)(3)(B)(iv)(VI); 8 USC §1182(a)(3)(B)(iv)(VI) (stating that "material support" includes "safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training").
[33] INA §237(a)(4)(B) ("Any alien who is described in subparagraph (B) or (F) of section 212(a)(3) [8 U.S.C.A. §1182(a)(3)] is deportable.").
[34] Once a person is placed in removal proceedings, she is normally barred from obtaining U.S. citizenship until the proceedings are terminated favorably with a decision allowing her to retain her lawful permanent residence status.
[35] *Compare* INA §212(a)(3)(B)(iv)(VI)(cc) *with* INA §212(a)(3)(B)(iv)(VI)(dd) (the latter allows the alien to escape the ground of inadmissibility if he "did not know, and should not reasonably have known, that the act would further the organization's terrorist activity").
[36] E.O. 13224, Sept. 23, 2001.

Taliban—and UN Security Council Resolution 1624—which asks states to take measures to halt the incitement of terrorist acts.[37]

4. Waiver for Immigration Law Violations

In later amendments to the material support language, Congress created a waiver provision for the immigration violations of the material support laws (but not for violations of the criminal statute). The waiver provides that

> The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may conclude in such Secretary's sole unreviewable discretion that . . . [the ground of inadmissibility for material support] shall not apply with respect to any material support an alien afforded to an organization or individual that has engaged in a terrorist activity. . . The Secretary of State may not, however, exercise discretion under this clause with respect to an alien once removal proceedings against the alien are instituted . . . [38]

DOS issued the first waiver under this authority in 2006, but it was given only to a single group of refugees who were living in a camp outside the United States, awaiting admission for resettlement in the U.S.[39] As a practical matter, only people who are outside the United States (refugees, for example) would be eligible for such a waiver. Most other people charged with violating the material support provisions would not qualify for a waiver because the bureaucratic reality is that they are likely to have already been placed into removal proceedings by the time the Secretary of State or the Secretary of Homeland Security approves their request for a waiver. If they have been stopped at the border and placed in removal proceedings, they will not be eligible; if the Government has later

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[37] As of December 31, 2005, the U.S. had designated more than 400 individuals and entities as terrorists or their financiers and facilitators. U.S. Dep't of State, Country Reports on Terrorism 2005, at 36.
[38] Language added by the REAL ID Act of 2005. Division B, Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, & Tsunami Relief, May 1, 2005, P.L. 109-13, 119 Stat. 231.
[39] DOS announced that it would give a waiver to the Burmese Karen Refugees at the Tham Hin Camp in Thailand. *See* Rachel L. Swarns, "U.S. Eases Curbs on Resettling Burmese Refugees," *N.Y.Times*, May 5, 2006, at A1; Bradley Graham, "Immigration Waiver Granted to Refugees: Some Burmese Lose Pro-Terrorism Label," *Washington Post*, May 5, 2005, at A14; U.S. Dep't of State, Fact Sheet, "Secretary Decides Material Support Bar Inapplicable to Ethnic Karen Refugees in Tham Hin Camp, Thailand," *available at* http://www.state.gov/r/pa/prs/ps/2006/65911.htm.

identified them as deportable aliens for having provided material support, they will probably already be in removal proceedings as well.

5. Additional Changes made by the USA PATRIOT Act of 2001

Adding to the scheme created by AEDPA for designating certain organizations as FTOs under INA §219, the USA PATRIOT Act[40] of 2001 created two other kinds of foreign terrorist organizations to which the "material support" provisions can apply: Under USA PATRIOT, in addition to the Section 219 FTOs, (1) "otherwise designated" organizations, and (2) any group of two or more persons, whether organized or not, who engage in certain activities can be considered "terrorist organizations." Today, in other words, an organization can be deemed a foreign terrorist organization—and supporting it can trigger criminal and immigration sanctions—even if the Secretary of State has not published notice of its designation in the Federal Register.

The Secretary's authority to designate any group, foreign or domestic, as a terrorist organization, upon publication in the Federal Register;[41] is also virtually unreviewable. The USA PATRIOT Act also made a deportable offense any fundraising, solicitation for membership, or material support—even for humanitarian projects—of all groups that are designated terrorist organizations by the Secretary of State (without regard to whether such activities furthered actual terrorist activity); made a deportable offense any solicitation of funds or other material support for groups not officially designated as "terrorist organizations" unless the person can prove that he "did

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[40] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), P. L. 107-56, 115 Stat. 272 (Oct. 26, 2001).

[41] The State Department had designated some thirty-nine (39) such groups as of December 5, 2001. *See* Press Statement, Philip T. Reeker, Statement on the Designation of 39 Organizations on the USA PATRIOT Act's "Terrorist Exclusion List" (Dec. 6, 2001), *available at* http://www.state.gov/r/pa/prs/ps/2001/index.cfm?docid=6695.

not know, and should not reasonably have known, that the solicitation would further the organization's terrorist activity."[42]

Thus, after the USA PATRIOT Act, the law defines a "terrorist organization" as an organization (1) designated under section 219[43] of the INA; (2) otherwise designated in the Federal Register by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization; or (3) a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the "terrorist activities" described above.[44]

Section 412 of the PATRIOT Act granted the Attorney General or the Deputy Attorney General a non-delegable power to certify an alien as a terrorist if the Attorney General has "reasonable grounds" to believe that the alien is a terrorist or has committed a terrorist activity.[45] The law requires immigration officials to detain a person so certified.[46] The law allows a suspected terrorist alien to be detained for seven days before the government brings immigration or criminal charges.[47] Aliens who are detained by immigration authorities under this section can get review of their detention by filing a petition for a writ of habeas corpus in a federal court, but their only appeal shall be to the U.S. Court of Appeals for the District of Columbia Circuit.[48] If a person has a final order for removal but has been certified as a terrorist, and cannot be removed, the Attorney General can detain the person but must review the detention every six months. The Attorney General can

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[42] USA PATRIOT Act of 2001, §411(a)((1)(F).
[43] 8 USCS §1189.
[44] The USA PATRIOT Act also added new grounds of inadmissibility for representatives of foreign terrorist organizations or any group that publicly endorses acts of terrorist activity, and spouses and children of aliens who are inadmissible on any of the terrorism-related grounds.
[45] USA PATRIOT Act of 2001, §412(a).
[46] *Id.* If the person is determined not to be removable from the United States, the person may no longer be detained.
[47] *Id.*
[48] USA PATRIOT Act of 2001, §412(b)(3). Any district court handling such a habeas case is also bound by the decisions of the U.S. Court of Appeals for the District of Columbia Circuit. *Id.* at §412(b)(4).

continue to detain the person past six months if he can show that "the release of the alien will endanger the national security of the United States or the safety of the community or any person."[49]

6. The Net Effect of the "Material Support" Provisions

What is the net effect of the "material support" provisions of the U.S. Code? As a result of AEDPA, USA PATRIOT Act, and the REAL ID Act of 2005, anyone who today acts as a member of a group fighting against an established government would by definition be engaging in "terrorist activity" if that government treats the members of the group as criminals under its domestic laws. Put another way, if the person uses a firearm or other weapon to fight against the government, she has engaged in "terrorist activity" if her fighting is "unlawful under the laws of the place where it is committed." If a person provides "material support" to someone who engaged or is engaging in such activity, the person violates U.S. immigration and criminal laws. The language is so broad that it punishes "people who fought for freedom from apartheid in South Africa, Jews who resisted persecution in Nazi Germany and Vietnamese and Hmong who aided the United States forces during the Vietnam War."[50]

Had this law been in effect in 1778, for example, Mary Hays McCauly—better known as Molly Pitcher, the famous American Revolutionary War heroine—would have engaged in "terrorist activity" when she helped her husband fight at the Battle of Monmouth during the Revolutionary War; under British law at the time, a British subject (colonist) who attacked the British Army was a criminal and could be tried in British criminal courts. Molly Pitcher's act of providing water to the

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[49] USA PATRIOT Act of 2001, §412(a)(6).
[50] Letter from Robert D. Evans, Director, Governmental Affairs Office, American Bar Association, to Senator Arlen Specter, Apr. 26, 2006, *available at* http://www.aila.org/content/default.aspx?docid=19233 (document can also be downloaded from American Bar Association website).

other Revolutionary War fighters[51] during the battle would have been an act of providing "material support" to terrorists.[52] Because the law is retroactive, today any non-citizen Daughters of the American Revolution could technically face deportation for being members of the organization.[53]

D. The People's Mujahedin of Iran (PMOI): DOS versus DOD

1. The History of the PMOI/MEK

The group known as the People's Mujahedin Organization of Iran ("PMOI")—and also called, variously, the Mujahedin-e Khalq ("MEK"), the Muslim Iranian Students' Society, the National Council of Resistance (NCR), the Organization of the People's Holy Warriors of Iran, the National Liberation Army of Iran (NLA), the National Council of Resistance of Iran (NCRI), or the Sazeman-e Mujahedin-e Khalq-e Iran[54]—was formed in 1965; its goal then was to overthrow the Shah of Iran.[55] In the 1970s, members of the group killed American military and civilian personnel who were working in Iran; it also supported the takeover of the U.S. Embassy in 1979. After the Iranian Islamic Revolution, however, the group began to fight against the Khomeini regime, and most of its members fled Iran. Many ended up in Europe, but a large group found safe haven in Iraq. Saddam Hussein armed the group and sent its members into action against Iran. Throughout the 1990s, the PMOI engaged in an ongoing campaign of violent terrorist attacks, mostly targeting the Iranian regime.

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[51] Georgetown University Law Center, *Unintended Consequences: Refugee Victims of the War on Terror*, at ii (May 2006) ("As the law went into effect in late 2004, UNHCR officials in Ecuador were told by U.S. government representatives that 'even a glass of water' could constitute prohibited support.").
[52] I rely on the facts about Molly Pitcher found at http://sill-www.army.mil/pao/pamolly.htm (last accessed April 30, 2006).
[53] Interestingly, the Daughters of the American Revolution allow membership for women whose ancestors provided "material aid" to the Revolutionary War fighters. *See* http://www.dar.org/natsociety/content.cfm?ID=145&hd=n&FO=Y (allowing membership for female descendants of "[t]hose who rendered material aid such as furnishing supplies with or without remuneration, lending money to the Colonies, munitions makers, gunsmiths, etc.").
[54] U.S. Dep't of State, Country Reports on Terrorism 2005 (April 2006), at 212.
[55] Ervand Abrahamian, *The Iranian Mojahedin* (1989).

In 1997, the Secretary of State Madeleine Albright designated the PMOI/MEK as a foreign terrorist organization under INA §219.[56] This designation was somewhat controversial,[57] but it withstood three separate court challenges.[58] Despite numerous attempts by MEK—and some of its prominent supporters[59]—to get DOS to lift the designation, it remains in place today.[60] In April 2006, the State Department described the group as follows:

> Mujahedin-e Khalq Organization (MEK): The MEK, a largely Iranian group, mixes Marxism, nationalism, and Islam. The MEK was formed in the 1960s and was expelled from Iran after the Islamic Revolution in 1979. Since the late 1908s, its primary support came from the former Iraqi regime of Saddam Hussein. The MEK conducted anti-Western attacks prior to the Islamic Revolution. Since then, it has conducted terrorist attacks against the interests of the clerical regime in Iran and abroad.[61]

This official State Department description lacks the color of other accounts of the PMOI/MEK, which has been the subject of several high-profile news reports. In 2003, for example, Elizabeth Rubin published a lengthy profile of the group in the New York Times magazine. She described how the group was led by its "charismatic husband-and-wife duo, Maryam and Massoud Rajavi," and how it had "transformed itself into the only army in the world with a commander corps composed mostly of women."[62] Characterizing the group as "bizarre," Rubin reported that they were conducting small arms and artillery training, maintaining tanks, and driving

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[56] 8 U.S.C. §1189.

[57] The news media and some scholars have described the designation as "a goodwill gesture toward Iran's newly elected reform-minded president, Mohammad Khatami." Elizabeth Rubin, The Cult of Rajavi, *N.Y. Times Magazine*, July 13, 2003; see also Ilan Berman, *Tehran Rising* at 31 (2005).

[58] *See United States v. Afshari*, 2006 U.S. App. LEXIS 9572 (April 17, 2006) (recounting history of the designation of the PMOI/MEK as a foreign terrorist organization). MEK appealed its designation three times—in 1999, 2001, and 2003, losing each time.

[59] One such supporter is Republican Congressman Tom Tancredo of Colorado. *See* John P. Gramlich, "Iranian 'Terror' Group Divides Washington," *United Press Int'l*, Dec. 20, 2005 (describing how Congressman Tancredo has "publicly expressed support for" the PMOI/MEK). Congressman Tancredo, ironically, has campaigned vigorously in favor of anti-terrorism provisions of the immigration laws, and was a staunch support of the REAL ID Act of 2005.

[60] John P. Gramlich, "Iranian 'Terror' Group Divides Washington," *United Press Int'l*, Dec. 20, 2005.

[61] U.S. Dep't of State, Country Reports on Terrorism 2005 (April 2006), at 132.

[62] Elizabeth Rubin, The Cult of Rajavi, *N.Y. Times Magazine*, July 13, 2003, at 26.

Katyusha rocket trucks while going through "routine self-criticism" and "weekly ideological cleansings." She also quoted a former member of the group who described it as "a totalitarian mini-state" and others who opined that "the Rajavis, given the chance, would have been the Pol Pot of Iran." Her account of the group was reinforced by other reports, including a widely-publicized Human Rights Watch report in which escapees from the group described various human rights abuses perpetrated by the PMOI/MEK on its members and former members from 1991 to 2003.[63]

In any event, U.S. Army General Ray Odierno negotiated the group's "surrender" to U.S. forces in May 2003. General Odierno "thought that the group's commitment to democracy in Iran meant its status as a terrorist organization should be reviewed."[64] An unidentified administration official said that "Pentagon hard-liners" wanted to use the PMOI/MEK to help overthrow the Iranian regime and provide intelligence on the Iranian nuclear program.[65]

Notwithstanding high-profile attempts to describe the group as benign, however, in its most recent terrorism report, dated April 2006, the State Department reaffirmed that the PMOI/MEK is a terrorist organization.[66] At the same time, DOS states that "MEK leadership ordered its members not to resist Coalition forces at the outset of Operation Iraqi Freedom, and they surrendered their arms to Coalition forces in May 2003."[67] DOS states further that the PMOI no longer have weapons, tanks armored vehicles, or heavy artillery.[68] DOS also reports that a "significant number

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[63] Human Rights Watch, *No Exit: Human Rights Abuses Inside the MKO Camps* (May 2005), *available at* http://hrw.org/backgrounder/mena/iran0505/iran0505.pdf; *see also* Human Rights Watch, Statement on Responses to Human Rights Watch Report on Abuses by the Mojahedin-e Khalq Organization (MKO), available at http://hrw.org/english/docs/2006/02/15/iran12678_txt.htm.

[64] Rubin, at 26.

[65] *Id.*

[66] U.S. Dep't of State, Country Reports on Terrorism 2005 (April 2006), at 132.

[67] Country Reports at 213.

[68] *Id.*

of MEK personnel have voluntarily left the . . . group, and several hundred of them have been voluntarily repatriated to Iran."[69]

2. PMOI Prosecutions in the United States

Following the PMOI's designation as an FTO, the Department of Justice prosecuted and convicted many people for providing "material support" to the organization. Although these defendants have frequently challenged their convictions as unconstitutional, the courts have rejected their arguments. The courts have also rejected their attempts to attack collaterally the designation of the PMOI as a Foreign Terrorist Organization.

In the recent case of *United States of America v. Hossein Afshari*,[70] for example, a panel of the Ninth Circuit Court of Appeals denied a petition for rehearing and the Court also denied a petition for rehearing en banc, thus upholding the convictions of seven defendants who had given money to the PMOI between 1997 and 2001. They had been convicted of providing "material support" to a terrorist organization in violation of 18 U.S.C. §2339B(a)(1).

The Department of Homeland Security and its predecessor agency, the Immigration & Naturalization Service have also sought to deport those non-citizens who have provided material support to the PMOI/MEK. In 2002, for example, the Board of Immigration Appeals upheld a removal order for an Iranian national who had provided support to the PMOI/MEK, denying him asylum and withholding of removal.[71]

3. PMOI and the Department of Defense

At the same time that DOJ has been vigorously prosecuting supporters of PMOI/MEK inside the United States, the Pentagon has been protecting the group in Iraq. The U.S. State

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[69] *Id.*
[70] 2006 U.S. App. LEXIS 9572 (9th Cir., Apr. 17, 2006).
[71] *In re U—H—*, Int. Dec. 3469, 2002 BIA LEXIS 9, 23 I&N Dec. 355 (BIA 2002).

Department and the Department of Defense have acknowledged that the U.S. military "has allowed the MEK to maintain an operational training facility in Iraq."[72] Human rights groups have documented the fact that PMOI/MEK members are being held by the Pentagon at Camp Ashraf in Iraq. When the group's presence at the camp was first noticed, the Pentagon equivocated about their status,[73] but eventually the Pentagon acknowledged that the "3,500 Iranian refugees" located at Camp Ashraf are in fact members of PMOI/MEK.[74] The PMOI/MEK receive very unusual treatment for denizens of a refugee camp. According to press reports, "Camp Ashraf is not really a camp. . . . [I]t has a convention centre, two museums, a pool, park, garden, hospital and university."[75] Members of the PMOI/MEK parade "in their military uniforms—green fatigues adorned with scarlet berets, scarves and sashes."[76]

Human Rights Watch and other groups, as well as the U.S. State Department, claim that PMOI/MEK remains dangerous.[77] A group calling itself "The Association for the Support of Victims of the Mojahedin-e Khalq" has held press conferences recently, accusing MEK of ongoing human rights abuses.[78] The Canadian Security Intelligence Service apparently thinks that the group is enough of a threat that it has been warning Canadian politicians not to associate with the PMOI/MEK.[79]

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[72] John P. Gramlich, "Iranian 'Terror' Group Divides Washington," *United Press Int'l*, Dec. 20, 2005 (quoting DOS spokesman Gregg Sullivan).
[73] This equivocation was apparently the result of internal conflict in the administration: According to news reports, some factions at the State Department wanted the PMOI/MEK disarmed, but the Pentagon wanted to use them in Iran. See Connie Bruck, "Exiles: How Iran's Expatriates Are Gaming the Nuclear Threat," *The New Yorker*, Mar. 6, 2006, at 48.
[74] John P. Gramlich, "Iranian 'Terror' Group Divides Washington," *United Press Int'l*, Dec. 20, 2005.
[75] Stewart Bell, "U.S. Holds Canadians on Iran-Iraq Border: 50 People Left Canada to Join 'Terror' Group," *National Post* (Canada), Apr. 17, 2004, at A1.
[76] *Id.*
[77] John P. Gramlich, "Iranian 'Terror' Group Divides Washington," *United Press Int'l*, Dec. 20, 2005 (quoting DOS spokesman Gregg Sullivan for the proposition that "this is a group that is engaged in terrorist activity").
[78] Press Conference in Paris on Human Rights Abuses in the Mojahedin-e Khalq Since the Fall of Saddam Hussein, *U.S. Newswire*, Mar. 7, 2006.
[79] Stewart Bell, "CSIS Visits B.C. Tory MP After Iran Rally: Agents Accuse Exile Group of Terrorism," *National Post* (Canada), Apr. 15, 2004, at A1.

Yet the U.S. military, reportedly on the orders of Secretary of Defense Donald Rumsfeld, has now designated members of the PMOI/MEK as "protected persons" under the Fourth Geneva Convention.[80] They appear to be the only FTO in the world that is publicly receiving such protection; under the rules of the Administration's Global War on Terrorism, the majority of terrorists are deemed "unlawful enemy combatants" and said to fall outside the Geneva Conventions.[81] Thus, the designation of the PMOI as "protected persons"—in light of the State Department position that the group is an FTO—is more than a bit puzzling.

The Fourth Geneva Convention[82] concerns the protection of civilians during times of war and under occupation by a foreign power. Article 4 of this Convention defines "protected persons" as "[p]ersons protected by the Convention . . . who, at a given moment and in any manner whatsoever, find themselves, in the case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."[83] While the Fourth Geneva Convention explicitly excludes "Nationals of a States which is not bound by the Convention"[84] and anyone who is a citizen of a neutral or allied state,[85] Iran is a Party to the Convention and its nationals who are members of the PMOI/MEK can thus qualify as "protected persons."

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[80] "Iraq: Two Members of PMOI Abducted," *U.S. Fed News*, Dec. 11, 2005 (citing a U.S. Central Command press release for the proposition that "[t]he residents of Camp Ashraf have been considered protected persons under the fourth Geneva Convention since June 2004").
[81] Dep't of Defense, Background Briefing, May 20, 2004 ("[T]he secretary of defense has instructed his combatant commanders that for those people that the armed forces detain in the global war on terrorism that are unlawful combatants, that are not subject to the Geneva Convention, shall be treated humanely and consistent with military necessity, consistent with the principals [sic] of the Geneva Convention"), *available at* http://www.defenselink.mil/transcripts/2004/tr20040520-0788.html.
[82] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *opened for signature* Aug. 12, 1949, 75 U.N.T.S. 287, 6 U.S.T. 3516 [hereinafter Fourth Geneva Convention or GCIV].
[83] GCIV Article 4.
[84] GCIV Article 4.
[85] GCIV Article 4.

Under Article 3 of the Convention,[86] protected persons must be given humane treatment. Additionally, many of the remaining articles in the Fourth Geneva Convention grant extra protections to protected persons. Under those articles, "protected persons" may not be subjected to any "physical or moral coercion," "physical suffering or extermination," collective punishment, pillage, or reprisals.[87] They are allowed to leave the country or occupied territory if they like.[88] They are allowed to work but cannot be compelled to do so.[89]

Many U.S. military units have been ordered to Camp Ashraf to help and protect the PMOI/MEK, and in some cases to help repatriate their members to Iran. The Army Times, for example, reported on March 13, 2006 that the Army Reserve's 344th Combat Support Hospital was running "combat health facilities at . . . Camp Ashraf, where they treat coalition forces, detainees, civilian contractors[,] and some local Iraqis."[90] The Massachusetts National Guard had approximately 150 soldiers guarding the PMOI/MEK at Camp Ashraf until recently;[91] so did the Minnesota National Guard.[92] MEK members are apparently accorded privileges such that they are permitted to go on "routine logistics trip[s]" to Baghdad in which they are often transported by U.S.

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86 Also referred to as "Common Article 3" because identical language is found in Article 3 of all four of the four Geneva Conventions of 1949. Common Article 3 is also the international law protecting noncombatants in most cases of non-international armed conflict. Common Article 3 provides protection against violence and outrages to personal dignity, as well as assuring fair trial standards. Common Article 3 has attained the status of customary international law, and in recent years has been used as a basis for international war crimes prosecutions.

87 GCIV Articles 31, 32, 33.

88 GCIV Article 35.

89 GCIV Articles 39, 40.

90 Michelle Tan, "Hospital Has The Right Stuff," *Army Times* (Mar. 13, 2006), at 28.

91 Connie Paige, "Troops Home for the Holidays," *Boston Globe* (Dec. 17, 2005) (describing how Massachusetts National Guard soldiers were assigned to perform "detainee operations" at Camp Ashraf).

92 Tracey Compton, "1-194th's Soldiers Roll Into St. Cloud," *St. Cloud Times*, Dec. 7, 2005, at A1.

soldiers.[93] Furthermore, the press has reported that MEK's "terrorist military base has been left intact with its own command structure to govern the camp."[94]

E. Providing Material Support to Terrorists

Under the definition of "material support" in the INA and other U.S. laws, however, members of U.S. military units are clearly providing "material support" to the PMOI/MEK. As described above, the definition of "material support" is extremely broad. In the case *Singh-Kaur v. Ashcroft,* for example, the Third Circuit Court of Appeals held that an alien who admitted only to providing food and shelter to a group of militant Sikhs who opposed the Indian government was properly found to have provided "material support" to those "engaged in terrorist activities."[95] Under U.S. case law and the interpretations of U.S. immigration authorities, feeding members of an FTO; transporting them; and providing them with shelter—all constitute "material support." The only support that is not considered criminally-punishable "material support" is the provision of medical care and religious items, as those two types of support are specifically excluded from the criminal "material support" definition—yet supplying aspirin or a Koran to a member of an FTO could still get a non-citizen deported.[96] According to an attorney for the Department of Homeland Security, there is no *de minimis* exception to the concept of material support; a person falls within the ambit of the "material support" statutes by giving even a dime to a terrorist.[97]

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93 Dep't of Defense U.S. Central Command Press Release, Iraq: Two Members of PMOI Abducted (Update 1), Dec. 11, 2005 (describing how two PMOI members were "abducted on Aug. 4 in eastern Baghdad while on a routine logistics trip").

94 Press Conference in Paris on Human Rights Abuses in the Mojahedin-e Khalq Since the Fall of Saddam Hussein, *U.S. Newswire*, Mar. 7, 2006.

95 *Singh-Kaur v. Ashcroft*, 385 F.3d 293, 299-301 (3rd Cir. 2004).

96 *Compare* 18 USC §2339A(b) *with* 8 USC §1182(a)(3)(B)(iv)(VI).

97 Oral Argument of DHS Attorney George Martin, Transcript of Oral Argument, Board of Immigration Appeals, *In the Matter of Ma San Kywe*, A97-901-756 (Jan. 26, 2006) (on file with author) ("So, if someone provides a pocket full of change knowing that the organization might be a terrorist organization, that's sufficient in your view? . . .[T]hat's correct."); *see also* Georgetown University Law Center, *Unintended Consequences: Refugee Victims of the War on Terror*, at ii-iii (May 2006) (describing lack of a *de minimis* exception to material support bar).

U.S. immigration authorities have interpreted the "material support" laws to deny admission to the United States to large numbers of people, including refugees who would otherwise be accepted for resettlement in America.[98] As described in a recent report from the Georgetown University Law Center, the U.S. Government has

> indefinitely deferred U.S. resettlement of a Liberian woman who was gang-raped and held hostage by the Liberians United for Reconciliation and Democracy (LURD). Relying on the material support bar, DHS classified the laundry and chores that the rebels forced her to do while she was held hostage as prohibited material support to a terrorist organization. A Sri Lankan refugee was forced to pay a ransom for his release after he was abducted by the Liberation Tigers of Tamil Eelam (LTTE); the U.S. judge denied him asylum on account of this provision of material support to a designated terrorist organization. The expansive U.S. definition has denied U.S. protection to anti-Communist *Alzados* who challenged Castro's dominance in Cuba; Vietnamese Montagnards who supported U.S. military action during the Vietnam War; and thousands of pro-democracy Burmese who supported resistance to a totalitarian regime that the U.S. also opposes.[99]

According to Human Rights Watch, the law "is now being applied so broadly, that supporters of movements that the United States once fought alongside, such as members of the Northern Alliance, are barred [from] admission."[100] The bar "fails to include exceptions for individuals who have provided 'support' under implied or explicit threats of death, who support pro-democracy groups in conflict with repressive regimes, for minors forced to work for terrorist organizations, or for those who have provided such negligible 'support' as a glass of water or a bowl of rice."[101] According to the Miami Herald, "one DHS lawyer argued in an immigration appeals case

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[98] *See* Georgetown University Law Center, *Unintended Consequences: Refugee Victims of the War on Terror* (May 2006) (describing how the material support bar has been used to deny admission to the United States to numerous refugees).
[99] *Id.* at ii.
[100] Human Rights Watch Draft Memo, Mar. 5, 2006 (in possession of the author) [hereinafter "HRW Memo"].
[101] Letter from Robert D. Evans, Director, Governmental Affairs Office, American Bar Association, to Senator Arlen Specter, Apr. 26, 2006 (in possession of the author).

that any level of support—as little as a dime provided under duress or unwittingly—would bar a deserving refugee from U.S. entry."[102] The Human Rights Watch reports that

> In a recent Board of Immigration Appeals case, lawyers for the Department of Homeland Security even opined that the law would bar admission to the Iraqi nationals that provided the United States Marines information directing them to Jessica Lynch, because [] they aided a force that was taking up arms against the ruling Iraqi government.[103]

The law makes no exception for material support provided under duress.[104] Nor do the criminal statute or the immigration laws make an exception for U.S. military personnel who provided the material support or resources pursuant to orders by the Pentagon chain-of-command.

Thus, U.S. soldiers who have been assigned to Camp Ashraf potentially face criminal charges for having provided material support to a FTO; any non-US citizens among the force are inadmissible to the United States and subject to deportation. Should any of these non-citizen U.S. soldiers end up in removal proceedings later in their lives, their assignment to Camp Ashraf would mean that they are ineligible for most relief from removal, including temporary protected status,[105] asylum,[106] withholding of removal,[107] cancellation of removal,[108] and adjustment of status.[109] While providing material support to a FTO is not an absolute bar to obtaining U.S. citizenship, an

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[102] "Commentary: Sweeping Legislation, Unintended Harm," *Miami Herald*, Mar. 27, 2006, at A26.
[103] Human Rights Watch Memo at 2.
[104] *Id.*
[105] INA §244(c)(2)(A)(iii)(III), 8 U.S.C. §1254a(c)(2)(A)(iii)(III) (no waivers of inadmissibility for national security grounds).
[106] INA §208(b)(2)(A)(v), 8 USC §1158(b)(2)(A)(v) (finding aliens ineligible for asylum if they fall under certain portions of Section 1182(a)(3)(B), the statutory provision defining terrorist activities).
[107] INA §241(b)(3)(B)(iv), 8 USC §1231(b)(3)(B)(iv) (refusing to allow withholding of removal to aliens if there are "reasonable grounds" to believe that the alien is "a danger to the security of the United States" and specifically referring to Section 1227(a)(4)(B), which states that the definition includes any alien described under Section 1182(a)(3)(B)—the statutory provision defining terrorist activities).
[108] INA §240A(c)(4), 8 U.S.C. §1229b(c)(4).
[109] An alien who seeks adjustment of status must be "admissible" to the United States. *See* INA §245(a), 8 U.S.C. §1255(a).

immigration examiner could surely deny a citizenship applications on the grounds that providing material support to a FTO demonstrates a lack of good moral character.[110]

F. Ensuring A Coherent Military, Foreign, and Immigration Policy

Having said all this, is it likely that American immigration officials will deny entry to the United States or deport non-citizen U.S. soldiers who have followed the orders of their commanders and performed duties that required them to provide "material support" to the PMOI/MEK? One would hope that these officials have a sense of the justifiable public outrage that would accompany such actions, even if the law technically requires them. Yet the situation illustrates why Congress should amend the material support law at the first opportunity.

The FTO laws and their related "material support" provisions are currently being violated in Iraq as a matter of official U.S. military and foreign policy. When U.S. law criminalizes without exception behavior that is officially and publicly authorized and directed in support of U.S. military and foreign policy objectives, those in the Executive Branch who are tasked to carry out the policy are placed in a dilemma. If they perceive the dilemma, they may have to disobey orders from their superiors in order to avoid legal sanctions later. If they do not see the dilemma, they may later suffer criminal and administrative sanctions for behavior that appeared to be required by their official duties. In any event, this conflict is repugnant to a society which is supposed to operate under the rule of law.

U.S. law should also encourage the State Department and the Department of Defense to be legally consistent,[111] rather than opening the U.S. government up to charges of hypocrisy. The

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[110] INA §316(a), 8 U.S.C. §1427.

[111] Others have pointed out similar inconsistencies in other government lists of terrorist organizations. *See* Mark P. Denbeaux, Joshua Denbeaux, David Gratz, John Gregorek, Matthew Darby, Shana Edwards, Shane Hartman, Daniel Mann, & Helen Skinner, *Second Report on the Guantanamo Detainees: Inter- and Intra-Departmental Disagreements About Who Is Our Enemy*, undated manuscript (in possession of the author) (explaining how DOD has 72 organizations on its Combatant Status Review Tribunals list, but these organizations differ from the ones on the Patriot Act Terrorist Exclusion list and other lists maintained by the Department of State).

current situation with respect to "material support" of terrorists allows opponents of the current administration to accurately describe the Administration as providing support to a terrorist organization in violation of law, and in violation of the publicly-announced policy of the United States to deny any support to terrorists. Under the express terms of the current law, the United States is itself "a state sponsor" of terrorism.

The Department of Defense and the Department of State should be in official agreement on what organizations constitute FTOs. Even if they cannot agree, Congress should amend current "material support" laws so as to preclude the possibility that a person could be denied immigration benefits or criminally prosecuted for supporting a group that is itself being supported and protected by the United States Government as an official and public matter. In the context of the Congressionally-authorized Global War on Terrorism, support for such organizations should be encouraged, not punished.

The American Bar Association and various human rights groups have recommended changes to the law to protect legitimate refugees from being barred from the United States under the material support provisions. These proposals will go far to resolve unfair "material support" bars pertaining to those refugees. They do not, however, resolve the problem with the PMOI/MEK. For that problem to be resolved, Congressional action is necessary.

G. Conclusion

This paper has explored one of the stranger and more embarrassing legal conundrums arising out of recent efforts by Congress to tighten the immigration and criminal laws relating to terrorism. Unfortunately, Congress's efforts in the "material support" arena have seemingly done more to embarrass the United States and hurt our allies and friends than they have helped achieve U.S. foreign and military policy goals. To avoid the serious public diplomacy fallout and potential

private pain created by the current policy, Congress should amend the "material support to terrorism" laws at the first opportunity.