

Anti-Palestinian at the Core:



The Origins and Growing Dangers of U.S. Antiterrorism Law

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Introduction

In the decades since 9/11, United States anti-terrorism laws have become so ubiquitous and entrenched that their origins and development are often obscured.¹ This Briefing Paper maps the specifically anti-Palestinian agendas that shaped many of these laws before the decisive shift to broader anti-Muslim animus after 2001 and it highlights the dangers of these laws' possible use and expansion in the current moment.² Many foundational antiterrorism laws arose during or were adapted to pivotal moments in the Palestinian liberation struggle, often pushed by Israel-aligned groups to reflexively cast the veil of "terrorism" almost uniquely on Palestinians.

As the more notorious U.S. policies of the post-9/11 era – such as torture, indefinite detention, and targeted killing abroad – fade from public memory, these older antiterrorism laws have been normalized as a comparatively liberal baseline, their structurally anti-Palestinian character having been obscured in the meantime. The most important of these has been the statute criminalizing "material support" for terrorist organizations, the most commonly charged federal antiterrorism offense.³

Clarifying this origin story through its modern development is critical in this moment as there is a fresh wave of energy seeking to silence, demonize, and even criminalize protests and dissent against Israel's unfolding genocide in the Gaza Strip since October 2023. As in prior moments of crisis, the same Zionist organizations that pushed for expanded antiterrorism laws – most notably the Anti-Defamation League (ADL) – now brazenly tar all advocacy of Palestinian liberation as support for terrorism. In the face of unprecedented popular criticism of Israel in the United States, Israel-aligned groups are working to weaponize antiterrorism law, developing new tools and adapting old ones. Understanding this historical context has important strategic implications for advocates challenging the current atmosphere of anti-Palestinian repression and offers a lens for evaluating any proposed reforms. Recommendations follow the findings of this report.

On October 25, the ADL and Louis D. Brandeis Center for Human Rights Under Law sent a letter to nearly 200 leaders of universities and colleges urging them to take the unprecedented step of investigating Students for Justice in Palestine (SJP) – an activist group with

chapters on campuses across the United States – for violating the material support statute.⁴ The following day, the U.S. Senate passed a resolution denouncing campus SJP chapters.⁵ In further fomenting a climate of anti-Palestinian animus, members of Congress have begun floating increasingly extreme legislative proposals, such as expelling Palestinians from the country and setting up a McCarthyite Congressional committee to investigate allegations of anti-semitism.⁶

In the meantime, the Biden administration has unveiled an initiative to partner federal law enforcement with campus police departments in surveilling online activism pertaining to Palestine in the name of combating antisemitism.⁷ Federal law enforcement agencies have cited Hamas' October 7 attack as a pretext for a "full court press" in surveillance, reportedly stepping up visits to Palestinians and their supporters, as well as to mosques.⁸ The FBI even opened an investigation into a student protest at Harvard Business School.⁹

Israel-aligned groups like the ADL have long sought to weaponize U.S. antiterrorism law against Palestinian liberation.

State governments have also jumped on the crackdown bandwagon, citing their own terrorism statutes: Florida's public university system issued an unconstitutional order banning SJP chapters, which the American Civil Liberties Union and Palestine Legal challenged in federal court.¹⁰ Virginia's Attorney General has opened a probe into a non-profit organization, American Muslims for Palestine, alleging possible violation of charitable solicitation laws.¹¹

Efforts to deploy antiterrorism law against advocates for Palestinian liberation are a dangerous and wrongheaded attack on constitutionally-protected forms of speech and association. They also represent the culmination of a decades-long campaign by Israel-aligned organizations, including the ADL, to wield U.S. antiterrorism laws as a weapon against the Palestinian liberation movement.¹² Indeed, as this Briefing Paper demonstrates, many key tools in the antiterrorism regime were pushed by U.S. Zionist groups at times of political upheaval like the current moment.

Human rights and civil liberties advocates have long highlighted the abusive and discriminatory application of federal antiterrorism laws against Arab, Middle Eastern, Muslim, and South Asian communities in the years

The anti-Muslim thrust of the “War on Terror” was built on a pre-existing foundation of hostility to Palestinian liberation.

since 2001.¹³ These critiques have often focused on the expansive material support law that criminalizes constitutionally protected speech and associational activities.¹⁴

The anti-Muslim thrust of “War on Terror” policies was built on a pre-existing foundation of hostility to the Palestinian liberation movement. And these foundational antiterrorism policies and practices remain solidly in the U.S. legal arsenal, subject to further expansion and exploitation by anti-Palestinian groups, even as some of the most outrageous manifestations of the War on Terror have faded from view. The inherently politicized nature of the terrorism label and the close involvement of Israel-aligned groups in crafting antiterrorism laws has made those laws structurally anti-Palestinian from their inception.¹⁵ Over time, these legal mechanisms were expanded and “brought home” to repress other protest movements.¹⁶ Now, many of these same Israel-aligned groups are aiming these laws at student speech and protest activities that represent the heart of First Amendment and free speech principles. Capitulating to such an attack would have devastating consequences for the fundamental constitutional rights of all.

This Briefing Paper maps how early U.S. antiterrorism legislation evolved specifically to oppose Palestinian liberation struggles.¹⁷ Key findings include:

- The earliest mention of “terrorism” in a federal statute, in 1969, dealt specifically with restricting humanitarian aid to Palestinians and inaugurated a pattern of rendering Palestinians synonymous with terrorism;
- The first government-issued terrorism blacklist was championed by Israel’s supporters in Congress and has been overwhelmingly used to pressure governments accused of supporting Palestinian resistance;
- The first and only time Congress has labeled a non-state group a terrorist organization was in a 1987 law aimed at the Palestine Liberation Organization;
- The first immigration law to include terrorism as a basis for exclusion and deportation singled out the PLO in its definition of terrorist activity;
- The first law authorizing private terrorism lawsuits was drafted to target the PLO and has been heavily used by dual citizens of Israel and the United States

- against defendants accused of supporting Palestinian resistance;
- The first financial sanctions blacklist of terrorist organizations was created in response to Israeli demands to crack down on Hamas and other Palestinian factions;
 - Although the 1995 Oklahoma City bombing was perpetrated by domestic extremists, the antiterrorism provisions passed in its wake – including the material support statute – targeted only foreign groups, with Palestinian organizations being a primary concern.

The Paper also highlights the pivotal role of Zionist organizations in shaping these tools, to the extent that many antiterrorism laws are essentially bespoke instruments for Zionist interests in crushing any Palestinian resistance. Most prominent has been the ADL, whose most active period in advocating for terrorism legislation – from the late 1980s to the mid-1990s – coincided with its engagement in extensive private espionage activities against Palestinian and Arab groups and anti-apartheid activists.¹⁸

These laws have over the last two decades been used liberally by Zionist groups to tar those advocating for Palestinian rights as “terrorist supporters,” egging on federal prosecutions of Palestinians and taking the law in their own hands to sue non-profits such as American Muslims for Palestine and the U.S. Campaign for Palestinian Rights.¹⁹ In more recent years, Zionist groups have also maneuvered in the shadow of antiterrorism law, seeking to extend repression even further. The Zionist organization Zachor has written to federal and state authorities demanding terrorism investigations of Black-led and Palestine solidarity organizations in the U.S. for their advocacy on Palestine.²⁰ The Zionist Advocacy Center, a registered agent of an Israeli government-linked organization, has used terrorism smears to weaponize federal law against organizations providing humanitarian aid in Palestine.²¹ Zionist groups have invoked antiterrorism laws to pressure social media companies and fundraising sites to exclude supporters of Palestinian liberation from their platforms.²² These harassment and defamation efforts have repeatedly invoked frivolous accusations that target protected speech activities.

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The danger of the present moment is not theoretical. Israel and its allies in the U.S. are exploiting the current crisis to further expand and criminalize advocacy for Palestinian rights in all its forms. And even if these efforts do not fulfill their stated goals, their actual impact – like that of the post-9/11 era of surveillance and targeting of Muslim communities – will be severely chilling for Palestinian, Arab, Muslim, and other communities that are advocating for Palestinian rights, and represent a devastating erosion of First Amendment and other constitutional rights.

This Briefing Paper is intended to inform and encourage policymakers and other government officials, universities, journalists, non-profits, and social movement actors to push back on attempts to repress advocacy for Palestinian liberation. It provides a crucial and often missing historical context for understanding the structurally anti-Palestinian character of many U.S. antiterrorism laws – a diagnosis that must inform any attempts at change. To that end, the recommendations at the end provide basic actions that decision-makers across all these sectors should take to ensure that First Amendment speech, association, and assembly rights are protected, and to protect vulnerable students and Palestine advocates exercising those rights from expansive efforts to criminalize their critical organizing for Palestinian freedom.

Background

Throughout the past 75 years as Israel, with the support of colonial powers, has massacred and dispossessed Palestinians and imposed systems of apartheid laws on those remaining in their historic homeland, Palestinian resistance to the Zionist project has taken many forms, both peaceful and armed.²³ Relying on essentialist tropes about Palestinians as barbaric, Israel like other colonial powers has always characterized indigenous resistance – including even unarmed resistance – as “terrorism.” One of the very first laws passed by the state of Israel was the Prevention of Terrorism Ordinance, itself influenced by colonial regulations issued during the British mandatory period in Palestine.²⁴ Although Palestinian armed struggle has been no more violent than in other anticolonial movements, it faced a particular set of challenges. Unlike in those other anticolonial struggles, the vast majority of the indigenous population was living in exile scattered across the broader region, making armed struggle necessarily transnational and vulnerable to pressure from the various states where the diaspora resided.²⁵

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The revival of the Palestinian national liberation movement after the 1967 war thus led Israel to characterize Palestinian armed resistance as “international terrorism” and to lobby Western states to adopt its enemies as their own. The United States in particular came to see the movement, especially as represented by the Palestine Liberation Organization (PLO), as a threat not only to Israel, but to pro-U.S. Arab regimes as well. In the United States, Zionist organizations have also over the decades played an important role in pushing for the passage of antiterrorism legislation, including groups oriented toward foreign policy such as American Israel Public Affairs Committee (AIPAC) and those with a domestic focus like the Anti-Defamation League (ADL).

Against this backdrop, the term *terrorism* appeared in a federal statute for the first time in 1969. In that year’s Foreign Assistance Act, Congress required UNRWA, the UN body providing humanitarian assistance to Palestinian refugees, to ensure that no U.S. aid dollars would go “to any refugee who is receiving military training as a member of the so-called Palestine Liberation Army ... or who has engaged in any act of terrorism.”²⁶ The law gave no definition for terrorism, but it set down a decades-long pattern that legally inscribed the Pal-

estinian – and especially the refugee – as the default terrorist. The provision’s main sponsor, New York congressman and ardent Zionist Leonard Farbstein, elaborated the logic associating Palestinians with terrorism in a speech on the floor of the House of Representatives:

... [UN] refugee camps now in the main have been taken over by the terrorists in the Middle East. ... these camps are being used for training purposes and the young children for whom the schools are being built and who are being fed and clothed are being trained as terrorists in these refugee camps ...²⁷

This law, animated by the racist myth of Palestinian refugee children as brainwashed killers, remains on the books to this day.²⁸ But the provision lacked any specific enforcement mechanism.²⁹ Over time, the label of terrorist would move from rhetorical condemnation to policy instrument as the government developed a series of mechanisms for designating states, groups, or individuals for inclusion on various terrorism lists, each authorizing specific forms of repression.³⁰

Sanctions on State Sponsors of Terrorism

The U.S. Secretary of State has the authority to designate certain governments as state sponsors of acts of international terrorism (SSTs). The SST label has long been a central instrument of U.S. foreign policy to stigmatize and strangle “rogue states.”

Designation as an SST excludes countries from nearly any form of U.S. aid and heavily restricts trade with them. It also serves to isolate SSTs from the international community, as the U.S. government is mandated by statute to oppose any assistance for them from the World Bank and International Monetary Fund. Even foreign companies doing business with designated countries risk having any U.S.-based assets seized.³¹

The SST label has its origins in the mid-1970s, when Congress passed several laws aimed at restricting aid to states hosting or otherwise supporting Palestinian re-

sistance groups.³² Zionist organizations actively advocated for these laws.³³ These efforts, however, did not specify how sanctions would be triggered. This changed with the 1979 Export Administration Act, which gave the Secretary of State the power to determine that a country “has repeatedly provided support for acts of terrorism.” In such cases, certain exports could be restricted if they would “enhance the ability of such country to support acts of international terrorism.”³⁴

The first terrorism blacklist was aimed at punishing states for supporting Palestinian resistance.

The idea for giving the executive branch designation authority originated with Jacob Javits, a Republican senator from New York and a leading supporter of Israel.³⁵ Javits named Iraq, Libya, and South Yemen as likely candidates for designation, all active supporters of the Palestinian liberation movement.³⁶ Javits relied on State Department reports that specifically called out Iraq and Libya for supporting “rejectionist” Palestinian factions.³⁷ By the late 1980s, the states labeled as SSTs came to be referred to collectively as a list.

Elevating concerns regarding Israel – over many other areas of geostrategic concern to the U.S. – has been central to SST designation decisions. Of the eight countries that have ever been added to the SST list, six are in the Middle East and North Africa (MENA) and accusations of sheltering or supporting Palestinian liberation movements played a major role in their blacklisting. Sudan’s decision to normalize relations with Israel was a key condition for its delisting in 2021.³⁸ Outside the MENA region, only North Korea and Cuba have been on the SST list but their designation has little practical effect insofar as they were already under comprehensive U.S. trade sanctions. Other non-MENA countries – especially Nicaragua in the 1980s – were accused of supporting terrorism and targeted aggressively on that pretext but never formally designated.³⁹

The First Terrorist Group

On December 22, 1987, Congress formally declared the PLO a “terrorist organization” and ordered the closure of all its offices in the United States.⁴⁰ It did so in a law adopted just weeks after the outbreak of the first Intifada in Palestine, the first and only time Congress has declared any group to be a terrorist organization. The statute marked an important policy shift from pressuring state sponsors of terrorism to targeting alleged terrorist groups directly. It is also a useful example of how even when legislative initiatives fail to achieve their most extreme goals, they can nonetheless indirectly cause significant long-term harm. This is important to keep in mind when considering initiatives that may seem outlandish – like the bill floated in October 2023 to expel Palestinians from the United States.⁴¹

The measure was introduced by Iowa’s Charles Grassley earlier in 1987, with the co-sponsorship of half the Senate.⁴² Congressional demands to expel the PLO had been growing since the 1985 killing of U.S. citizen Leon Klinghoffer by the Palestinian Liberation Front, a rogue faction of the PLO, during the hijacking of the cruise ship *Achille Lauro*.

In accordance with the law, the government shut down the PLO’s observer mission at the United Nations.⁴³ International outrage ensued over the United States abusing its status as host of UN headquarters. The International Court of Justice demanded that the United States submit to international arbitration over the matter.⁴⁴ Shortly thereafter, a U.S. federal court ruled that the mission could stay open.⁴⁵

Although it did not achieve all its most notorious goals, the 1987 law was far more influential in pioneering the tactic of designating non-state groups as terrorist organizations. In the same statute, Congress obligated the State Department in its annual terrorism reports to gather “all relevant information about the activities during the preceding year of any terrorist group.”⁴⁶ As a result, the following year’s report for the first time included an appendix listing “organizations that engage in terrorism.”⁴⁷ Of the 44 groups listed, over a quarter were Palestinian. Once again, Congressional desires to single out Palestinians by name – symbolically powerful but otherwise cumbersome – would give way to seemingly more “objective” process of drawing up terrorism lists that prominently targeted Palestinian groups.⁴⁸

Immigration Law

In immigration law, “terrorism” has always been synonymous with the PLO.

In 1990, Congress for the first time made terrorism a formal basis for exclusion and deportation from the United States, in an amendment to the Immigration and Nationality Act.⁴⁹ The same statute also declared that any “officer, official, representative, or spokesman” of the PLO would automatically be considered as engaging in terrorist activity.⁵⁰ Once again, the law inscribed Palestinians as the default exemplar of terrorism. Over the following decades, Congress would dramatically expand the terrorism provisions of the immigration system.⁵¹

The 1990 terrorism amendments were part of a broader attempt to reform and update immigration laws that had already been weaponized against Palestinians. In 1979, Congress explicitly barred entry to members of the PLO – the only organization mentioned by name in that law.⁵² This followed a backlash over the State Department’s decision to grant a tourist visa to PLO official Shafiq al-Hout to speak at several universities. The Council of Presidents of Major Jewish American Organizations clamored for his immediate deportation and AIPAC wrote to members of Congress demanding an explanation.⁵³ While the 1990 amendments reinforced the connection between Palestinians and terrorism in the law, they were also a reform in the sense that they did not apply to all PLO members, but only to someone who was an “officer, official, representative, or spokesman.”

The 1990 amendments also came against the backdrop of efforts to deport Palestinian activists. The best-known case was that of the “Los Angeles Eight” – seven Palestinians and one Kenyan in California who were arrested in 1987 and slated for deportation. The eight were initially accused under rarely-used provisions of McCarthy-era immigration laws for membership in the Popular Front for the Liberation of Palestine, proscribed as an organization distributing literature advocating “world communism.”⁵⁴ A federal judge ruled the law to be unconstitutional and threw the charges out.⁵⁵

Once the 1990 immigration amendments were passed, the government wasted no time in resuming its deportation drive against the Los Angeles Eight using its new terrorism powers instead. Each subsequent step in the

expansion of terrorism provisions in U.S. immigration law over the following decades gave the government's case a new lease on life as it dragged on through multiple appeals, including to the U.S. Supreme Court.⁵⁶ Eventually, the government abandoned its attempts to deport the last of the Eight in 2007 – twenty years after the case began.⁵⁷

The 1990 immigration law amendments were also significant for introducing “material support” to anyone “conducting a terrorist activity” as a basis for exclusion.⁵⁸ No link to a specific violent act was required. Instead, the law covered fundraising, recruitment, and other activities that would ordinarily be considered constitutionally protected if carried out by U.S. citizens.⁵⁹ Once installed in immigration law, the material support concept would migrate to criminal law several years later with devastating consequences.

Civil Litigation

As the government expanded its coercive powers in various domains under the rubric of terrorism, it also placed some of those powers in the hands of private actors.⁶⁰ In 1992, Congress authorized U.S. nationals to file lawsuits for acts of international terrorism.⁶¹ The statute included some unusual incentives to litigate: it provided that defendants found liable could be ordered to pay triple damages as well as plaintiffs' legal fees.⁶² This law, dubbed “the Antiterrorism Act of 1992” (ATA), was championed in the Senate by Charles Grassley and Howell Heflin and was passed with strong bipartisan support.⁶³

The legislative history of the ATA makes clear that the PLO was the intended target from the beginning. A federal court in New York had earlier asserted jurisdiction over the PLO in a suit filed by the Klinghoffer family, but it relied on narrow grounds that would not easily apply to other situations.⁶⁴ The ATA promised to provide a firmer legal basis for such suits going forward.⁶⁵

The ATA was perhaps the clearest example yet of be-

spoke legislation designed to placate Zionist groups: it was drafted with the help of the Lincoln Legal Foundation, a small think tank led by Joseph Morris, a conservative lawyer, former Reagan administration official, and one-time head of B'nai B'rith's Midwest chapter.⁶⁶ The Klinghoffer family, acting on behalf of the ADL, testified in Congress twice in support of the bill.⁶⁷ Daniel Pipes, the conservative Zionist activist, also provided testimony speculating on PLO financial holdings in the United States that could potentially be seized in such lawsuits.⁶⁸ Interestingly, the most prominent terrorist incident not related to Palestine that came up in Congressional debate over the measure was the 1988 bombing of a passenger plane over Lockerbie, Scotland, which was blamed on Libya – even though the legislation would not have permitted lawsuits against Libya, as a sovereign state.⁶⁹

Terrorism litigation against private actors in U.S. courts is mostly driven by Israeli plaintiffs with U.S. passports.

In subsequent years, Zionist legal activists would pioneer the use of the ATA. Palestine Legal and the Center for Constitutional Rights have compiled and analyzed 447 cases with ATA claims filed from the inception of the law through 2020. In the first decade of ATA litigation, nearly 63% of cases filed arose from Palestine – more than the rest of the world combined. If one removes cases arising from the 9/11 attack, Palestine still accounts for a majority of all ATA cases ever filed. Of the Palestine cases, 58% stemmed from events taking place in the occupied West Bank and Gaza Strip.

Most Palestine cases involve claims arising from the second Intifada; of the people allegedly harmed in those cases, 84% were individuals with dual U.S.-Israeli citizenship.⁷⁰ Indeed, there appears to be only one lawsuit that did *not* involve a dual citizen.⁷¹ In Israel, these individuals benefit from a regime that systematically privileges them as Jews, while their United States citizenship allows them to invoke the ATA and trigger the global jurisdiction of U.S. courts.⁷² Zionist groups have used the ATA to sue Palestine movement organizations in the U.S., namely the Holy Land Foundation and the U.S. Campaign for Palestinian Rights.⁷³

The Trials of Muhammad Salah

In December 1992, Israel deported 415 Palestinians to south Lebanon on suspicion of membership in Hamas and Islamic Jihad. The mass deportations, which constituted a war crime under international humanitarian law⁷⁴, sparked widespread condemnation – even from the United States. Israel would respond by launching a campaign to convince Washington to crack down on alleged Hamas supporters in the United States. It was joined in this effort by U.S.-based allies such as the ADL, which released a “Counterterrorism Action Agenda” in November 1994 that would provide a blueprint for key pieces of antiterrorism law detailed in the remainder of this Briefing Paper, including the material support statute.⁷⁵

Just weeks after the mass deportations, Israel arrested Muhammad Salah, a Palestinian with U.S. citizenship who was visiting Gaza. Israeli officials pointed to Salah’s arrest to deflect U.S. criticism over the deportations by alleging, without evidence, that the United States was harboring Hamas military commanders and was thus responsible for terrorism. The arrest set off a long saga, chronicled in an important article by Salah’s attorneys that traced the “U.S. decision to criminalize the Palestinian resistance movement and, ultimately, to team up with Israel in a joint ‘war on terror.’”⁷⁶ Salah was among the first targets of many of the antiterrorism laws and policies detailed in this Briefing Paper.

Salah was eventually convicted in an Israeli military court that relied on statements obtained under torture. While imprisoned in Israeli jails, Muhammad Salah was labeled as a “Specially Designated Terrorist” pursuant to President Clinton’s executive order targeting

groups that threatened the Middle East peace process. Salah thus became the first and to this day only U.S. citizen – as opposed to a corporate or charitable entity – ever to have had their assets frozen under a terrorism listing regime. This was an administrative action that was imposed without any notice, opportunity to be heard, or requirement to share legal basis or evidence. It prevented him from engaging in many ordinary transactions like paying rent without getting approval from the Treasury Department.⁷⁷

Salah returned to the United States in 1998. Several years later, he was targeted in the first major terrorism civil lawsuit, brought by Zionist lawyers against the Holy Land Foundation.⁷⁸ Then in 2004, after surveilling him and having an informant spy on him for four years, the government launched a criminal case against Salah, including for racketeering conspiracy and material support for terrorism, in one of the first major terrorism cases of the post-9/11 era. Prosecutors sought to recycle Salah’s coerced confession from his Israeli military court case and to use written statements he had been compelled to give in the civil lawsuit.⁷⁹ Despite these and other injustices, the material support charge was dropped before his 2007 trial and Salah was convicted only on a relatively minor obstruction of justice charge and sentenced to 21 months in prison. In 2012, Salah filed a lawsuit challenging the freezing of his assets under the terrorism listing regime; within weeks, the government quietly granted his request, likely unprepared to defend use of the asset-freeze listing process against U.S. citizens in open court.⁸⁰ This brought to an end nearly three decades of persecution by Israel and the United States.

Financial Sanctions

In 1995, President Bill Clinton signed an executive order banning transactions with and freezing U.S.-based assets of “terrorists who threaten to disrupt the Middle East Peace Process.”⁸¹ This was the first formal list of terrorist groups created by the U.S. government that triggered concrete legal consequences.⁸² It drew on longstanding sanctions laws but broke new ground in applying them to non-state actors, including individuals.

As the title of the executive order made clear, its purpose was to help crush opposition to the negotiations between Israel and the PLO that began in Oslo, Norway and provided diplomatic cover to the deepening of Israel’s colonization and occupation policies in the West Bank and Gaza Strip. It therefore listed seven Palestinian factions that opposed the Oslo process, including Hamas, Islamic Jihad, and the Popular Front for the Liberation of Palestine; Hizballah, also an opponent of Israel; two Egyptian armed opposition groups seeking to overthrow the Egyptian regime, which was a staunch ally of the U.S. and Israel; and a right-wing Zionist organization.⁸³ The Treasury Department order implementing the asset freeze also named 18 individuals – all Arabs, notwithstanding the even more widespread support and funding for the proscribed militant Zionist group in the U.S.⁸⁴

Financial sanctions on terrorist groups were first developed to crush Palestinian opposition to the Oslo process.

The executive order was the precursor to the modern terrorism sanctions regime. When the U.S. designated Osama bin Laden and al-Qaeda as terrorists in 1998, the simplest way to do so was to add them to the same list, even though their impact on the “Middle East peace process” was far from clear.⁸⁵ The executive order was also the template for another executive order adopted in the aftermath of 9/11 that is a main source of authority for the regime controlling terrorism finances, a system that now includes tens of thousands of names from around the world.⁸⁶

The 1995 executive order was aimed at supporting multiple agendas in U.S. policy toward Palestine. First, it was meant as a gesture of support to bolster the lagging political fortunes of Israeli prime minister Yitzhak Rabin, who was facing domestic criticism for negotiating with Palestinians.⁸⁷ Second, it sought to lead by example and prod U.S. allies in the Middle East and Europe to crack down on alleged Hamas fundraising.⁸⁸

Third, it was a concession to U.S. Zionist groups who were clamoring for more stringent terrorism legislation: the ADL hailed the measure as “a historic moment in the war against terrorism and a pivotal step in the overall strategy to confront international terrorist groups and their state sponsors.”⁸⁹ Fourth, the order intensified divisions within the Palestinian national movement, providing cover to the Palestinian Authority in “cracking down” on Hamas for its opposition to the Oslo process, leading even Palestinian leader Yasser Arafat to publicly praise the order as a long-awaited move.⁹⁰

Criminal Law

The most significant criminal law pertaining to terrorism is the ban on material support to Foreign Terrorist Organizations (FTOs). The material support statute is the most commonly used criminal charge in terrorism cases and is overwhelmingly employed against American Muslims.⁹¹ The Supreme Court in 2010 upheld very broad interpretations of the material support statute to include even advocacy and humanitarian aid if deemed to be carried out “in coordination” with an FTO.⁹²

The material support statute was passed in the wake of the 1995 bombing of a federal building in Oklahoma City, described at the time as the worst terrorist atrocity in U.S. history. Although that attack was perpetrated by U.S. white nationalists, the resulting antiterrorism laws enacted by Congress exclusively targeted foreign organizations. Zionist organizations played a key role in the legislation’s ultimate passage.

Backed by public outrage, the Clinton administration initially supported terrorism legislation with broad powers to target both domestic and foreign actors, including expanded wiretapping authority and various provisions regulating explosives and firearms.⁹³ The bill also incorporated several key demands from the ADL’s 1994 “Counterterrorism Action Agenda” pertaining to foreign groups.⁹⁴ These included bans on entry for members and supporters of terrorist groups, especially for fundraising, and prohibitions on material support for terrorist

The ADL exploited the Oklahoma City bombing to further its anti-Palestinian agenda.

groups. Senior officials from the ADL and the American Jewish Committee both testified in Congress in favor of these measures.⁹⁵

The Republican-led House of Representatives used the opportunity to instead push legislation streamlining the federal death penalty and dramatically expanding immigration detention and deportation – measures that overwhelmingly impacted Black and Brown communities. Moreover, in the face of right-wing hostility to expanding federal law enforcement power, most of the terrorism provisions were removed.⁹⁶ The ADL denounced the “eviscerat[ion] of key provisions to restrict fundraising for foreign terrorist organizations” as “shocking and mind-boggling.”⁹⁷ Democrats seized on the specter of Hamas fundraising in the U.S. to push the Republicans to at least restore the measures directed at foreign actors.⁹⁸ Signs of Republican openness to compromise on this point were apparent almost immediately, with House Speaker Newt Gingrich describing “specific provisions to find a way to block Hamas from being able to raise money in the United States.”⁹⁹ After mobilizing 12 other leading Zionist organizations to sign a letter to key legislators, the ADL announced that its highest-priority demands on the “ability to restrict fundraising, freeze assets and deny access to the country for representatives of designated foreign terrorist organizations” were restored.¹⁰⁰ Targeting Palestinians as terrorists was the area where bipartisan consensus could be found.

The final statute, the Antiterrorism and Effective Death Penalty Act (AEDPA), codified the government’s ability to formally designate¹⁰¹ groups as terrorist – as long as they were not American. It created the category of “Foreign Terrorist Organizations” and empowered the secretary of state to determine which groups belonged on the list – decisions that are very difficult to challenge in court.¹⁰² The first list of FTOs was announced in October 1997 and consisted of 28 groups – of which eight were opponents of Israel (seven Palestinian factions, plus Hizballah).¹⁰³ Under AEDPA and subsequent legislation, FTO designation triggers a cascade of legal effects, all consistent with the ADL’s legislative wish-list.

First, alleged members of FTOs are subject to exclusion and deportation.¹⁰⁴ AEDPA also made them ineligible for asylum and subject to streamlined deportation pro-

ceedings. Before that, immigration law did not specifically name terrorist organizations other than the PLO or provide any clear legal mechanism for doing so. By enabling FTO membership to trigger automatic immigration consequences, AEDPA formally imported the logic of terrorist lists into immigration law. In 2004, the USA PATRIOT act created yet another list of groups whose membership is grounds for exclusion, known as the Terrorism Exclusion List, which requires even fewer procedures than the FTO list.¹⁰⁵

Second, AEDPA authorized the Treasury department to freeze the assets of FTOs.¹⁰⁶ In this sense it complements the regime set up by the various executive orders and creates a firm basis in statute for using terrorism lists to freeze assets.

The third and perhaps most controversial effect was to criminalize provision of material support to an FTO¹⁰⁷, which went beyond the existing ban on material support to terrorist acts.¹⁰⁸ As the ADL conceded in its advocacy materials, the statute would “cover even legal, charitable, non-violent social service activities” but argued that it was nonetheless justified because “money is fungible” and “[t]here is no way to know whether these financial contributions go towards a kindergarten or terrorist activities.”¹⁰⁹ The material support statute has survived First Amendment challenges in part because it is seen as an extension of foreign policy and immigration law – and thereby will not be used, for example, against domestic white supremacist groups.¹¹⁰ The fact that only foreign groups can be designated as terrorist served as a reassurance that the provision was “narrowly tailored,” according to the ADL.¹¹¹ Yet anyone accused of material support to an FTO is barred from challenging that group’s designation.¹¹²

Several of the most notorious material support prosecutions in the aftermath of 9/11 were brought by the U.S. government against Palestinian activists who had already been targeted by Zionist groups and even the Israeli state. These included the case in Chicago against Muhammad Salah and Abdelhaleem Ashqar, discussed *supra*; in Texas, against the “Holy Land Foundation Five,” Shukri Abu Baker, Ghassan Elashi, Mufid Abdulkader, Abdelrahman Odeh, and Mohammed El-Mezain; in Florida, against Sami al-Arian, Ghassan Ballut, Ha-

tim Fariz, and Sameeh Hammoudeh. These cases were widely criticized for their disregard for defendants' rights, including use of solitary confinement and the role of Israeli agents testifying as expert witnesses in closed sessions using pseudonyms, rendering any effective cross-examination impossible.¹¹³

Despite these obstacles, terrorism-related charges against Salah and Ashqar were dropped but the government continued to persecute them under other legal pretexts. The Holy Land Five were convicted in 2008 after an earlier mistrial and given decades-long prison sentences. The Florida trial ended in acquittal or a deadlocked jury on all counts, although prosecutors later pushed the defendants to plead guilty to lesser charges; al-Arian also spent additional years in detention due to his refusal to testify against others in grand jury proceedings and was finally deported in 2015.¹¹⁴ These cases were only the most visible outcomes of large-scale surveillance programs that impacted an entire generation of U.S. Muslim communities.¹¹⁵

Conclusion

U.S. antiterrorism law has been structurally anti-Palestinian from its inception. Moreover, many of the major developments described above came about when U.S. government actors and Zionist organizations such as the ADL successfully exploited moments of crisis to enact anti-Palestinian agendas. The 1987 law declaring the PLO a terrorist organization used the outbreak of the first Intifada to fulfill a longstanding demand to shut the PLO's offices in the U.S. The 1995 Oklahoma City bombing became an opportunity to implement the ADL's agenda for establishing the material support regime. The virulent U.S. response to 9/11, including the passage of the USA PATRIOT ACT, was partially primed by reactions to the second Intifada in the fall of 2000.

Events since the autumn of 2023 have presented another crisis – one that opponents of Palestinian liberation must not be allowed to seize to criminalize advocacy

and suppress dissent. Such an outcome would irreparably undermine fundamental constitutional rights and enable even more aggressive efforts to crack down on other movements for social justice.

Recommendations

Decision-makers should, where applicable:

- Reject and denounce the smearing and attempted criminalization of student and other activists as terrorists or terrorism supporters as baseless and in fundamental contradiction with free speech principles;
- Reject and denounce calls by Israel-aligned groups to deplatform Palestine advocacy groups based on unfounded threats of liability for material support for terrorism.
- Recognize the anti-Palestinian bias built into the structure of U.S. antiterrorism laws and treat all invocation of such laws with due skepticism, and recognize the labeling of Palestine advocates as terrorist supporters as fundamentally anti-Palestinian and likely defamatory;
- Protect Palestine advocates from baseless smears and legal bullying, including by providing resources to combat doxing, legal threats, and other intimidation for their speech activities, and challenging in court any legal action against such advocates;
- Oppose attempts to expand antiterrorism laws, and instead advocate to protect communities against the constitutional overreach of such laws;
- Support efforts aimed at curbing or repealing the antiterrorism laws discussed in this Briefing Paper; and, not least in importance,
- Cease treating Israel-aligned organizations like the ADL as credible interlocutors on issues related to Palestine and recognize their role as Israel propagandists and as reactionary forces against progressive justice movements.¹¹⁶

In this moment of heightened McCarthyism, decision-makers and university administrators in particular must also¹¹⁷:

- Publicly affirm and defend the rights of activists, students, faculty, and staff to advocate for Palestine as an exercise in their constitutionally-protected rights to freedom of speech and association and clarify that campus speech should never be the basis for opening terrorism investigations;
 - Refrain from collaborating with law enforcement and intelligence agencies in efforts to surveil Palestine activism, absent a court order. For universities that have memoranda of understanding with law enforcement, those agreements should explicitly exclude investigations for material support for terrorism;
 - Ensure that First Amendment and free speech policies are upheld against efforts to paint Palestine advocacy as antisemitic or “support for terrorism,” which itself leads to anti-Palestinian discrimination and to a hostile anti-Palestinian environment on campuses.
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Endnotes

- 1 Throughout this Briefing Paper, the terms “terrorism” and “terrorists” will be used exclusively in reference to how they are understood in U.S. law, unless otherwise specified. In U.S. federal law, “terrorism” is often glossed as “international terrorism,” so the two terms will be treated interchangeably. Compare 18 U.S.C. Chapter 113B — TERRORISM and 18 U.S.C. § 2331(1) (“international terrorism”). The term “domestic terrorism” was not legislated until 2001. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, § 802, 115 Stat. 272, 376 (2001) (codified as amended at 18 U.S.C. § 2331(5)). Most federal antiterrorism laws deal with international terrorism only. See Shirin Sinnar, *Separate and Unequal: The Law of “Domestic” and “International” Terrorism*, 117 MICH. L. REV. 1333 (2019).
- 2 These developments in U.S. law are part of broader public and expert discourses about terrorism, in which Israel also played a pivotal role. See, e.g., Remi Brulin, *Compartmentalization, Contexts of Speech and the Israeli Origins of the American Discourse on “Terrorism,”* 39 DIALECTICAL ANTHRO. 1 (2015); LISA STAMPNITZKY, DISCIPLINING TERROR: HOW EXPERTS INVENTED “TERRORISM” 111-116 (2013).
- 3 See 18 U.S.C. § 2339B. This statute criminalizes material support to foreign terrorist organizations and should not be confused for 18 U.S.C. § 2339A, which criminalizes material support for certain terrorist acts. In this Briefing Paper, “material support” will refer to 18 U.S.C. § 2339B unless otherwise specified.
- 4 See Anti-Defamation League, *ADL and Brandeis Center Letter to Presidents of Colleges and Universities*, Oct. 25, 2023, <https://www.adl.org/resources/letter/adl-and-brandeis-center-letter-presidents-colleges-and-universities>.
- 5 See *Condemning Hamas and Antisemitic Student Activities on College Campuses in the United States*, S. Res. 418, 118th Cong. (2023).
- 6 See *Safeguarding Americans from Extremism (SAFE) Act of 2023*, H.R. 6211, 118th Cong. (2023); *To Establish the Commission to Study Acts of Antisemitism in the United States*, H.R. 6578, 118th Cong. (2023).
- 7 See Monica Alba & Peter Alexander, *Biden Administration Unveils New Actions to Combat Antisemitism on College Campuses*, NBCNEWS.COM (Oct. 30, 2023).
- 8 See Anthony O’Rourke & Wadie E. Said, *Terrorism Investigations on Campus and the New McCarthyism*, DISSENT.COM (Dec. 8, 2023); Hannah Rabinowitz, Evan Perez & Pamela Brown, *U.S. Law Enforcement and Intelligence Agencies Launch Full Court Press to Focus on Hamas Following Israel Attack*, CNN.COM (Oct. 25, 2023); Prem Thakker & Daniel Boguslaw, *FBI Targets Muslims and Palestinians in the Wake of Hamas Attack, Civil Rights Advocates Warn*, THE INTERCEPT (Oct. 13, 2023).
- 9 See Claudine Gay, *Combating Antisemitism*, Harvard Office of the President, Nov. 9, 2023, <https://www.harvard.edu/president/news/2023/combating-antisemitism>.
- 10 See Memorandum from Chancellor Ray Rodrigues on Deactivation of National Students for Justice in Palestine to SUS Presidents (Oct. 24, 2023), <https://www.flbog.edu/wp-content/uploads/2023/10/Deactivation-of-Students-for-Justice-in-Palestine.pdf>; see also *American Civil Liberties Union, Federal Court Rules Florida Officials Do Not Intend to Dactivate University of Florida’s Students for Justice in Palestine*, Jan. 31, 2024, <https://www.aclu.org/press-releases/federal-court-rules-florida-officials-do-not-intend-to-deactivate-university-of-floridas-students-for-justice-in-palestine>.
- 11 See Office of the Attorney General, Commonwealth of Virginia, *Attorney General’s Office Opens Investigation Into American Muslims for Palestine Nonprofit*, Oct. 31, 2023, <https://www.oag.state.va.us/media-center/news-releases/2630-october-31-2023-attorney-generals-office-opens-investigation-into-american-muslims-for-palestine-nonprofit>.
- 12 Anti-terrorism laws, however, are only one weapon in the arsenal of lawfare against advocates of Palestinian liberation. See PALESTINE LEGAL & CENTER FOR CONSTITUTIONAL RIGHTS, *THE PALESTINE EXCEPTION TO FREE SPEECH: A MOVEMENT UNDER ATTACK IN THE U.S.* (2015), <https://palestinelegal.org/the-palestine-exception>.
- 13 See, e.g., TAREK Z. ISMAIL, NAUREEN SHAH & ANDREA PRASOW, HUMAN RIGHTS WATCH, *ILLUSION OF JUSTICE: HUMAN RIGHTS ABUSES IN US TERRORISM PROSECUTIONS* (2014), <https://www.hrw.org/report/2014/07/21/illusion-justice/human-rights-abuses-us-terrorism-prosecutions>; AMERICAN CIVIL LIBERTIES UNION, *BLOCKING FAITH, FREEZING CHARITY: CHILLING MUSLIM CHARITABLE GIVING IN THE “WAR ON TERRORISM FINANCING”* (2009), <https://www.aclu.org/report/blocking-faith-freezing-charity-chilling-muslim-charitable-giving-war-terrorism-financing>.
- 14 See, e.g., WADIE SAID, *CRIMES OF TERROR: THE LEGAL AND POLITICAL IMPLICATIONS OF FEDERAL TERRORISM PROSECUTIONS* (2015).
- 15 This is not to suggest, however, that Palestine was no longer a significant concern in U.S. antiterrorism law after 9/11 – far from it, as Congress has continued to pass terrorism sanctions that have specifically targeted U.S. bilateral aid to the Palestinian Authority and civil society in Palestine. See LISA BHUNGALIA, *ELASTIC EMPIRE: REFASHIONING WAR THROUGH AID IN PALESTINE* (2024); Draft Analysis of ATA Cases on File with Author.
- 16 See Center for Constitutional Rights, *et al., How the “War on Terror” has Metastasized to Silence U.S. Social Movements and Shrink Civic Space 6-13* (2023), <https://ccrjustice.org/sites/default/files/attach/2023/09/ICCPR%20Terrorism%20Frame%20Shadow%20Report%209.12.23.pdf>.
- 17 See also Maryam Jamshidi, *Instruments of Dehumanization*, BOS. REV., Dec. 9, 2023 (“U.S. law has systematically singled out Palestinians for discriminatory treatment in both explicit and implicit ways—more so than any other population and certainly no other population of such comparatively small size. These laws, which exist at both the federal and state level, have effectively transformed the U.S. legal system into an extension of the Israeli state itself”).
- 18 The ADL spying scandal prompted several lawsuits,

which forced the group to pay hundreds of thousands of dollars in settlements. See Dan Evans, *Anti-Defamation League Spying: Paper Trail of Deceit*, S.F. EXAMINER (Apr. 1, 2002); see also Emmaia Gelman, *The Anti-Democratic Origins of the ADL and AJC*, JEWISH CURRENTS (Mar. 12, 2021).

19 See THE PALESTINE EXCEPTION TO FREE SPEECH, *supra* note 12; Muslim Legal Aid Fund, *American Muslims for Palestine (AMP): Update in Ongoing Lawsuit*, <https://mlfa.org/cases/amp-lawsuit-update>; Center for Constitutional Rights, *Jewish National Fund vs. US Campaign for Palestinian Rights*, <https://ccrjustice.org/home/what-we-do/our-cases/jewish-national-fund-v-us-campaign-palestinian-rights>.

20 See Letter from Zachor Legal Institute on Call for Investigation of Domestic Activities of Affiliates of Certain Designated Foreign Terrorist Organizations to Attorney General Jeff Sessions (July 12, 2018), <https://zachorlegal.org/wp-content/uploads/2018/11/Final-DOJ-Letter.pdf>; Zachor Legal Institute, *Zachor Legal Institute Working to Stop Terror Recruitment on University Campuses* (July 28, 2019), <https://zachorlegal.org/2019/07/28/zachor-legal-institute-working-stop-terror-recruitment-university-campuses>.

21 The Zionist Advocacy Center has smeared several humanitarian organizations as engaging in “material support to terrorism” by citing the False Claims Act, 31 U.S.C. § 3729, a Civil War-era statute that imposes liability on organizations receiving funding from the U.S. government. See KAY GUINANE, CHARITY & SECURITY NETWORK, *THE ALARMING RISE OF LAWFARE TO SUPPRESS CIVIL SOCIETY: THE CASE OF PALESTINE AND ISRAEL* 99-115 (2021), <https://charityandsecurity.org/wp-content/uploads/2021/09/The-Alarming-Rise-of-Lawfare-to-Suppress-Civil-Society.pdf>.

22 See, e.g., Michael Arria, *U.S.-Based Human Rights Group Loses Fundraising Platform Over Association with Palestinian NGO*, MONDOWEISS.NET (Feb. 23, 2023), <https://mondoweiss.net/2023/02/u-s-based-human-rights-group-loses-fundraising-platform-over-association-with-palestinian-ngo>; Tyler Sonnemaker, *Venmo is Blocking Some Payments Mentioning Palestinian Relief Funds. The Company Says It's Following the Law*, BUS. INSIDER (May 18, 2021), <https://www.businessinsider.com/venmo-blocking-palestine-relief-payments-us-treasury-sanctions-rules-2021-5>.

23 See, e.g., AREEJ SABBAGH-KHOURY, *COLONIZING PALESTINE: THE ZIONIST LEFT AND THE MAKING OF THE PALESTINIAN NAKBA* (2023); RASHID KHALIDI, *THE HUNDRED YEARS' WAR ON PALESTINE: A HISTORY OF SETTLER COLONIALISM AND RESISTANCE, 1917-2017* (2020); ILAN PAPPÉ, *THE ETHNIC CLEANSING OF PALESTINE* (2006); ROSEMARY SAYIGH, *PALESTINIANS, FROM PEASANTS TO REVOLUTIONARIES: A PEOPLE'S HISTORY* (1979).

24 See Prevention of Terrorism Ordinance, 5708-1948, 1 LSI 76 (1948).

25 See PAUL THOMAS CHAMBERLIN, *THE GLOBAL OFFENSIVE: THE UNITED STATES, THE PALESTINE LIBERATION ORGANIZATION, AND THE MAKING OF THE POST-COLD WAR ORDER* (2012); YEZID SAYIGH, *ARMED STRUGGLE AND THE SEARCH FOR STATE: THE PALESTINIAN NATIONAL MOVEMENT, 1949-1993* (1997).

26 Foreign Assistance Act of 1969, Pub. L. No. 91-175, § 108 (a), 83 Stat. 805, 819 (1969) (codified as amended at 22 U.S.C. § 2221(c)).

27 115 CONG. REC. 34917 (Nov. 19, 1969).

28 See 22 U.S.C. § 2221(c).

29 Even the main sponsor refrained from urging a complete cut-off of aid to UNRWA. See 115 CONG. REC. 34917 (Nov. 19, 1969) (“I do not propose at this time to offer any amendment to cut the sum which we contribute to [UNRWA] for the benefit of the refugees, because that area today is a tinder box as is. I do not believe anyone should throw a match that might perhaps light up that tinder box and cause it to explode.”).

30 See also GAVIN SULLIVAN, *THE LAW OF THE LIST: UN COUNTERTERRORISM SANCTIONS AND THE POLITICS OF GLOBAL SECURITY LAW 77* (2020) (“In the current global legal landscape ... terrorism is something that is listed rather than defined”).

31 For a summary of these restrictions and their various legal bases, see DIANNE E. RENNACK, CONG. RSCH. SERV., R43835, *STATE SPONSORS OF ACTS OF INTERNATIONAL TERRORISM — LEGISLATIVE PARAMETERS: IN BRIEF 2-3* (2021).

32 See International Security Assistance and Arms Export Control Act of 1976, Pub. L. No. 94-329, § 303, 90 Stat. 729, 753-54 (1976) (codified as amended at 22 U.S.C. § 2371); International Security Assistance Act of 1977, Pub. L. No. 95-92, § 18, 91 Stat. 614, 622-23 (1977); Export Administration Amendments of 1977, Pub. L. No. 95-52, § 115, 91 Stat. 235, 241 (1977).

33 See, e.g., Joseph Polakoff, *AJCongress Group Supports Anti-Terrorist Bill*, JTA DAILY NEWS BULL. (June 14, 1977); *AJCongress Presents Proposals to Republican Platform Committee*, JTA DAILY NEWS BULL. (Aug. 12, 1976); *Action Against Terrorism Urged*, JTA DAILY NEWS BULL. (Dec. 14, 1972).

34 Export Administration Act of 1979, Pub. L. No. 96-72, § 6, 93 Stat. 503, 515 (1979). The statute was repealed in 2018, but the authority of this provision was continued at 50 U.S.C. § 4813.

35 Javits originally proposed a total cutoff of exports to designated countries. See 125 CONG. REC. 20009-10 (July 21, 1979). On Javits' leading role in efforts to support Israel in Congress, see JACOB K. JAVITS & RAFAEL STEINBERG, *JAVITS: THE AUTOBIOGRAPHY OF A PUBLIC MAN 271-290* (1981).

36 See 125 CONG. REC. 20010 (July 21, 1979).

37 See *International Terrorism: Hearing Before the Subcomm. on Foreign Assistance of the Senate Comm. on Foreign Relations*, 95th Cong. 3-4 (1977) (letter from Douglas J. Bennet, Ass't Sec. of State for Cong. Relations).

38 See Lara Jakes, Declan Walsh, and Eric Schmitt, *U.S. State Dept. to Drop Sudan From Terror List*, N.Y. TIMES (Oct. 20, 2020) (“Removing Sudan from the terrorism list was a necessary precursor to it becoming the latest Arab state to broker an official détente with Israel”).

39 See PHILIP W. TRAVIS, *REAGAN'S WAR ON TERRORISM IN NICARAGUA: THE OUTLAW STATE* (2017).

40 Anti-Terrorism Act of 1987, Pub. L. No. 100-204, § 1002(b), 101 Stat. 1406-07 (1987). The measure was introduced by Charles Grassley of Iowa and cosponsored by half of the Senate.

- 41 See SAFE Act of 2023, *supra*, at note 6.
- 42 See Anti-Terrorism Act of 1987, S. 1203, 110th Cong. (1987).
- 43 Relying on separate statutory authority, the Reagan administration shut down the PLO Washington office on its own initiative just weeks before the law passed. See Determination and Designation of Benefits Concerning Palestine Information Office, 52 Fed. Reg. 37035 (Oct. 2, 1987). The Center for Constitutional Rights filed an amicus brief in that case opposing the government's action. See Center for Constitutional Rights, Palestine Information Office v. Schultz (amicus), <https://ccrjustice.org/home/what-we-do/our-cases/palestine-information-office-v-shultz-amicus>.
- 44 See Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, 1988 I.C.J. Rep. 12 (Apr. 26).
- 45 See U.S. v. PLO, 695 F. Supp. 1456 (S.D.N.Y. 1988).
- 46 Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. No. 100-204, § 140(a)(2), 101 Stat. 1331, 1348 (1987).
- 47 1987 U.S. DEP'T OF STATE PATTERNS OF GLOBAL TERRORISM REP. 41 (1988).
- 48 In 1993, proposed legislation to declare Hamas a terrorist organization went nowhere. See S. 503, 103rd Cong. (1993) (proposed amendment to the Immigration and Nationality Act).
- 49 Immigration Act of 1990, Pub. L. No. 101-649, § 601, 104 Stat. 4978, 5069 (1990) (codified as amended at 8 U.S.C. § 1182(a)(3)(B)(i)). The immigration restrictions discussed in this section do not apply to personnel at the PLO mission to the United Nations, who are governed by laws regulating foreign diplomats.
- 50 See *id.*
- 51 See MICHAEL JOHN GARCIA & RUTH ELLEN WASEM, CONG. RSCH. SERV., RL 32564, IMMIGRATION: TERRORIST GROUNDS FOR EXCLUSION AND REMOVAL OF ALIENS (2010).
- 52 See Department of State Authorization Act, Fiscal Years 1980 and 1981, Pub. L. No. 96-60, § 109, 93 Stat. 395, 398 (1979). The language excluding the PLO was shepherded through Congress by Stephen Solarz and Jacob Javits. See 125 CONG. REC. 10565-68 (May 10, 1979).
- 53 See SHAFIQ AL-HOUT, MY LIFE IN THE PLO: THE INSIDE STORY OF THE PALESTINIAN STRUGGLE 138 (2011); 125 CONG. REC. 10567-68 (May 10, 1979).
- 54 See A.D.C. v. Meese, 714 F. Supp. 1060, 1063 (C.D. Cal. 1989).
- 55 See *id.*, at 714 F. Supp. 1082-84.
- 56 See A.D.C. v. Reno, 525 U.S. 471 (1999) (interpreting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to narrow judicial review over deportation decisions).
- 57 For a brief overview of the saga, see *From the Editors*, 245 MIDDLE EAST REP. 1 (2007).
- 58 See Immigration Act of 1990, Pub. L. No. 101-649, § 601, 104 Stat. 4978, 5070 (1990) (codified as amended at 8 U.S.C. § 1182(a)(3)(B)(iii)).
- 59 See *id.*
- 60 See Maryam Jamshidi, *The Private Enforcement of National Security*, 108 CORNELL L. REV. 4, (2023); Maryam Jamshidi, *The World of Private Terrorism Litigation*, 27 MICH. J. RACE & LAW 1, (2022); Maryam Jamshidi, *How the War on Terror Is Transforming Private U.S. Law*, 96 WASH. U. L. REV. 3, (2018) .
- 61 See Federal Courts Administration Act of 1992, Pub. L. No. 102-572, § 1003, 106 Stat. 4506, 4522 (1992) (codified as amended at 18 U.S.C. § 2333).
- 62 See 18 U.S.C. § 2333(a).
- 63 An earlier version of the law was enacted in 1990 and repealed for technical reasons. See FEDERAL COURTS STUDY COMMITTEE IMPLEMENTATION ACT 22, S. REP. 102-342 (1992).
- 64 See *Klinghoffer v. SNC Achille Lauro*, 739 F. Supp. 854 (S.D.N.Y. 1990) (relying on admiralty to find jurisdiction), *vacated* *Klinghoffer v. Achille Lauro*, 937 F.2d 44 (2nd Cir. 1991). The case was unsettled for an undisclosed sum in 1997.
- 65 See 137 CONG. REC. 8143 (Apr. 16, 1991) (statement of Sen. Grassley: "The New York court set the precedent; [the ATA] would codify that ruling and makes the right of American victims definitive.").
- 66 See *Antiterrorism Act of 1990: Hearing Before the Subcomm. on Courts and Administrative Practice* 81, S. Hrg. 101-1193 (1990) (Statement of Joseph A. Morris); see also Carol Felsenthal, *A Look at Joseph Morris, the Hearing Officer in Rahm Emmanuel Residency Challenge*, CHI. MAG., Dec. 14, 2010.
- 67 See *Antiterrorism Act of 1990, supra* note 67, at 56-62; *Antiterrorism Act of 1991: Hearing Before the Subcomm. on Intellectual Property and Judicial Administration, Comm. on the Judiciary, House of Representatives* 14-19, 102nd Cong. (1991).
- 68 See *Antiterrorism Act of 1990, supra* note 67, at 109-118.
- 69 See 138 CONG. REC. 33628-29 (Oct. 7, 1992); 137 CONG. REC. 8143 (Apr. 16, 1991).
- 70 See Database of ATA Cases on file with author.
- 71 See *Bennett et al v. Arab Bank*, 05-cv-3183 (E.D.N.Y. filed July 1, 2005).
- 72 See Darryl Li, *Terrorism Torts and the Right to Colonize*, L. & POL. ECON. BLOG (Mar. 13, 2023), <https://lpeproject.org/blog/terrorism-torts-and-the-right-to-colonize>.
- 73 Ironically, while the ATA's extraterritorial reach has been mobilized to attack human rights, courts at the same time have largely curtailed the extraterritorial reach of actual human rights statutes such as the Alien Tort Claims Act. See Brief of Amici Curiae Center for Constitutional Rights and International Federation for Human Rights in Support of Neither Party at 2-3, *Jesner v. Arab Bank*, 584 U.S. ___ (2018) (No. 16-499).

- 74 See Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 146-47, Aug. 12, 1949, 6 U.S.T. 3516; 75 U.N.T.S. 287.
- 75 See Anti-Defamation League, *Anti-Defamation League Proposes Counterterrorism Action Agenda for U.S. Government*, Nov. 11, 1994.
- 76 Michael E. Deutsch & Erica Thompson, *Secrets and Lies: The Persecution of Muhammad Salah (Part I)*, 37 J. PAL. STUD. 4, 39 (2008).
- 77 See Center for Constitutional Rights, *Salah v. U.S. Department of Treasury*, <https://ccrjustice.org/home/what-we-do/our-cases/salah-v-us-department-treasury>.
- 78 See *Boim v. Quranic Literacy Institute*, 00-cv-2905 (N.D. Ill. filed Dec. 12, 2000).
- 79 See Michael E. Deutsch & Erica Thompson, *Secrets and Lies: The Persecution of Muhammad Salah (Part II)*, 38 J. PAL. STUD. 1 (2008).
- 80 See U.S. Department of the Treasury, *Anti-Terrorism Designations; Anti-Terrorism Designations Removal*, Nov. 5, 2012.
- 81 Exec. Order No. 12947, 60 Fed. Reg. 5079 (Jan. 25, 1995).
- 82 In 1991, Congress required the Treasury department to submit an annual report on assets held by SSTs and “any organization engaged in international terrorism.” Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, ¶ 304(a), Pub. L. No. 102-138, 105 Stat. 647, 710 (1991). From that time until Executive Order 12947, the Treasury Department’s only benchmark for international terrorist organizations was the appendix in the State Department’s Patterns of Global Terrorism report. See Annual Report to the Congress on Assets in the United States Belonging to Terrorist Countries or International Terrorist Organizations, 139 CONG. REC. 8943 (May 3, 1993).
- 83 The order lists “Kahane Chai” and “Kach” as if they are separate organizations, but Kach is the Hebrew acronym for Kahane Chai. See List of Specially Designated Terrorists Who Threaten to Disrupt the Middle East Peace Process, 60 Fed. Reg. 5084, 5085-86 (Jan. 25, 1995).
- 84 See *id.*; see also SHAUL MAGID, MEIR KAHANE: THE PUBLIC LIFE AND POLITICAL THOUGHT OF AN AMERICAN JEWISH RADICAL (2021).
- 85 Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process, Exec. Order No. 13099, 63 Fed. Reg. 45167 (Aug. 25, 1998). Al-Qaeda was added to the Foreign Terrorist Organization list in 1999.
- 86 See Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, Exec. Order No. 13224, 66 Fed. Reg. 49079 (Sept. 24, 2001).
- 87 See Daniel Williams, *U.S. Trying to Bolster Rabin Political Fortunes; Israeli Leader Seen as Key to Mideast Peace*, WASH. POST (Jan. 27, 1995).
- 88 See Letter from President Clinton to Congress on Terrorism, Jan. 24, 1995 (“The United States will use these actions on our part to impress on our allies in Europe and elsewhere the seriousness of the danger of terrorist funding ... and to encourage them to adopt appropriate and effective measures to cut off terrorist fundraising and the harboring of terrorist assets in their territories and by their nationals.”).
- 89 Anti-Defamation League, *Anti-Defamation League Hails President Clinton’s Executive Order on Terrorists*, Jan. 24, 1995.
- 90 See *PLO Praises, Hamas Blasts Clinton Decision*, REUTERS (Jan. 24, 1995).
- 91 According to a database of government terrorism prosecutions maintained by The Intercept, over half of the 992 cases recorded involved material support allegations. See <https://trial-and-terror.theintercept.com/> (last accessed December 29, 2023). The database, however, does not differentiate material support to FTOs (18 U.S.C. § 2339B) from less commonly charged forms of material support codified at 18 U.S.C. § 2339A.
- 92 See *Holder v. Humanitarian Law Project*, 561 U.S. 1, 4 (2010).
- 93 See Comprehensive Terrorism Prevention Act of 1995, S. 735, 104th Cong. (1995).
- 94 See Anti-Defamation League, *Anti-Defamation League Proposes Counterterrorism Action Agenda for U.S. Government*, *supra* note 75.
- 95 See Statement of Ruth Lansner, Chair, National Legal Affairs Committee, Anti-Defamation League of B’nai B’rith before the House Judiciary Committee, *International Terrorism: Threats and Responses, Hearings Before the Comm. on the Judiciary, House of Representatives 427-33*, 104th Cong. (1995); Statement of Robert S. Rifkind, President, American Jewish Committee, *Counterterrorism Legislation: Hearing Before the Subcomm. on Terrorism, Technology, and Government Information of the Comm. on the Judiciary, United States Senate 45-50*, S. Hrg. 104-748, 104th Cong. (1995).
- 96 See 142 CONG. REC. 4593-4603 (Mar. 13, 1996); see also “President Signs Anti-Terrorism Bill,” CONG. Q. ALMANAC 1996, 5-18 to 5-26 (1997).
- 97 Anti-Defamation League, *ADL: “House Guts Terrorism Legislation,”* Mar. 13, 1996.
- 98 See “Clinton Hits Congress for Inaction on Terrorism Bill, Cites Hamas Danger,” AGENCE FRANCE-PRESSE (Apr. 13, 1996) (Clinton demand for “explicit authority to prevent terrorist groups like [Hamas] ... from raising money in the United States for their dirty deeds”); Ron Jenkins, “Clinton Warns Terrorism Can Shake Freedom,” ASSOCIATED PRESS (Apr. 5, 1996) (“We ought to be able to throw [terrorist suspects] out immediately”).
- 99 142 CONG. REC. 4812 (Mar. 14, 1996).
- 100 Anti-Defamation League, *ADL Welcomes Improved Antiterrorism Bill*, Apr. 15, 1996.
- 101 See 142 CONG. REC. 4597 (Mar. 13, 1996) (Rep. Nadler of New York: without designation authority, “we have no prohibition that can be enforced against the funding from the United States of terrorist organizations”); *id.* at 4598 (Rep. McCollum of Florida: “The ability of the Secretary of State to

name foreign organizations ... is absolutely essential"); *id.* at 4599 (Rep. Conyers of Michigan: "We have got to denominate them as terrorists.").

102 See Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, Pub. L. No. 104-132, § 302, 110 Stat. 1214, 1248-50 (1996) (codified as amended at 8 U.S.C. § 1189); see also Wadie E. Said, *The Material Support Prosecution and Foreign Policy*, 86 IND. L. J. 543, 556 (2011) ("courts have resisted ... allowing the groups and individuals targeted by [the FTO] provisions from litigating whether the conduct criminalized actually harms United States foreign policy goals").

103 See Department of State, Designation of Foreign Terrorist Organizations, 62 Fed. Reg. 52650 (Oct. 8, 1997). The other groups were armed opposition movements fighting other governments allied with the United States: Turkey, the Philippines, India, Colombia, Peru, and Sri Lanka.

104 See AEDPA, *supra* note 102, title V, subtitle B.

105 See USA PATRIOT ACT, *supra* note 1, § 411(a)(1)(A)(i), 115 Stat. 272, 346 (2001).

106 See AEDPA, *supra* note 102, § 219(a)(2)(C).

107 See *id.*, § 301 (codified as amended at 18 U.S.C. § 2339B).

108 See 18 U.S.C. § 2339A.

109 Anti-Defamation League, *The Omnibus Counterterrorism Act*, Mar. 11, 1996.

110 AEDPA placed the Secretary of State's FTO designation authority in the Immigration and Nationality Act. See AEDPA, *supra* note 102, at § 302. For more on the disparate treatment of international and domestic terrorism in U.S. law, see Sinnar, *supra* note 1.

111 See Statement of Ruth Lansner, *supra* note 95, at 428.

112 See 18 U.S.C. § 1189(a)(8).

113 See, e.g., MIKO PELED, *INJUSTICE: THE STORY OF THE HOLY LAND FOUNDATION FIVE* (2017); Said, *The Material Support Prosecution and Foreign Policy*, *supra* note 102, at 578-93. The Center for Constitutional Rights also intervened in the Salah and Ashqar case to oppose the use of closed hearings. See Memorandum of Certain Organizational and Individual Intervenors in Opposition to Government's Motion to Close Portions of Suppression Hearing to the Public, *USA v. Marzook*, 03-cr-978, dkt. 416 (N.D. Ill. Oct. 9, 2003).

114 See, e.g., PELED, *INJUSTICE*, *supra* note 113; *THE PALESTINE EXCEPTION TO FREE SPEECH*, *supra* note 12, at 41-42.

115 See, e.g., *THE FEELING OF BEING WATCHED* (Assia Boundaoui dir., 2018); DIALA SHAMAS & NERMEEN ARASTU, *CREATING LAW ENFORCEMENT ACCOUNTABILITY & RESPONSIBILITY*, *et al.*, *MAPPING MUSLIMS: NYPD SPYING AND ITS IMPACT ON AMERICAN MUSLIMS* (2013).

116 See also #DropTheADL Campaign, <https://droptheadl.org>.

117 See also O'Rourke & Said, *supra* note 8.