

We have prepared the following Background on the Omnibus Counterterrorism Act. It may be reproduced in its entirety or as excerpts with proper credit to the Anti-Defamation League. ADL experts are available to provide additional information or analysis by contacting the Media Relations Department at (212) 490-2525, ext. 7748.

THE OMNIBUS COUNTERTERRORISM ACT

Why do we need counterterrorism legislation?

American citizens and institutions have been the target of choice for terrorists. According to the Justice Department, attacks against American citizens and interests over the past five years account for roughly 40 percent of the total incidents worldwide.

Americans were victims in the attack on the Marine barracks in Beirut, the murder of Leon Klinghoffer on the hijacked Achille Lauro, the bombing of Pan Am 103, the World Trade Center, and most recently, the Federal Building in Oklahoma City. Since the Oklahoma City blast, there have been frequent reminders of the growing danger: increased membership in the fiercely anti-government militia groups, the FAA-imposed heightened security measures at airports across the country, and the recent convictions of Sheik Omar Abdel Rahman and nine other defendants in a conspiracy to blow up New York landmarks.

Activists and supporters of some terrorist groups use the U.S. as a base to organize, finance and direct terrorist activity here and abroad.

The nature of the current terrorist threat and the limitations of existing American law in addressing this danger provide compelling reasons for Congress to act now to enact tough, comprehensive, constitutionally-sound anti-terrorism legislation.

How will this legislation fight terrorism?

The American criminal justice system must be better equipped to confront a new level of sophistication and danger posed by terrorist groups. The legislation provides the American criminal justice system with essential counterterrorism tools, including:

- * New federal jurisdiction to prosecute acts of terrorism carried out within the United States, as well as conspiracies here to commit terrorism abroad. There is currently no federal statute outlawing terrorism. In the case of the bombings of the World Trade Center and the Oklahoma City federal building, federal jurisdiction was established only because of the nature of the targets, their occupants, and the means by which the attack was carried out.
- * Provisions to expand restrictions on access to the U.S. and facilitate exclusion of aliens who are representatives and leaders of designated terrorist groups.

* An expanded ban on providing material support -- training, weapons, safehouses, fundraising, and financial services -- for terrorism and terrorist organizations.

* Expanded jurisdiction to prevent the transfer of nuclear materials, including materials from the Former Soviet Union.

* Implementation of an International Convention on Plastic Explosives to require manufacturers to mark materials to make them easier to detect at airports and other sites.

How are civil liberties concerns addressed in the legislation?

* Access Restrictions for Members of Designated Terrorist Groups:

The antiterrorism legislation pending before the House expands both the grounds on which an individual can be denied access to the U.S. and the universe of excludable individuals. While known terrorists are already excludable under current law, this legislation would bar access for identifiable members, representatives, and leaders of designated terrorist organizations.

Admission to the United States is a privilege -- aliens outside the U.S. have no due process rights. The government unquestionably has the constitutional right -- and the duty -- to keep our country from being used as a base to organize, finance, and direct terrorist activity here and abroad.

In fact, the designation of foreign terrorist organizations by the administration is not unprecedented. Under President Clinton's Executive Order 12947 (January 23, 1995), forty-four organizations were designated as "threatening to disrupt the Middle East Peace Process." Assets and property in the United States of these designated organizations were frozen and contributions of funds, goods, or services -- even "charitable" ones by American citizens-- were prohibited.

Moreover, the legislation provides that the designation of foreign terrorist organizations by the Administration be subject to judicial review. The bill pending before the House provides authority to challenge the designation; it will be set aside if the designation is "arbitrary, capricious, an abuse of discretion, ... contrary to constitutional right...."

* Fundraising Restrictions for Terrorist Organizations Abroad:

The antiterrorism legislation includes a broad ban on fundraising for designated foreign terrorist organizations. This prohibition would extend existing law to cover even legal, charitable, non-violent, social service activities of the designated organizations. Opponents have attacked this provision as an unconstitutional restriction on free speech and association rights and raised concerns about the possible abuse of power in designating terrorist groups.

As a safeguard, the designation of a foreign terrorist organization, as noted above, is subject to judicial review.

Furthermore, money is fungible. It is virtually impossible to determine the final destination or ultimate use of a contribution -- notwithstanding the donor's good intent. Many terrorist organizations, including Hamas, Islamic Jihad, and Hezbollah, do perform a variety of social service functions, which, in turn, enhance their credibility and political strength with their constituency. There is no way to know whether these financial contributions go towards a kindergarten or terrorist activities.

While the right to associational freedom does include the right to donate money, it is beyond dispute that the government may restrict this right if it has a compelling interest to do so -- clearly present in this circumstance.

Finally, criminal sanctions are triggered only when a donor "knowingly" provides material support to a designated organization "which the persons knows or should have known is a terrorist organization."

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