CENTER FOR CONSTITUTIONAL RIGHTS

Submission to the United Nations Special Rapporteur on Counterterrorism and Human Rights

Call for inputs on definitions of "terrorism", "terrorist organization" and "violent extremism"

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Overview

1. The Center for Constitutional Rights submits this document to the United Nations Special Rapporteur on Counterterrorism and Human Rights to inform the thematic report on definitions of "terrorism", "terrorist organisation" and "violent extremism" to be presented to the United Nations Human Rights Council in March 2026.

2. The Center for Constitutional Rights works with communities under threat to fight for justice and liberation through litigation, advocacy, and strategic communications. Since 1966, the Center for Constitutional Rights has taken on oppressive systems of power, including structural racism, gender oppression, economic inequity, and governmental overreach.

3. This submission is informed by our experience over the past nearly 25 years where we have stood alongside our courageous clients and partners and their supporting communities, activists, storytellers, and a broad cadre of other lawyers and human rights defenders in resisting every particle of the post-9/11 authoritarian architecture. We responded to immigrants in New York and New Jersey when they were unlawfully rounded up by federal agents and local police in the weeks and months following 9/11; we represented the first men to challenge their incommunicado, indefinite detention at the Guantánamo Bay prison (and we continue to represent our client Guled Duran, who is still detained at Guantanamo despite being approved for transfer years earlier); we supported victims of torture and abuse by governments and military contractors in detention facilities across the world; and we supported those harmed as a result of the opportunistic, unlawful invasion of Iraq, including in a joint project between Iraqi human rights organizations and U.S. veterans, as well as seeking justice and accountability for Blackwater's victims. Whether fighting for men like Maher Arar who were ensnared in the U.S. torture and rendition program or challenging drone killings and the surveillance of Black and Brown communities, we've remained committed to resisting and dismantling the expansive and dangerous post-9/11 antiterrorism legal regime.

4. We are proud of this profoundly important—and enduring—work. In those acts of resistance, we have brought principles of justice, humility, and love to demand recognition of our clients' dignity and to directly challenge the state power and state violence that has been increasingly deployed to specifically delegitimize, criminalize, and dehumanize politically disfavored groups and individuals, political rivals, migrants, students and activists, human rights defenders, and civil society organizations.

5. Nearly 25 years since September 11, 2001, this call for inputs requires us to reflect on the lessons we have learned from this history so that we can build a more just future. The reality is, so many years later, that many of our clients, partners, and their communities are no closer to justice, accountability, or healing. Not only does much of this work continue, but it is compounded by an unprecedented expansion of this post-9/11 authoritarian architecture by the Trump administration and rising authoritarianism globally.

6. In a global context now characterized by backsliding democracies and rising authoritarianism that was in part fueled by the intentional expansion of the post-9/11 counterterrorism framework, there is an increasing dissonance between attempts to further entrench and define aspects of this framework and rhetoric condemning undemocratic actors, fighting authoritarianism, and reaffirming fundamental human rights.

7. The lived experience of the communities targeted by the counterterrorism framework clearly establishes that the framework itself is a fundamental source of persistent human rights violations. The unabated abusive state practices inherent in the framework have perpetuated the erosion of rights-based international norms and obligations necessary to counteract rising authoritarianism globally. National and state-level antiterrorism laws are intended by design to be utilized to target politically disfavored individuals and groups specifically to exceptionally deny basic civil and political rights, including the right to life. Broadly, avoiding due process, denying fair trials, and justifying the arbitrary and often indefinite deprivation of a person's liberty are the point. The counterterrorism framework has been routinely exploited to perpetrate murder, extrajudicial killing, forcible transfer, and atrocity crimes, including genocide.

8. As the counterterrorism framework has become increasingly expanded and entrenched since 9/11, the international rules-based order has been decimated in part due to the collective and overwhelming acquiescence by states when confronted by repressive action carried out in the name of counterterrorism. Acquiescence has allowed the Trump administration and other individuals and regimes that wield state power with near complete disregard for international law, prioritizing self-interest and repression of political dissent over all else, to further dismantle the international rules-based order, including direct attacks on the International Criminal Court.

9. While it has always been a creature of political will, it is a grisly reality that the international rules-based order, built on obligatory international norms, has been undercut to such a degree that it has failed to not only stop multiple genocides against Tamils in Sri Lanka, Rohingya in Myanmar, Palestinians in Gaza, and non-Arab communities in Sudan but in most of these contexts the genocidal regime has relied on the counterterrorism framework as its attempted justification for perpetrating the crime of genocide. In the case of Palestinians, Israel's response to decolonization and an indigenous people's demand for and attempt to activate their collective right to self-determination has been to use the counterterrorism framework and rhetoric to delegitimize, criminalize, and dehumanize the Indigenous population and facilitate the crime of genocide.

10. States like the United States are utilizing the counterterrorism framework and rhetoric to actively work to ensure impunity for Israeli perpetrators rather than stop the genocide against Palestinians in Gaza or demand justice and accountability for victims, including by labeling resistance to and advocacy against genocide as "terrorist". More broadly, the Trump administration is increasingly utilizing the counterterrorism framework to perpetuate and expand abusive state practices intended to delegitimize, criminalize, and dehumanize politically disfavored groups, political rivals, migrants, students and activists, human rights defenders, and civil society organizations.

11. While an improved and bolstered definition of "terrorism" may mitigate one of the most prevalent sources globally of human rights violations, the past nearly 25 years necessitates, by any reckoning, an acknowledgement that the counterterrorism endeavor is nefariously flawed and dramatic shifts are needed to protect the international rules-based order and international human rights.

12. This submission is meant to add necessary context to the types of input and comments requested by the Special Rapporteur by mapping the specifically anti-Palestinian agendas that shaped many of the antiterrorism laws in the United States before the decisive shift to broader anti-Muslim animus after September 2001. It also highlights the dangers of these laws' possible use and expansion in the current moment.

13. The Center for Constitutional Rights, together with civil society partners, has elsewhere offered information and analysis regarding the expansion of the terrorism framework to silence U.S. social movements and shrink civic space, including a submission titled *How the "War on Terror" has Metastasized to Silence U.S. Social Movements and Shrink Civic Space* to the 139th Session of the Human Rights Committee in 2023, and a joint civil society submission titled *Entrenching Authoritarianism: Expanding the Terrorism Framework and the Infrastructure of Surveillance to Repress Expression and Stifle Dissent* in September 2025 to the Human Rights Council as part of the United States' Universal Periodic Review. We commend the work of this mandate in identifying the risks and recommendations that might mitigate the harm of the counterterrorism framework on civil society and civic space through the Global Study on Counter-terrorism and Civic Space. We urge the Special Rapporteur to build upon the work of your predecessor and not only interrogate the framework itself, but also imagine an international legal order without the inherently nebulous and malleable concept of "counterterrorism", which allows both states and corporations to articulate their political priorities, and target disfavored groups or opinions.

14. The Center for Constitutional Rights believes we must work collectively to urgently dismantle this broader counterterrorism framework and the post-9/11 "national security" apparatus that has fundamentally altered not only the U.S. legal and political system, but has decimated the international human rights system, fostered rising authoritarianism globally, and smoothed the way for multiple genocides. A primary focus now should be on efforts to bolster political will to restrain state actors and regimes that utilize the counterterrorism framework to deploy state power in a way that perpetuates and expands abusive state practices intended to delegitimize, criminalize, and dehumanize politically disfavored groups, political rivals, and ethnic or racial minorities.

15. We must shift global priorities and resources away from discriminatory systems, and into programs, solutions, and institutions that center and bolster marginalized communities and protect rights in meaningful ways for communities most impacted by the counterterrorism framework and the post-9/11 authoritarian architecture.

Origins of U.S. antiterrorism laws

16. Thousands of people died horribly in the attacks on September 11, 2001. Nearly a million have died in the wars since. The United States launched a campaign of human rights abuses targeting immigrant, Muslim, and Black and Brown communities at home and abroad and sought to capitalize on this latest iteration of a global, existential, and constructed threat to wage foreign wars and establish domestic policies that reinforced existing systems of oppression.

17. The Bush administration declared a so-called global "war on terror" and, through the use of secret detention centers and torture, full-scale invasions, and drone strikes, this "war" caused profound and lasting harm to communities around the world. The U.S. also passed draconian legislation and implemented policies that further marginalized and criminalized those most vulnerable within the United States through immigration registrations, sweeps and deportations, racial and religious profiling, mass surveillance, and the militarization of local police departments.

18. The Center for Constitutional Rights has stood with those whose lives have been upended or destroyed as a result of the U.S. government's suspension of human rights, particularly of Muslims. For the last nearly 25 years, we have fought alongside our clients, communities, and movement partners to hold each U.S. administration—including the Obama, Trump, and Biden administrations—accountable for their role in creating and upholding these policies and practices.

19. While accountability efforts have been integral to advancing a broader popular understanding and recognition of the human rights violations inherent in the U.S. government response to the September 11 attacks, it is also true that United States antiterrorism laws have become so ubiquitous and entrenched that their origins and development are often obscured.

20. From a basic study it is clear that specific anti-Palestinian agendas shaped many of these laws before the decisive shift to broader anti-Muslim animus after 2001. 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.

21. 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 in the United States.[1]

22. Understanding that the anti-Muslim thrust of "War on Terror" policies was built on a pre-existing foundation of hostility to the Palestinian liberation movement is necessary historical context and has

[1] *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 submission, "material support" will refer to 18 U.S.C. § 2339B unless otherwise specified.

important strategic implications for global and international actors engaged in evaluating or developing any proposed reforms to the counterterrorism framework and for advocates interested in challenging the current atmosphere of anti-Palestinian repression.

23. 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 genocide against Palestinians in Gaza 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.

Anti-Palestinian at the core

24. U.S. antiterrorism law has been structurally anti-Palestinian from its inception.[2] Moreover, many of the major developments in the creation of U.S. antiterrorism law 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 Palestine Liberation Organization (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.

Background

25. 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.[3] Relying on essentialist tropes about Palestinians as barbaric, Israel like other colonial powers has always characterized Indigenous resistance—including 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.[4] 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

[2] The research and analysis in this section is from a joint publication of the Center for Constitutional Rights and Palestine Legal, researched and written by Darryl Li, titled, *Anti-Palestinian at the Core: The Origins and Growing Dangers of U.S. Antiterrorism Law* (2024), https://ccrjustice.org/sites/default/files/attach/2024/02/Anti-Palestinian%20at%20the%20Core_White%20Paper_0.pdf.
[3] *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).
[4] *See* Prevention of Terrorism Ordinance, 5708- 1948, 1 LSI 76 (1948).

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.[5]

26. 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 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 ADL.

27. 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 the the United Nations Relief and Works Agency for Palestine Refugees in the Near East (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."[6] The law gave no definition for terrorism, but it set down a decades-long pattern that legally inscribed the Palestinian—and especially the refugee—as the default terrorist.

28. This law, animated by the racist myth of Palestinian refugee children as brainwashed killers, remains on the books to this day.[7] But the provision lacked any specific enforcement mechanism.[8] 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.[9]

Sanctions on state sponsors of terrorism

29. 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

[5] *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).
[6] 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)).
[7] *See* 22 U.S.C. § 2221(c).
[8] 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.").
[9] *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").

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.[10]

30. 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 resistance groups.[11] Zionist organizations actively advocated for these laws.[12] 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."[13]

31. 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.[14] Javits named Iraq, Libya, and South Yemen as likely candidates for designation, all active supporters of the Palestinian liberation movement.[15] Javits relied on State Department reports that specifically called out Iraq and Libya for supporting "rejectionist" Palestinian factions.[16] By the late 1980s, the states labeled as SSTs came to be referred to collectively as a list.

32. 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.[17] 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.[18]

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[10] 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).
[11] *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).
[12] *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).
[13] 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.
[14] 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).
[15] *See* 125 Cong. Rec. 20010 (July 21, 1979).
[16] *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).
[17] *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").
[18] *See* Philip W. Travis, Reagan's War on Terrorism in Nicaragua: The Outlaw State (2017).

The first terrorist group

33. On December 22, 1987, Congress formally declared the PLO a "terrorist organization" and ordered the closure of all its offices in the United States.[19] 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 legislation floated in October 2023 to expel Palestinians from the United States.[20]

34. The measure was introduced by Iowa's Charles Grassley earlier in 1987, with the co-sponsorship of half the Senate.[21] 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.

35. In accordance with the law, the government shut down the PLO's observer mission at the United Nations.[22] 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.[23] Shortly thereafter, a U.S. federal court ruled that the mission could stay open.[24]

36. Although it did not achieve all its most notorious goals, the 1987 law was far more influential in pioneering the tactic of designating nonstate 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."[25] As a result, the following year's report for the first time included an appendix listing "organizations that engage in terrorism."[26] Of the 44 groups listed, over a quarter were Palestinian. Once again, Congressional desires to single out Palestinians by name—symbolically powerful but otherwise

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[19] 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.
[20] *See* Safeguarding Americans from Extremism (SAFE) Act of 2023, H.R. 6211, 118th Cong. (2023).
[21] *See* Anti-Terrorism Act of 1987, S. 1203, 110th Cong. (1987).
[22] 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
[23] *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).
[24] *See* U.S. v. PLO, 695 F. Supp. 1456 (S.D.N.Y. 1988).
[25] Foreign Relations Authorization Act, Fiscals Years 1988 and 1989, Pub. L. No. 100-204, § 140(a)(2), 101 Stat. 1331, 1348 (1987).
[26] 1987 U.S. Dep't of State Patterns of Global Terrorism Rep. 41 (1988).

cumbersome—would give way to a seemingly more "objective" process of drawing up terrorism lists that prominently targeted Palestinian groups.[27]

Immigration law

37. 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.[28] The same statute also declared that any "officer, official, representative, or spokesman" of the PLO would automatically be considered as engaging in terrorist activity.[29] 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.[30]

38. 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.[31] 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.[32] 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."

39. 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."[33] A federal judge ruled the law to be unconstitutional and threw the charges out.[34]

40. 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

[27] 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).
[28] 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.
[29] *See id.*
[30] *See* Michael John Garcia & Ruth Ellen Wasem, Cong. Rsch. Serv., RL 32564, Immigration: Terrorist Grounds for Exclusion and Removal of Aliens (2010).
[31] *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).
[32] *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).
[33] *See* A.D.C. v. Meese, 714 F. Supp. 1060, 1063 (C.D. Cal. 1989).
[34] *See id.*, at 714 F. Supp. 1082-84.

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.[35] Eventually, the government abandoned its attempts to deport the last of the Eight in 2007—twenty years after the case began.[36]

41. The 1990 immigration law amendments were also significant for introducing "material support" to anyone "conducting a terrorist activity" as a basis for exclusion.[37] 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.[38] Once installed in immigration law, the material support concept would migrate to criminal law several years later with devastating consequences.

Civil litigation

42. 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.[39] In 1992, Congress authorized U.S. nationals to file lawsuits for acts of international terrorism.[40] 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.[41] 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.[42]

43. 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.[43]

44. The ATA promised to provide a firmer legal basis for such suits going forward.[44] The ATA was perhaps the clearest example yet of bespoke 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

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[35] *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).
[36] For a brief overview of the saga, see From the Editors, 245 Middle East Rep. 1 (2007).
[37] *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)).
[38] *See id.*
[39] *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).
[40] *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).
[41] *See* 18 U.S.C. § 2333(a).
[42] 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).
[43] *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.
[44] *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.").

lawyer, former Reagan administration official, and one-time head of B'nai B'rith's Midwest chapter.[45] The Klinghoffer family, acting on behalf of the ADL, testified in Congress twice in support of the bill.[46] 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.[47] 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.[48]

45. 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.

46. 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. Indeed, there appears to be only one lawsuit that did not involve a dual citizen.[49] 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.[50] 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.[51]

Financial sanctions

47. 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."[52] This was the first formal list of terrorist groups created by the U.S. government that triggered concrete legal

[45] *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.
[46] *See* Antiterrorism Act of 1990, 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).
[47] *See* Antiterrorism Act of 1990, at 109-118.
[48] *See* 138 Cong. Rec. 33628-29 (Oct. 7, 1992); 137 Cong. Rec. 8143 (Apr. 16, 1991).
[49] *See* Bennett et al v. Arab Bank, 05-cv-3183 (E.D.N.Y. filed July 1, 2005).
[50] *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.
[51] 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).
[52] Exec. Order No. 12947, 60 Fed. Reg. 5079 (Jan. 25, 1995).

consequences.[53] It drew on longstanding sanctions laws but broke new ground in applying them to non-state actors, including individuals.

48. 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.[54] 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.[55]

49. 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.[56] 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.[57]

50. 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.[58] 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.[59]

51. 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

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[53] 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).
[54] 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).
[55] *See id.*; *see also* Shaul Magid, Meir Kahane: The Public Life and Political Thought of an American Jewish Radical (2021).
[56] 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.
[57] *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).
[58] *See* Daniel Williams, U.S. Trying to Bolster Rabin Political Fortunes; Israeli Leader Seen as Key to Mideast Peace, Wash. Post (Jan. 27, 1995).
[59] *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.").

pivotal step in the overall strategy to confront international terrorist groups and their state sponsors."[60] 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.[61]

Criminal law

52. 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.[62] 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.[63]

53. 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.

54. 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.[64] The bill also incorporated several key demands from the ADL's 1994 "Counterterrorism Action Agenda" pertaining to foreign groups.[65] These included bans on entry for members and supporters of terrorist groups, especially for fundraising, and prohibitions on material support for terrorist groups. Senior officials from the ADL and the American Jewish Committee both testified in Congress in favor of these measures.[66]

55. 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

[60] Anti-Defamation League, Anti-Defamation League Hails President Clinton's Executive Order on Terrorists, Jan. 24, 1995.
[61] *See* PLO Praises, Hamas Blasts Clinton Decision, Reuters (Jan. 24, 1995).
[62] 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.
[63] *See* Holder v. Humanitarian Law Project, 561 U.S. 1, 4 (2010).
[64] *See* Comprehensive Terrorism Prevention Act of 1995, S. 735, 104th Cong. (1995).
[65] *See* Anti-Defamation League, Anti-Defamation League Proposes Counterterrorism Action Agenda for U.S. Government, Nov. 11, 1994.
[66] *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).

provisions were removed.[67] The ADL denounced the "eviscerat[ion] of key provisions to restrict fundraising for foreign terrorist organizations" as "shocking and mind-boggling."[68] 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.[69] 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."[70] 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.[71] Targeting Palestinians as terrorists was the area where bipartisan consensus could be found.

56. The final statute, the Antiterrorism and Effective Death Penalty Act (AEDPA), codified the government's ability to formally designate[72] 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.[73] 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).[74] Under AEDPA and subsequent legislation, FTO designation triggers a cascade of legal effects, all consistent with the ADL's legislative wish-list.

57. First, alleged members of FTOs are subject to exclusion and deportation.[75] AEDPA also made them ineligible for asylum and subject to streamlined deportation proceedings. 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

[67] *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).
[68] Anti-Defamation League, ADL: "House Guts Terrorism Legislation," Mar. 13, 1996.
[69] *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").
[70] 142 Cong. Rec. 4812 (Mar. 14, 1996).
[71] Anti-Defamation League, ADL Welcomes Improved Antiterrorism Bill, Apr. 15, 1996.
[72] *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 .").
[73] *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 I n d . 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").
[74] *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.
[75] *See* AEDPA, *supra* note 73, title V, subtitle B.

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.[76]

58. Second, AEDPA authorized the Treasury department to freeze the assets of FTOs.[77] 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.

59. The third and perhaps most controversial effect was to criminalize provision of material support to an FTO[78], which went beyond the existing ban on material support to terrorist acts.[79] 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."[80] 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.[81] 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.[82] Yet anyone accused of material support to an FTO is barred from challenging that group's designation.[83]

60. 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 Abdulqader, Abdelrahman Odeh, and Mohammed El-Mezain; in Florida, against Sami al-Arian, Ghassan Ballut, Hatim 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.[84]

61. 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

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[76] *See* 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, 346 (2001).
[77] *See* AEDPA, supra note 73, § 219(a)(2)(C).
[78] *See id.*, § 301 (codified as amended at 18 U.S.C. § 2339B).
[79] *See* 18 U.S.C. § 2339A.
[80] Anti-Defamation League, *The Omnibus Counterterrorism Act*, Mar. 11, 1996.
[81] AEDPA placed the Secretary of State's FTO designation authority in the Immigration and Nationality Act. *See* AEDPA, supra note 73, at § 302. For more on the disparate treatment of international and domestic terrorism in U.S. law, *see* Shirin Sinnar, Separate and Unequal: The Law of "Domestic" and "International" Terrorism, 117 Mich. L. Rev. 1333 (2019).
[82] *See* Statement of Ruth Lansner, supra note 66, at 428 .
[83] *See* 18 U.S.C. § 1189(a)(8).
[84] *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 73, 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)

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.[85] These cases were only the most visible outcomes of large-scale surveillance programs that impacted an entire generation of U.S. Muslim communities.[86]

62. 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. Over time, these legal mechanisms were expanded and "brought home" to repress other protest movements.[87]

The legacy of 9/11 and urgency of today

63. Following the 9/11 attacks, the United States turned a horrific criminal act—which killed thousands of innocent people—into a platform to launch a shocking human rights crisis. The government used the same formula it had for centuries before 9/11: launch foreign wars and establish domestic policies to oppress its own people in service of some broader ideological conflict. Here, as before, in transforming politics, law, and culture, the United States constructed a dominant, destructive, and enduring 9/11 ideology building upon narratives of xenophobia, maximal security measures, and military power and profit that still largely permeates every facet of public life nearly 25 years later.

64. This human rights crisis generated by the Bush administration—which has gone unremediated or been further fueled by the subsequent Obama, Trump, and Biden administrations since—has global and domestic facing dimensions that have been mutually reinforcing. The Bush administration unleashed a so-called "global war on terror"—unlimited in time or scope—against a constructed ideological enemy. The United States invaded Afghanistan and Iraq, wreaking fire, terror, and destruction on their populations; dotted the globe with secret detention sites to administer a coordinated regimen of torture and brutality, all of which was authorized by lawyers at the highest levels of the Justice Department; and constructed the Guantánamo Bay prison deliberately outside the law to torture and detain anyone even minimally suspected of associations with terrorist groups, as long as they were Muslim. The post-9/11 approach reified a xenophobic conception of the U.S. border—a "Homeland," which valorized citizenship over foreign-born, Us vs. Them.

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[85] *See, e.g.*, Peled, Injustice , supra note 84; 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.
[86] *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).
[87] *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.

65. The U.S. passed draconian legislation and implemented policies that further marginalized and criminalized those most vulnerable within the United States through immigration registrations, sweeps and deportations, racial and religious profiling, mass surveillance, and the militarization of local police departments and the entire Southern border. The immigration system was reorganized to maximize detention and deportation.

66. The post-9/11 policies in the name of counterterrorism ensured that the largest federal agency in the U.S. would be the new Department of Homeland Security, overshadowing the budget and bureaucracy of the Department of Education, Department of the Interior, and Department of Health and Human Services. It facilitated profiteering for private military contractors, surveillance companies, and private detention centers, solidifying a symbiotic corporate-security state that overwhelmingly utilized and exploited the counterterrorism framework for profit.

67. Today, the enduring post-9/11 ideology built upon long standing narratives of xenophobia, maximal security measures, and military power and profit, has seeped and metastasized throughout all aspects of present-day law and politics. Amid ongoing wars in the Middle East, extrajudicial detentions and killings in Latin America and the Caribbean, abandonment of allies and embrace of dictators, and the targeting of immigrants and deployment of military troops inside the United States, Guantánamo remains an enduring site and symbol of U.S. lawlessness in the aftermath of the September 11 attacks.

68. The Center for Constitutional Rights has led the effort to bring justice to Guantánamo over the past two-plus decades. We were the first organization to file a case on behalf of men detained there, the first civilians to go there, and the first to meet with a survivor of the Central Intelligence Agency (CIA) torture program. We organized hundreds of attorneys to ensure that anyone held at Guantánamo who wanted legal representation could have it. We have made hundreds of trips to the base to visit our clients and advocated for them in legal proceedings from Guantánamo to the U.S. Supreme Court to the International Criminal Court.

69. Today, of the 780 men and boys, all Muslim, sent to Guantánamo Bay, Cuba, where they were tortured, abused, and detained indefinitely without access to fair trials, 15 of those men remain at Guantánamo, including our client Guled Duran, who has been approved for transfer for years. Four face charges related to 9/11 before a military commission, but the case has collapsed and will never be resolved through a contested trial because the defendants were tortured by the CIA. A fifth defendant was ruled incompetent to stand trial due to harm from his torture.

70. Failure to end the military commissions means that the detention facility at Guantánamo Bay will continue to operate largely as it has since the U.S. military occupied the territory more than a century ago—as an offshore prison intended to hold individuals indefinitely outside of U.S. and international law. Indeed, for the last seven months, the Trump administration has exploited the failure of prior administrations to close the prison, using it unlawfully to terrorize and detain hundreds of immigrants transported there directly from the United States, many of whom are later sent to other countries without individualized regard to whether they might face torture and persecution.

71. Under the current Trump administration, the United States government has expanded its abuses using the same "national security" and counterterrorism justifications recalling the sordid history of the United States' extraordinary renditions to foreign torture sites and the Guantánamo Bay prison facility. The United States and the Republic of El Salvador entered into an unprecedented agreement to transfer individuals across borders into the notoriously brutal Centro de Confinamiento del Terrorismo (CECOT) in blatant violation of international human rights obligations. The agreement and reported actions constitute serious violations of international law, including the prohibition against torture and non-refoulement, as well as basic principles of due process and humane treatment.

72. Since October 2023, there has been an upsurge in attempts to crack down on advocacy for Palestine in the United States, including escalating demands and state action to weaponize antiterrorism laws against student and faculty activists. These efforts are a dangerous attack on constitutionally protected speech and association. They also represent the culmination of a decades-long campaign by Israel-aligned organizations, including the Anti-Defamation League, to expand U.S. antiterrorism law to turn it against advocates for Palestinian liberation.

73. As the Trump administration directly targets and attacks civil and human rights, it is fueling a new human rights crisis. Civil society and government institutions, such as the International Criminal Court, human rights organizations, human rights defenders, migrants, immigrants, and political opponents are increasingly being delegitimized, criminalized, and dehumanized using counterterrorism rhetoric, policies, and tactics built on this 9/11 legacy.

74. In the latest example of dangerous expansion, President Trump has reportedly authorized the CIA to conduct covert operations in Venezuela and what appears to be the increasingly likely use of force on land in addition to the already many unlawful killings at sea. As the Trump administration prepares to wage war on Venezuela—a grossly illegal act—Trump and his aides have made the fantastical claim to make a case for war that Venezuela poses a grave threat to the security of the United States by producing and trafficking drugs. Venezuela plays virtually no role in the fentanyl trade. The Trump administration claims Venezuelan president Nicolás Maduro heads a drug cartel, which it recently designated as a foreign terrorist organization, but it is doubtful that such a cartel even exists. Regardless, Trump does not have the authority to attack Venezuela. Under international law, a country's involvement in drugs, no matter how extensive, does not make it a legitimate target of military force.

75. Since the inception of the Center for Constitutional Rights nearly six decades ago, we have stood in solidarity with clients, partners, and their communities fighting for justice and liberation and in opposition to U.S. intervention and military force. From our clients at Guantánamo Bay, our Iraqi clients who survived torture at the notorious Abu Ghraib prison between 2003-2004 during the U.S. invasion of Iraq, and the detention and attempted deportation of Mahmoud Khalil and Dr. Badar Khan Suri to the bilateral agreement with El Salvador to detain and torture migrants from Venezeula, and the murder and extrajudicial killing in the Caribbean, the counterterrorism framework provides the throughline and must be dismantled.

Conclusion

76. We know that courts and legal interventions alone cannot dismantle the statist ideology of "counterterrorim" that the U.S. entrenched and expanded after 9/11, any more than courts could alone dismantle the ideology of settler genocide or white supremacy on which the United States is founded.

77. After nearly 25 years, and in partnership with movements for social justice across the country and the globe, we commit to using all efforts to dismantle—not just attack—the unaccountable national security counterterrorism state and the apparatus of American Exceptionalism it brings to inflict so much harm in the United States and abroad. Alongside our partners demanding abolition of exorbitant carceral systems across the country, we reject the fear propagated by racialized frameworks of "counterterrorism" and "national security", and we demand that the trillions of dollars of resources that fuel U.S. militarism and the domestic national security apparatus in the name of counterterrorism be redirected to support the flourishing of our communities.

78. We urge all United Nations Special Procedures mandate holders, including the Special Rapporteur on Counterterrorism and Human Rights, to interrogate and reassess the utility of any efforts that may result in further entrenching this dangerous and destructive counterterrorism framework that has helped usher in rising authoritarianism around the world and helped to smooth the way for multiple genocides with impunity; and take all necessary measures to dismantle the counterterrorism framework and the ideologies that underpin war, detention, and impunity.

79. We must urgently stop the use and expansion of antiterrorism laws and will stand by our clients, partners, and innumerable others who have been harmed by the ideology and violent manifestations of "terrorism", fighting for accountability in their names and in an effort to build a better world—with justice, humility, and love.