

No. 00-910

In the Supreme Court of the United States

HUMANITARIAN LAW PROJECT, ET AL., PETITIONERS

v.

JANET RENO, ATTORNEY GENERAL, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether Congress may, consistent with the First and Fifth Amendments, prohibit persons within the United States or subject to its jurisdiction from providing money, weapons, explosives, or other material support to foreign organizations that have been found by the Secretary of State, in consultation with the Attorney General and the Secretary of the Treasury, to be engaged in terrorist activity threatening the security of United States nationals or the national security of the United States.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 205 F.3d 1130. The opinion of the district court (Pet. App. 17a-84a) is reported at 9 F. Supp. 2d 1176. The district court's findings of fact and conclusions of law (Pet. App. 85a-110a) are reported at 9 F. Supp. 2d 1205.

JURISDICTION

The judgment of the court of appeals was entered on March 3, 2000. A petition for rehearing was denied on September 1, 2000 (Pet. 1; see Pet. App. 111a-112a). The petition for a writ of certiorari was filed on November 29, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1996, following continued terrorist actions throughout the world, including many directed at United States interests, Congress passed the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214. Title III of that Act, 110 Stat. 1247, entitled “International Terrorism Prohibitions,” was designed to cut off support for such terrorist activities. In enacting Title III of AEDPA, Congress intended (*inter alia*) to “strictly prohibit terrorist fundraising in the United States,” and to prevent this country from “be[ing] used as a staging ground for those who seek to commit acts of terrorism against persons in other countries.” H.R. Rep. No. 383, 104th Cong., 1st Sess. 43 (1995) (House Report).¹ The Act reflects Congress’s judgment that “[s]everal terrorist groups have established footholds within ethnic or resident alien communities in the United States,” and “[m]any of these organizations operate under the cloak of a humanitarian or charitable exercise * * * and thus operate largely without fear of recrimination.” *Ibid.* The Act itself contains a congressional finding that “foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.” AEDPA § 301(a)(7), 110 Stat. 1247.

After extensive hearings, Congress determined that “[t]here is no other mechanism, other than an outright prohibition on contributions, to effectively prevent such organizations from using funds raised in the United States to further their terrorist activities abroad.”

¹ The House Report relates to H.R. 1710, a predecessor bill to AEDPA’s antiterrorism provisions.

House Report 45. The House Report on a predecessor bill to AEDPA's antiterrorism provisions (see note 1, *supra*) explained that "[a]llowing an individual to supply funds, goods, or services to an organization * * * helps defray the cost to the terrorist organization of running the ostensibly legitimate activities. This in turn frees an equal sum that can be spent on terrorist activities." *Id.* at 81. In floor debate on AEDPA, individual Members of Congress likewise emphasized the importance of the contribution ban as a means of preventing terrorist organizations from amassing the resources used to commit violent acts. See 142 Cong. Rec. 7577 (1996) (Sen. Snowe) ("Most important is the provision in this bill that will cut off the ability of terrorist groups such as Hamas to raise huge sums in the United States for supposedly 'humanitarian' purposes, where in reality a large part of those funds go toward conducting terrorist activities."); 141 Cong. Rec. 14,733 (1995) (Sen. Feinstein) ("I simply do not accept that so-called humanitarian works by terrorist groups can be kept separate from their other operations. I think the money will ultimately go to bombs and bullets, rather than babies, or, because money is fungible, it will free up other funds to be used on terrorist activities.").

Section 302 of AEDPA authorizes the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to designate an entity as a "foreign terrorist organization" if she finds that: "(A) the organization is a foreign organization; (B) the organization engages in terrorist activity (as defined in [8 U.S.C.] 1182(a)(3)(B) * * *); and (C) the terrorist activity of the organization threatens the security of United States nationals or the national security of the United States." 8 U.S.C. 1189(a)(1) (Supp. IV 1998).

Designation of a group as a “foreign terrorist organization” under AEDPA has three legal consequences. First, United States financial institutions possessing or controlling any funds in which a designated foreign terrorist organization or its agent has an interest are required to block all financial transactions involving those funds. 18 U.S.C. 2339B(a)(2) (Supp. IV 1998). Second, representatives and specified members of a designated foreign terrorist organization are inadmissible to this country. 8 U.S.C. 1182 (Supp. IV 1998). Third, it is illegal for persons within the United States or subject to its jurisdiction to “knowingly” provide “material support or resources” to a designated foreign terrorist organization. 18 U.S.C. 2339B(a)(1) (Supp. IV 1998). The Act defines “material support or resources” to mean “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.” 18 U.S.C. 2339A(b) (Supp. IV 1998); see also 18 U.S.C. 2339B(g)(4) (Supp. IV 1998).

The House Report recognized that “[t]he First Amendment protects one’s right to associate with groups that are involved in both legal and illegal activities.” House Report 43. However, that Report emphasized that the ban on material support “does not attempt to restrict a person’s right to join an organization. Rather, the restriction only affects one’s contribution of financial or material resources to a foreign organization that has been designated as a threat to the national security of the United States.” *Id.* at 44.

2. The Liberation Tigers of Tamil Eelam (LTTE or Tamil Tigers) and the Kurdistan Workers’ Party (PKK)

were among 30 entities designated by the Secretary of State as foreign terrorist organizations pursuant to AEDPA. 62 Fed. Reg. 52,650, 52,650-52,651 (1997).² The Tamil Tigers were founded in 1976, for the purpose of creating an independent Tamil state in Sri Lanka. See C.A. Supp. E.R. 7. The organization has employed means such as suicide bombings and political assassinations to pursue its campaign for independence, and in the process has killed hundreds of civilians in recent years. *Id.* at 7-10. Throughout the 1990s, the Tamil Tigers have attacked Sri Lankan government officials, killing in various incidents the President of Sri Lanka, the Security Minister, and the Deputy Defense Minister. *Id.* at 8-9.

The PKK was founded in 1974 for the purpose of establishing an independent Kurdish state in southeastern Turkey. C.A. Supp. E.R. 5. Since its inception, the organization has waged a violent terrorist insurgency in Turkey that has claimed more than 22,000 lives since 1984. *Ibid.* In recent years, the PKK has moved beyond rural-based insurgent activities and embraced urban terrorism; it has thus conducted terrorist attacks on Turkish diplomatic and commercial facilities in West European cities, and, in an announced attempt to damage Turkey's tourist industry, has

² The Tamil Tigers sought review of that designation through an action in the District of Columbia Circuit, as provided for in the AEDPA. See 8 U.S.C. 1189(b) (Supp. IV 1998). That court upheld the validity of the designation. See *People's Mojahedin Org. of Iran v. Department of State*, 182 F.3d 17 (D.C. Cir. 1999), cert. denied, 120 S. Ct. 1846 (2000). The PKK did not seek judicial review of the designation. Both entities were redesignated under AEDPA in October 1999, when their original designations expired under the terms of the statute. See 64 Fed. Reg. 55,112 (1999).

bombed tourist sites and hotels, and kidnaped foreign tourists. *Id.* at 5-7.

3. Petitioners are two United States citizens and six domestic organizations. Petitioners filed suit in federal district court, challenging the constitutionality of the relevant provisions of AEDPA. One citizen (Nagalingam Jeyalingam) and five of the organizations alleged that they wish to provide cash and various other types of support to the Tamil Tigers. The other citizen petitioner (Ralph Fertig) and the remaining petitioner organization (the Humanitarian Law Project) alleged that they wish to provide cash and other support to the PKK. Petitioners sought a nationwide preliminary injunction against enforcement of the relevant portions of AEDPA. See Pet. App. 24a, 27a-28a; C.A. E.R. 101-109. They asserted that the Secretary of State's designation of the Tamil Tigers and the PKK as foreign terrorist organizations has deterred petitioners from providing such support for fear of criminal investigation, prosecution, and conviction. *Id.* at 166.

In defending the challenged statutory provisions, the government submitted evidence showing that terrorist organizations do not maintain organizational structures or "firewalls" to prevent resources donated for humanitarian purposes from being used to commit or support terrorist acts. C.A. Supp. E.R. 12. Because money is fungible and terrorist groups do not open their books, it is extremely difficult for law enforcement agencies to distinguish between funds used to support exclusively non-violent humanitarian activities and those utilized for terrorist activities. *Id.* at 11-14. Moreover, some foreign terrorist organizations use social and political components to recruit personnel to carry out terrorist operations, and to provide support to terrorists and their families in aid of such operations. *Id.* at 12. The

government’s evidence also indicated that, even if funds or goods raised for charitable purposes are in fact so used, the effect of the donations is to make funds raised from other sources available for use in facilitating terrorist acts. *Id.* at 13. As one government declarant explained, “[g]iven the purposes, organizational structure, and clandestine nature of foreign terrorist organizations, it is highly likely that any material support to these organizations will ultimately inure to the benefit of their criminal, terrorist functions—regardless of whether such support was ostensibly intended to support non-violent, non-terrorist activities.” *Id.* at 10.

4. The district court denied petitioners’ request for preliminary injunctive relief with respect to most of the challenged AEDPA provisions, but granted a preliminary injunction against enforcement of two of the Act’s provisions. Pet. App. 17a-84a (opinion), 85a-110a (findings of fact and conclusions of law).

a. The court found that certain activities proscribed by AEDPA—such as providing false documentation or identification, weapons, lethal substances, or explosives to the PKK or Tamil Tigers—are “not protected by the right to freedom of association” conferred by the First Amendment. Pet. App. 35a. The court further found that the challenged AEDPA provisions were subject only to intermediate scrutiny because “the prohibition of material support to the PKK and LTTE is not aimed at the content of [petitioners’] political expression.” *Id.* at 41a; see *id.* at 43a. The court also explained that the Act preserves petitioners’ ability to join with others to express their ideas or advocate on behalf of the Tamil Tigers and the PKK. *Id.* at 50a-51a.

b. Based on its conclusion that AEDPA is not directed at speech and imposes only an incidental bur-

den on First Amendment activity, the district court applied the analysis mandated by *United States v. O'Brien*, 391 U.S. 367 (1968). See Pet. App. 43a, 51a-63a. The court found that the governmental interest in preventing the flow of resources to terrorist organizations is substantial and is unrelated to the suppression of free expression. *Id.* at 52a-55a. The court found as well that AEDPA restricts petitioners' associational and expressive activities no more than is necessary to further Congress's legitimate purpose. *Id.* at 55a-63a. The court noted in that regard that because money is fungible, any material support allows the recipient foreign terrorist organization to devote more of its resources to terrorism. *Id.* at 56a-57a. The district court therefore concluded that petitioners had failed to establish a probability of success on the merits of their claim that AEDPA violates the First Amendment. *Id.* at 62a-63a.³

c. The district court also rejected petitioners' contention that the breadth of the Secretary of State's discretion in designating foreign terrorist organizations under AEDPA renders the Act invalid. Pet. App. 64a-74a. The court held that the Act adequately constrains the Secretary's discretion by setting forth intelligible principles governing the designation process and by permitting designated organizations to seek judicial review. *Id.* at 66a-72a. The court also observed that petitioners had provided no evidence that the Secretary

³ The district court also stated that, had it applied the "strict scrutiny" approach urged by the petitioners, it still would have rejected their claim for a broad injunction. Pet. App. 63a n.20. The court explained that AEDPA clearly serves a compelling governmental interest and does not undermine to any material degree the potential for robust and effective discussion of the political ideas espoused by the Tamil Tigers and PKK. *Ibid.*

had designated the Tamil Tigers or the PKK based on disagreement with the groups' political views. *Id.* at 73a.

d. However, the district court granted a limited preliminary injunction against enforcement of two AEDPA provisions. Pet. App. 79a-83a. The court concluded that petitioners had demonstrated a probability of success on their contention that the terms "personnel" and "training," which are included within the statutory definition of "material support or resources," are too vague to satisfy constitutional requirements because they do not adequately inform reasonable people as to the range of conduct forbidden by the statute. *Id.* at 80a-82a. The court thought it possible that some of the activities in which petitioners wished to engage, such as writing and distributing publications supportive of the Tamil Tigers and the PKK, and training the PKK in political advocacy, might be construed as the provision of "training" or "personnel" to the designated organizations. *Id.* at 81a-82a. The district court entered a preliminary injunction barring the enforcement of 18 U.S.C. 2339B (Supp. IV 1998) against any of the named petitioners or their members for providing "training" or "personnel" to the Tamil Tigers or the PKK. Pet. App. 83a-84a n.31, 109a-110a.

5. Both sides appealed from the portions of the district court's ruling that were adverse to them. The court of appeals affirmed the district court's judgment in its entirety. Pet. App. 1a-16a.

a. The court of appeals rejected petitioners' argument that AEDPA imposes "guilt by association." Pet. App. 5a. The court observed that the statute does not prohibit membership in the designated groups or the vigorous promotion or support of any group's political

goals. *Ibid.* Rather, the court explained, “[w]hat AEDPA prohibits is the act of giving material support, and there is no constitutional right to facilitate terrorism by giving terrorists the weapons and explosives with which to carry out their grisly missions. Nor, of course, is there a right to provide resources with which terrorists can buy weapons and explosives.” *Ibid.*

b. The court of appeals rejected petitioner’s contention that the AEDPA provisions are invalid because their applicability does not depend on proof that the donor acted with a specific intent to aid the organization’s unlawful purposes. Pet. App. 5a-6a. The court explained that while a showing of intent to aid unlawful activity might be necessary in order to support a prohibition of advocacy, no such requirement was needed to sustain a ban on the provision of material support. *Ibid.*

c. The court of appeals also rejected petitioners’ argument that the AEDPA prohibitions cannot constitutionally be applied to organizations, like the PKK and the Tamil Tigers, that engage in political advocacy as well as terrorist activity. Pet. App. 6a-11a. The court found that “the material support restriction here does not warrant strict scrutiny because it is not aimed at interfering with the expressive component of [petitioners’] conduct but at stopping aid to terrorist groups.” *Id.* at 8a. The court then found that the material support prohibition satisfies the four-part test set forth in *O’Brien*, 391 U.S. at 377. The court explained that (1) “the federal government clearly has the power to enact laws restricting the dealings of United States citizens with foreign entities”; (2) the government has a legitimate and substantial interest in preventing the spread of international terrorism; (3) the government’s interest is unrelated to suppressing free

expression; and (4) AEDPA is sufficiently tailored to accomplish its purpose. Pet. App. 9a-11a. With respect to the final point, the court of appeals emphasized that judgments regarding the proper means of “preventing the United States from being used as a base for terrorist fundraising” are “strongly bound up with foreign policy considerations,” and that the courts therefore “must allow the political branches wide latitude in selecting the means to bring about the desired goal.” *Id.* at 10a.

d. The court of appeals also rejected petitioners’ argument that AEDPA gives the Secretary of State impermissibly broad discretion to designate terrorist organizations. Pet. App. 11a-13a. The court reiterated that the material support prohibition does not limit speech or association *per se*, and it concluded that the statutory standard governing the designation of foreign entities “is not so vague or indeterminate as to give the Secretary unfettered discretion.” *Id.* at 12a. The court also noted that designations by the Secretary are subject to judicial review under the Act. *Id.* at 13a.

e. Finally, the court of appeals affirmed the district court’s entry of a preliminary injunction against prosecution of petitioners or their members under 18 U.S.C. 2339B (Supp. IV 1998) for the provision of “personnel” or “training” to the PKK or the Tamil Tigers. Pet. App. 13a-15a. The court concluded that “[b]ecause [petitioners] have demonstrated that they are likely to succeed on the merits of their claim with respect to the terms ‘training’ and ‘personnel,’ * * * the district court did not abuse its discretion in issuing its limited preliminary injunction.” *Id.* at 15a.

ARGUMENT

With respect to the questions presented in the petition for certiorari, the decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.⁴

1. Petitioners contend (Pet. 8-11) that AEDPA's ban on the provision of cash and other material support to the Tamil Tigers and the LTTE subjects the putative donor to "guilt by association," in violation of the Constitution. That argument is without merit. Petitioners remain free to align themselves with designated organizations through expressions of solidarity and advocacy of their causes. See Pet. App. 5a. As the court of appeals recognized, "[w]hat AEDPA prohibits is the act of giving material support, and there is no constitutional right to facilitate terrorism by giving terrorists the weapons and explosives with which to carry out their grisly missions. Nor * * * is there a right to provide resources with which terrorists can buy weapons and explosives." *Ibid.*

Petitioners' reliance (Pet. 9-10) on *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), is misplaced. At issue in *Claiborne Hardware* was an assessment of damages against organizers and supporters of a boycott of certain businesses in Mississippi. Some aspects of the boycott were legal, but others were

⁴ The government is simultaneously filing a conditional cross-petition for a writ of certiorari. While we believe that petitioners' petition for a writ of certiorari should be denied, if it is granted, the Court should also grant our cross-petition in order to consider the court of appeals' decision upholding the preliminary injunction barring enforcement against petitioners and their members of AEDPA's ban on the provision of "training" and "personnel" to designated foreign terrorist organizations.

enforced through violence and threats of violence. This Court overturned the damage awards, holding that “association alone” and speech in support of the boycott were insufficient grounds for the imposition of damages liability based on the violent acts of others. See *id.* at 920, 926, 930. AEDPA, by contrast, imposes no penalty for association or speech alone, nor is it directed at contacts with domestic organizations. The Act instead prohibits the furnishing of tangible material support to a foreign terrorist group.

This Court and the courts of appeals have consistently recognized the authority of the political Branches to restrict the flow of money and other tangible assets to foreign governments whose actions are deemed to be inimical to United States interests. See, e.g., *Regan v. Wald*, 468 U.S. 222, 242-243 (1984) (sustaining President’s decision to curtail the flow of hard currency to Cuba by restricting travel, on the grounds that the Executive Branch is owed great deference in foreign affairs, and that the currency could be used in support of Cuban adventurism); *Zemel v. Rusk*, 381 U.S. 1 (1965) (upholding refusal by the Secretary of State to validate a United States citizen’s passport for a journey to Cuba); *Freedom to Travel Campaign v. Newcomb*, 82 F.3d 1431, 1439 (9th Cir. 1996) (upholding Cuban travel ban against First and Fifth Amendment attack: “The purpose of the travel ban is the same now as it has been since the ban was imposed almost 35 years ago—to restrict the flow of hard currency into Cuba.”); *Walsh v. Brady*, 927 F.2d 1229, 1234-1235 (D.C. Cir. 1991) (rejecting First Amendment challenge to prohibition against payments to Cuba); *Veterans & Reservists for Peace in Vietnam v. Regional Comm’r of Customs*, 459 F.2d 676 (3d Cir.) (upholding Trading with the Enemy Act and Foreign

Assets Control Regulations against First Amendment attack), cert. denied, 409 U.S. 933 (1972); *Farrakhan v. Reagan*, 669 F. Supp. 506, 512 (D.D.C. 1987), aff'd, 851 F.2d 1500 (D.C. Cir. 1988) (Table) (rejecting First Amendment claim by organization wishing to transfer funds to Libya). The same analysis applies here.⁵

Contrary to petitioners' assertion (Pet. 10), the court of appeals' decision in this case does not conflict with the Third Circuit's ruling in *In re Asbestos School Litigation*, 46 F.3d 1284 (3d Cir. 1994). In that case, the court of appeals held that an asbestos manufacturer (Pfizer) was entitled to summary judgment in a class-action tort case involving conspiracy and concert-of-action claims. The court held that Pfizer's association with an industry group did not reveal an intent to support the tortious conduct of the other defendants, which had ceased long before Pfizer joined the group. *Id.* at 1290. The industry group had also engaged in such activities as providing testimony at congressional hearings, meeting with Members of Congress, serving on advisory committees assisting the Environmental Protection Agency, and participating in state administrative proceedings. The Third Circuit held that Pfizer could be held liable in tort for the actions of such a group only if it had specifically intended to further the group's wrongful conduct. *Ibid.*

Unlike *Asbestos School Litigation*, the instant case involves a prohibition on material support to foreign

⁵ Petitioners also contend (Pet. 8-9 n.4, 10-11) that the court of appeals' decision is inconsistent with various decisions of this Court involving penalties for association with the Communist Party. None of the cases on which petitioners rely, however, addressed the question whether the provision of cash and other material support to a violent foreign organization is protected by the First Amendment.

terrorist organizations, and thus implicates the broad foreign affairs powers of the political branches. As we explain above (see pp. 13-14, *supra*), this Court and the lower federal courts have regularly upheld broad prohibitions on transactions that could provide economic benefit to foreign entities designated by the political Branches as hostile to United States interests. And because the AEDPA prohibition takes effect only after a particular organization has been designated by the Secretary of State, the designation itself provides clear notice of the line between lawful and unlawful conduct.

2. Petitioners argue (Pet. 11-15) that the court of appeals here erred in applying the analysis of *United States v. O'Brien*, 391 U.S. 367 (1968), and should instead have subjected the AEDPA prohibition to “exacting scrutiny” (Pet. 13). They urge that the AEDPA prohibition should be judged under the same standard that this Court has applied in cases such as *Buckley v. Valeo*, 424 U.S. 1 (1976), and *Nixon v. Shrink Missouri Government PAC*, 120 S. Ct. 897 (2000), which involved limits on donations to domestic political campaigns. That argument is wrong for several reasons.

As the Court explained in *Shrink Missouri*, the First Amendment “has its fullest and most urgent application precisely to the conduct of campaigns for political office.” 120 S. Ct. at 903 (quoting *Buckley*, 424 U.S. at 15).⁶ The AEDPA prohibition applies to the conduct of

⁶ Contrary to petitioners’ assertion (Pet. 13), the court of appeals did not “suggest[] that the right of association extends only to groups whose ‘overwhelming function’ is political activity.” Rather, the court of appeals simply (and correctly) pointed out that a foreign terrorist organization’s participation in some degree of political advocacy does not render it equivalent, for First Amendment purposes, to a lawful organization whose predominant

providing material support to terrorist organizations, and it is directed at the non-communicative harm caused by such conduct. And while the financial records of domestic political parties or candidates can be examined to ensure that donated funds are not spent illegally, AEDPA reflects Congress's recognition—fully supported by the record in this case—that the receipts and disbursements of foreign terrorist organizations cannot be so monitored.

Contrary to petitioners' suggestion (Pet. 17), the AEDPA prohibition is content-neutral because it bars the provision of material support to designated foreign terrorist organizations regardless of the provider's motive: the Act applies not only to donations that are intended as gestures of support for the organization's aims and methods, but also to business dealings and other transactions that do not involve any form of expressive conduct or symbolic speech. The fact that the Secretary is required to determine whether the terrorist activity of a particular organization "threatens the security of United States nationals or the national security of the United States," 8 U.S.C. 1189(a)(1)(C) (Supp. IV 1998), raises no meaningful First Amendment concerns. In conducting United States foreign policy, the Executive Branch characteristically draws distinctions between foreign States and has frequently imposed prohibitions on dealings with selected regimes. The President's decision to permit financial dealings with nations whose policies and actions he regards as consistent with United States interests, while forbidding similar contacts with Cuba, North Korea, Libya, and Iraq, cannot plausibly be claimed to violate the

function is the election of candidates to public office. Pet. App. 6a-7a.

First Amendment. The political Branches are similarly free, as a constitutional matter, to distinguish between violent foreign non-governmental organizations based on the impact of their activities on United States interests.

3. Finally, there is no merit to petitioners' argument (Pet. 15-17) that AEDPA violates the First Amendment by vesting the Secretary of State with impermissibly broad discretion in designating foreign terrorist organizations. The Act permits the Secretary to designate an organization only if she determines that it is foreign, that it engages in "terrorist activity" (as defined by Congress), and that its terrorist activity threatens the security of the United States or United States nationals. "This standard is not so vague or indeterminate as to give the Secretary unfettered discretion." Pet. App. 12a. And, as the court of appeals correctly recognized, "because the regulation involves the conduct of foreign affairs, [courts] owe the executive branch even more latitude than in the domestic context." *Id.* at 13a.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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