No. 08-1498

IN THE

Supreme Court of the United States

ERIC H. HOLDER, JR., Attorney General, *et al.*,
Petitioners,

v.

HUMANITARIAN LAW PROJECT, *et al.*,
Respondents.

On Petition for a Writ of Certiorari To the United States Court of Appeals For the Ninth Circuit

BRIEF OF JAMES J. CAREY, Rear Adm., USN (Ret.), STEVEN B. KANTROWITZ, Rear Adm., USN (Ret.), THOMAS L. HEMINGWAY, Brig. Gen., USAF (Ret.), WASHINGTON LEGAL FOUNDATION, NATIONAL DEFENSE COMMITTEE, and ALLIED EDUCATIONAL FOUNDATION AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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Date: July 6, 2009

QUESTION PRESENTED

Whether 18 U.S.C. § 2339B(a)(1), which prohibits the knowing provision of "any . . . service, . . . training, [or] expert advice or assistance," 18 U.S.C. § 2339A(b)(1), to a designated foreign terrorist organization, is unconstitutionally vague.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes and Constitutional Provisions:

Page(s)

Miscellaneous:

BRIEF OF JAMES J. CAREY, Rear Adm., USN (Ret.), STEVEN B. KANTROWITZ, Rear Adm., USN (Ret.), THOMAS L. HEMINGWAY, Brig. Gen., USAF (Ret.), WASHINGTON LEGAL FOUNDATION, NATIONAL DEFENSE COMMITTEE, and ALLIED EDUCATIONAL FOUNDATION AS AMICI CURIAE IN SUPPORT OF PETITIONERS

INTERESTS OF *AMICI CURIAE*

Amici curiae are three individuals who are retired generals or admirals in the U.S. armed forces, and several organizations with an interest in national security issues.[1]

Rear Admiral James J. Carey, U.S. Navy (Ret.), served 33 years in the U.S. Navy and Naval Reserve, including service in Vietnam. He is a former Chairman of the U.S. Federal Maritime Commission and current Chairman of the National Defense Committee (NDC), which is also joining in this brief. The NDC is a grass roots pro-military organization supporting a larger and stronger military and the election of more veterans to the U.S. Congress.

Rear Admiral Steven B. Kantrowitz, U.S. Navy (Ret.), served on active duty and in the Reserve of the

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[1] Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than *amici* and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief. Ten days prior to the due date, counsel for *amici* provided counsel for Respondents with notice of intent to file. All parties have consented to this filing; letters of consent have been lodged with the Court.

U.S. Navy from September 1974 through January 2005. He retired as a Rear Admiral in the Judge Advocate General's Corps. During active duty, he served as a judge advocate performing duties involving the full reach of military law practice. This includes service for three years as Special Assistant and Aide to the Judge Advocate General of the Navy. At the time of his selection to flag rank, he served as commanding officer of an international and operational law unit. As a Flag officer, he served as the Assistant Deputy Advocate General of the Navy and Deputy Commander, Naval Legal Service Command.

Brigadier General Thomas L. Hemingway, U.S. Air Force (Ret.), served at the time of his retirement in May 2007 as the Legal Advisor to the Convening Authority in the Department of Defense Office of Military Commissions. He was commissioned as a second lieutenant in 1962 and entered active service in 1965 after obtaining a law degree. He has served as a staff judge advocate at the group, wing, numbered air force, major command, and unified command level. He had also been an associate professor of law at the U.S. Air Force Academy and a senior judge on the Air Force Court of Military Review.

The Washington Legal Foundation (WLF) is a non-profit public interest law and policy center with supporters in all 50 states. WLF devotes a substantial portion of its resources to promoting America's national security. To that end, WLF has appeared in this and numerous other federal and state courts to ensure that the United States government is not deprived of the tools necessary to protect this country from those who would seek to destroy it and/or harm its citizens. *See,*

e.g., Boumediene v. Bush, 128 S. Ct. 2229 (2008); *Hamdan v. Rumsfeld,* 548 U.S. 557 (2006); *Hamdi v. Rumsfeld,* 542 U.S. 507 (2004); *Rasul v. Bush,* 542 U.S. 466 (2004). WLF also filed a brief in this matter when it was before the court of appeals.

The Allied Educational Foundation (AEF) is a non-profit charitable foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study, such as law and public policy, and has appeared in this Court on a number of occasions.

Amici are concerned that the Ninth Circuit's decision, if allowed to stand, could significantly impair the federal government's ability to counter the threat to national security posed by foreign terrorist groups. Congress has determined that the threat posed by such groups is magnified by the support they have been able to garner from within the United States; it has adopted legislation designed to cut off such support. *Amici* believe that Congress is acting well within its powers by authorizing the imposition of criminal sanctions on those who provide material support for such groups, regardless of the form in which that support is given. *Amici* further believe that Congress has spoken with sufficient clarity to make clear to a person of ordinary intelligence the scope of the prohibition: Congress has prohibited virtually all support for foreign terrorist groups.

STATEMENT OF THE CASE

Congress has authorized the Secretary of State to designate an organization as a "foreign terrorist organization" if, *inter alia,* the organization engages in terrorist activity and that activity "threatens the security of United States nationals or the national security of the United States." 8 U.S.C. § 1189(a)(1). If an organization has been so designated, it is a serious criminal offense to "knowingly provide material support or resources" to the organization. 18 U.S.C. § 2339B(a)(1).

Among the organizations that the Secretary of State has designated as foreign terrorist organizations are the Kurdistan Workers Party ("Partiya Karkeran Kurdistan" or "PKK") and the Liberation Tigers of Tamil Eelam ("LTTE"). Despite that designation, Respondents (six organizations and two U.S. citizens) seek to provide material support to those terrorist groups. Plaintiffs contend that they do not seek to support the PKK's and the LTTE's terrorist activities; rather, they assert a desire to provide material support for the groups' lawful humanitarian and political activities. They filed two suits in U.S. District Court for the Central District of California, seeking to enjoin the federal government from initiating criminal proceedings against them for providing such support. The suits alleged, *inter alia,* that several of the statutory terms used to define what constitutes the provision of "material support or resources" – including "training," "expert advice or assistance," "service," and "personnel" – are impermissibly vague, in violation of the Fifth Amendment, because they fail to provide people of ordinary intelligence with a clear

understanding of what activities are impermissible.

As set forth in detail in the Petition, the cases have a lengthy procedural history – including three separate appeals to the Ninth Circuit. In December 2004, Congress adopted the Intelligence Reform and Terrorism Prevention Act of 2004 ("IRTPA"), Pub. L. No. 108-458, 118 Stat. 3638, which amended several of the statutory provisions challenged by Respondents. Following adoption of IRTPA, the appeals court vacated an earlier injunction issued by the district court against enforcement of portions of § 2339B, and remanded the case to the district court for reconsideration of light of the IRTPA amendments.

On remand, the district court consolidated the two cases and largely duplicated its prior rulings in the case. Pet. App. 33a-76a. It held that three of four challenged statutory terms were impermissibly vague: "training," "expert advice or assistance," and "service."[2] It held that the 2004 IRTPA amendments failed to cure the vagueness concerns expressed by the court in prior decisions with respect to the first two terms, and that "service," a term added for the first time by IRTPA, suffered from similar vagueness problems. *Id.* at 60a-68a. It denied a vagueness challenge to a fourth statutory term: "personnel." It held that IRTPA had cured the previously identified deficiencies in the definition of "personnel" by providing "fair notice" of

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[2] *See* 18 U.S.C. § 2339A(b). The challenged terms are among a laundry list of items included within the definition of "material support or resources," 18 U.S.C. § 2339A(b)(1), the provision of which to a foreign terrorist organization is made subject to criminal sanction by 18 U.S.C. § 2339B(a)(1).

the prohibited conduct:

> Limiting the provision of personnel to those working under the "direction or control" of a foreign terrorist organization or actually managing or supervising a foreign terrorist organization operation sufficiently identifies the prohibited conduct such that persons of ordinary intelligence can reasonably understand and avoid such conduct.

Id. at 69a.

The Ninth Circuit affirmed. *Id.* at 1a-32a. It held that the term "training" (defined under IRTPA as "instruction or teaching designed to impart a specific skill, as opposed to general knowledge," 18 U.S.C. § 2339A(b)(2)) was impermissibly vague because a person of ordinary intelligence would not know whether the conduct contemplated by Respondents constituted "training" and thus the unlawful provision of "material support." *Id.* at 21a-23a.[3] The court also held that even if a person of ordinary intelligence could differentiate between instruction that imparts a "specific skill" and instruction that imparts "general knowledge," it would still be unconstitutionally vague because, as so defined, "the term 'training' could still be read to encompass speech and advocacy protected by the First

[3] The court held that a person of ordinary intelligence would not know whether the following contemplated conduct was prohibited: "teaching someone to petition international bodies for tsunami related aid" and "instruct[ing] members of a designated group on how to petition the United Nations to give aid to their group." *Id.* at 21a-22a.

Amendment." *Id.* at 22a.

The appeals court held that the term "expert advice or assistance" (defined under IRTPA as advice or assistance derived from "scientific, technical, or other specialized knowledge," 18 U.S.C. § 2339A(b)(3)) was impermissibly vague, at least with respect to the "other specialized knowledge" portion of the ban. *Id.* at 24a. The court held that that portion of the ban is void for vagueness because it: (1) is not "reasonably understandable to a person of ordinary intelligence"; and (2) "continues to cover constitutionally protected advocacy." *Id.*

The appeals court adopted the holding and reasoning of the district court regarding the term "service." It stated that the term encompasses both "training" and "expert advice or assistance" and thus is constitutionally flawed for the same reasons that those other terms are flawed: a person of ordinary intelligence would not know whether his contemplated conduct constitutes "service," and "'it is easy to imagine protected expression that falls within the bounds' of the term 'service.'" *Id.* at 25a (quoting district court decision, *id.* at 67a).

The appeals court affirmed the district court's rejection of Respondents' void-for-vagueness challenge to the term "personnel." *Id.* at 26a-27a. The court also affirmed the district court's rejection of Respondents' First Amendment overbreadth challenge to the terms "training," "expert advice and assistance," "service," and "personnel." The court stated that while Respondents "may be able to identify particular instances of protected speech that may fall within the

statute," those instances "are not substantial" when compared to the many legitimate applications of § 2339B(a), and thus the statute is not overbroad. *Id.* at 29a.

REASONS FOR GRANTING THE PETITION

The petition raises issues of exceptional importance. Congress has determined that international terrorism "threatens the vital interests of the United States" and that *any* support of terrorist groups facilitates that terrorism. *See* Antiterrorism and Effective Death Penalty Act of 1996, P.L. 104-243, Title III, Subtitle A, § 301(a)(1) & (7), 110 Stat. 1247, *codified at* 18 U.S.C. § 2339B *note*. Accordingly, Congress has determined that national security requires that direct material support to groups determined by the federal government to be foreign terrorist organizations be prohibited. *Id.*

The Ninth Circuit's decision directly undercuts that congressional determination. By striking down portions of the ban on support of foreign terrorist organizations, the court has opened the door to activities that, Congress has determined, pose a threat to vital American interests. Review is warranted to determine whether, as the Ninth Circuit indicated, the Constitution prohibits the federal government from taking the steps that Congress has determined are necessary to protect national security.

Review is also warranted because the Ninth Circuit arrived at its result only after incorporating large swaths of First Amendment law into its Fifth Amendment void-for-vagueness analysis. The Ninth

Circuit held that even if a person of ordinary intelligence would understand what activities are prohibited by the challenged language of § 2339A(b)(1), that language is void for vagueness if the prohibited activities could "be read to encompass speech and advocacy protected by the First Amendment." Pet. App. 22a. That holding directly conflicts with numerous decisions of this Court, which hold that a statute is impermissibly vague (thereby violating due process rights) only if it: (1) fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits; or (2) defines a criminal offense with insufficient definiteness such that it encourages arbitrary and discriminatory enforcement. While the void-for-vagueness doctrine often serves First Amendment values by ensuring that uncertainty regarding the scope of a statute does not end up chilling constitutionally protected speech, the Court has never held that a clearly-written statute can be struck down on vagueness grounds merely because it could be read to encompass speech and advocacy protected by the First Amendment.

Review is also warranted because the appeals court adopted an overly broad understanding of the void-for-vagueness doctrine. Because no set of words will convey precisely the same meaning to all people, legislation – in order to survive a vagueness challenge – need do no more than make clear what the law *as a whole* prohibits. Instead of undertaking such a holistic approach, the appeals court picked out several components of Congress's comprehensive definition of what it means to "knowingly provide material support or resources" and faulted those individual components for being insufficiently precise. Review is warranted to

determine whether the Ninth Circuit's piece-by-piece approach to void-for-vagueness analysis is consistent with this Court's case law.

I. THE APPEALS COURT HAS OPENED THE DOOR TO ACTIVITIES THAT CONGRESS HAS DETERMINED POSE A THREAT TO VITAL AMERICAN INTERESTS

Congress has authorized the Secretary of State to designate an organization as a "foreign terrorist organization" if, *inter alia,* the organization engages in terrorist activity and that activity "threatens the security of United States nationals or the national security of the United States." 8 U.S.C. § 1189(a)(1). Among the organizations that the Secretary of State has designated as foreign terrorist organizations (FTOs)are the PKK and the LTTE, the two organizations to which Respondents seek to provide support. As a result of the Ninth Circuit's decision striking down portions of a federal statute, the federal government may not prevent Respondents from providing material support to the PKK or the LTTE in the form of "training," expert advice or assistance that is based on "other specialized knowledge,"[4] or "services" – despite Congress's determination that *any* support of FTOs facilitates international terrorism and thus threatens the vital interests of the United States.

Review is warranted in light of the importance of the decision to national security interests. The decision

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[4] That is, specialized knowledge that is neither "scientific" knowledge nor "technical" knowledge.

below not only permits Respondents to provide material support to two FTOs; it also effectively permits others living within the Ninth Circuit to provide similar support to the other 42 terrorist organizations that have been designated FTOs by the Secretary of State.

Among those other 42 FTOs are such well-known groups as al-Qaeda, HAMAS, and Hizballah.[5] Few need to be reminded of al-Qaeda's murderous history. In the years since it masterminded the 9/11 attacks in the United States that killed 3,000 people, its operations have included a series of attacks in Saudi Arabia in 2003-04 that killed more than 90 people, including 14 Americans; a suicide bombing at a hotel in Kenya that killed 15; and November 2003 attacks in Istanbul that killed more than 60 people. It is also believed to have financed the October 2002 bombings in Bali, Indonesia that killed more than 200 and to have been involved in the July 2005 bomb attacks on the London public transportation system.

HAMAS has been involved throughout the past decade in numerous attacks on the civilian population of Israel, America's close ally. In June 2007, it took control of Gaza from the Palestinian Authority in a military-style coup, leading to an international boycott and closure of Gaza's borders. Hizballah's violent history includes the suicide truck bombings of the U.S.

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[5] Information included herein regarding these three FTOs is taken from a State Department report. *See* Department of State, Office of the Coordinator for Counterterrorism, *Country Report on Terrorism 2008*, Chapter 6, "Terrorist Organizations," available at http://www.state.gov/s/ct/rls/crt/2008/122449.htm (last visited June 30, 2009).

Embassy and U.S. Marine barracks in Beirut.

Unless the Ninth Circuit's decision is reversed, the ability of the federal government to prosecute those who supply training, specialized knowledge, and/or services to these three groups and other FTOs will be severely impaired. Yet, supplying those resources strengthens the groups and thereby undermines U.S. interests, regardless whether those who do the supplying intend to limit their support to an FTO's "humanitarian" projects. As U.S. Senator John Kyle recently explained, "There is no such thing as 'good' aid to a terrorist organization, because all aid is fungible and can be converted to evil purposes, and because even humanitarian aid can be used by a terrorist organization to help it recruit new members." 153 Cong. Rec. S15876 (2007).

The Justice Department has determined that the "material support statutes" (18 U.S.C. §§ 2239A and 2239B) are "critical features of law enforcement's current approach to counterterrorism." Testimony of Deputy Assistant Attorney General Gregory Katsas, House Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security (May 10, 2005). Targeting those who provide the logistical support for terrorist groups – whether in the form of cash, materials, or services – is critical because "[p]eople who perform these services and fill these positions may not be bomb-throwers. But the frontline terrorists cannot operate without their supporters and their logistical support networks." *Id.* The Petition documents repeated instances in which the Justice Department has prosecuted individuals under the material support statutes for providing "training," "specialized

knowledge," and "services" to FTOs – the very provisions that the Ninth Circuit struck down as unconstitutionally vague. Review is warranted in light of the significant impact that the Ninth Circuit's decision is having on enforcement of statutes that the federal government deems critical to counterterrorism efforts.

II. REVIEW IS WARRANTED BECAUSE THE NINTH CIRCUIT'S INCORPORATION OF FIRST AMENDMENT LAW INTO ITS VAGUENESS ANALYSIS CONFLICTS WITH THIS COURT'S CASE LAW

Review is also warranted because the Ninth Circuit arrived at its result only after incorporating large swaths of First Amendment law into its Fifth Amendment void-for-vagueness analysis. The Ninth Circuit held that even if a person of ordinary intelligence would understand what activities are prohibited by the challenged language of § 2339A(b)(1), that language is void for vagueness if the prohibited activities could "be read to encompass speech and advocacy protected by the First Amendment." Pet. App. 22a. The appeals court then proceeded to invoke this could-be-read-to-encompass-speech-and-advocacy doctrine as a basis for declaring "training," "other specialized knowledge," and "service" impermissibly vague. *Id.* at 22a, 24a, 25a.

That holding directly conflicts with numerous decisions of this Court, which hold that a statute is impermissibly vague (thereby violating due process rights) only if it: (1) fails to provide people of ordinary

intelligence a reasonable opportunity to understand what conduct it prohibits; or (2) defines a criminal offense with insufficient definiteness such that it encourages arbitrary and discriminatory enforcement. *See, e.g., Hill v. Colorado,* 530 U.S. 703, 732 (2000); *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). The Ninth Circuit cited no opinions from this Court in support of its assertion that the could-be-read-to-encompass-speech-and-advocacy doctrine provides a third basis for striking down a statute on vagueness grounds.

The district court sought support for that doctrine in *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972). Pet. App. 61a. That citation was inapposite. The Court observed in *Grayned* that the vagueness doctrine is particularly important when the challenged statute is one that regulates speech, because the effect when such a statute is vague is to chill the speech (even fully protected speech) of those who are unsure whether their speech offends the statute. But the Court ultimately upheld the city ordinance at issue in *Grayned* after scrutinizing it under the two tests traditionally applied in determining whether a law is impermissibly vague: whether it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits, and whether it defines a criminal offense with insufficient definiteness such that it encourages arbitrary and discriminatory enforcement. *Grayned,* 408 U.S. at 109. The Court made no mention of a separate could-be-read-to-encompass-speech-and-advocacy doctrine in upholding the ordinance. *Id.* at 108-09.

Nor can the Ninth Circuit's adoption of the

doctrine in this case be dismissed as an aberration that is unlikely to repeat itself in future cases. Rather, the Ninth Circuit (both in the decision under review and in an earlier, 2000 panel decision in this case) made clear that in adopting the doctrine it was following well-established Ninth Circuit precedent. Pet. App. 19a-20a (citing *Foti v. City of Menlo Park,* 146 F.3d 629 (9th Cir. 1998). Review is warranted to resolve the conflict between this Court's decisions and Ninth Circuit case law regarding whether clearly-written statutes are subject to invalidation under the void-for-vagueness doctrine when they impose restrictions on fully protected speech.

III. REVIEW IS WARRANTED BECAUSE THE APPEALS COURT ADOPTED AN OVERLY BROAD UNDERSTANDING OF THE VOID-FOR-VAGUENESS DOCTRINE

The Court has made clear that because no set of words will convey precisely the same meaning to all people, legislation – in order to survive a vagueness challenge – need do no more than make "clear what the law *as a whole* prohibits." *Grayned*, 408 U.S. at 110. Because we are "[c]ondemned to the use of words, we can never expect mathematical certainty from our language." *Id.* Thus, a court employing this Court's holistic approach when considering a void-for-vagueness challenge to the material support statutes would look to the entire definition of "material support or resources" set forth in 18 U.S.C. § 2339A(b)(1) in determining whether the statute provides a person of ordinary intelligence with sufficient guidance regarding

what constitutes "material support or resources."[6]

The Ninth Circuit adopted a sharply conflicting approach: it examined one-by-one the various components of §2339A(b)(1)'s definition of "material support or resources." Review is warranted to resolve the conflict between this Court's approach to vagueness doctrine and the approach adopted by the Ninth Circuit, particularly because those two approaches lead to such radically different results.

When considered as a whole, the language employed by Congress in prohibiting significant direct support for designated "foreign terrorist groups" easily meets the standard vagueness test – whether it provides a person of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.

Section 2339B(a)(1) prohibits "knowingly" providing "material support or resources" to a foreign terrorist organization. "Material support or resources" in turn is defined as meaning:

> [A]ny property, tangible or intangible, or service, including currency or monetary instruments or

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[6] Section 2339A(b)(1) provides 22 separate examples of items included within the definition of "material support or resources," including "training," "expert advice or assistance," and "service." "Training" and "expert advice or assistance" are further defined in § 2339A(b)(2) & (b)(3). In addition, several of the items identified in § 2339A(b)(1) are clearly intended as examples of the types of "service" included within the definition of "material support or resources." Section 2339A(b)(1) goes on to identify two types of property not included within that definition: "medicine" and "religious materials."

> financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documents or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.

18 U.S.C. § 2339A(b)(1). "Training" is further defined to mean "instruction or teaching designed to impart a specific skill, as opposed to general knowledge." 18 U.S.C. § 2339A(b)(2). "Expert advice or assistance" is further defined to mean "advice or assistance derived from scientific, technical or other specialized knowledge." 18 U.S.C. § 2339A(b)(3). "Personnel" is further defined to make clear that one cannot be deemed to have provided "personnel" if the individuals involved work "independently of the foreign terrorist organization to advance its goals or objectives" and not under the organization's "direction and control." 18 U.S.C. § 2339B(h).

In view of the comprehensive nature of the definition of "material support or resources" contained in § 2339A(b)(1), Congress's overall intent is readily apparent to people of ordinary intelligence: Congress intended to prohibit virtually *all* direct significant support for designated foreign terrorist organizations. Given the overall tenor of the statute, Respondents' challenge to individual components of the definition of "material support or resources" is largely academic. Included within that definition is *any* "property" or "service"; the words that follow serve merely to flesh out the many and varied types of property and service

that Congress had in mind. The appeals court indicated that Respondents do not have a good idea regarding the types of "training" they may provide. But since virtually any activity that might be deemed "training" performed under the auspices of a foreign terrorist organization would also be a "service," all such activity is banned. Similarly, the ban on "advice or assistance derived from scientific, technical or other specialized knowledge" is crystal clear: while casual advice is not banned (*e.g.*, "it looks to me as though it is going to rain today"), the phrase "specialized knowledge," when read in the context of the entire statute, makes clear that *any* type of advice that could have real strategic value to the organization (because it is based on knowledge that is not generally possessed by members of the organization) is banned. That includes such "specialized knowledge" as knowledge of effective methods for lobbying the United Nations.

To the extent that there is any real limit on the ban on direct material assistance, it comes not from the language of § 2339A but from the word "knowingly" in § 2339B(a)(1) and from that statute's requirement that the "material support or resources" be given "to" the foreign terrorist organization. Many of the hypothetical examples put forward by Respondents in the appeals court would not be covered by the ban because, under a common sense reading of § 2339B(a)(1), the support would not be deemed to have been given "to" the organization. For example, Respondents expressed a desire to provide expert advice and training in Tamil language, literature, arts, cultural heritage, and history. Nothing in § 2339B prevents Respondents from doing so, even if some of those receiving the training happen also to be members of the LTTE. Such expert advice

and training could not reasonably be deemed to have been provided "to" the LTTE unless the training sessions at issue were being run under the auspices of the LTTE, or the LTTE had arranged for such sessions in order to gain knowledge that would further the goals of the LTTE. Thus, those wishing to impart their knowledge to the Tamil of Sri Lanka (including knowledge regarding international law, tsunami relief, or gaining United Nations support for the Tamil cause) have an easy way of doing so without running afoul of § 2339B: just make sure that one's actions are not being undertaken under the auspices of the LTTE.

Section 2339B's scienter requirement (limiting the statute's reach to those who "knowingly" provide material support to others they know to be terrorist groups or to have been designated as such by the Secretary of State) provides additional assurance that the statute could be applied to those who failed to understand its reach. Of course, Respondents are well aware that the PKK and the LTTE have been designated as terrorist organizations and that § 2339B broadly prohibits providing material support to those groups. Accordingly, there is little reason to be sympathetic to their claims that there may be some hypothetical situations to which § 2339B's application may be unclear. The statute is broad, and its application to the support they wish to provide is clear.

The preceding vagueness analysis – which employs the analyze-the-statute-as-a-whole approach endorsed by this Court in *Grayned* and elsewhere – conflicts sharply with the vagueness analysis adopted by Ninth Circuit. By focusing on individual terms within Congress's broad definition of "material support or

resources," the appeals court claimed to have identified instances in which individuals focusing on that single term would have insufficient guidance regarding whether the material support statutes prohibited their intended conduct. But in many of those instances (as explained above), individuals would have been able to obtain the guidance they claimed to be seeking by reading the entire statute. Indeed, this Court has repeatedly explained that words in a statute often cannot be fully understood unless they are considered in the context of the entire statute in which they appear. *See, e.g., Gustavson v. Alloyd Co.*, 513 U.S. 561, 575 (1995) (applying the maxim *noscitur a sociis* – a word is known by the company it keeps). Review is warranted to resolve the conflict between the approach to vagueness analysis adopted by this Court and the approach adopted by the Ninth Circuit – particularly because the two approaches lead to diametrically opposed results regarding whether portions of §2339A(b)(1) are void for vagueness.

CONCLUSION

Amici curiae request that the Court grant the petition for a writ of certiorari.

Respectfully submitted,

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Dated: July 6, 2009