



# RUTGERS LAW RECORD

*The Internet Journal of Rutgers School of Law | Newark*

[www.lawrecord.com](http://www.lawrecord.com)

Volume 41

2013-2014

## QUANTITY VS. QUALITY: THE MISDIRECTED WAR ON IMMIGRATION AND THE SWEEPING EFFECTS OF THE TIER III TERRORIST ORGANIZATION

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*“Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tossed, to me: I lift my lamp beside the golden door.”* —Emma Lazarus’ poem, inscribed on the Statue of Liberty<sup>1</sup>

### I. THE AFTERMATH OF SEPTEMBER 11<sup>TH</sup>

Present day terrorism has created an unprecedented amount of unique challenges to international peace and security. Many overzealous governments have taken a quantity over quality approach in passing counterterrorism laws, leaving their countries lost in a web of misdirected policies. National counterterrorism objectives have had an exceptional impact on the immigration policies of the United States, particularly following the terrorist attacks of September 11<sup>th</sup>. The *9/11 Commission Report* concluded that several of the hijackers could have been potentially excluded or removed were it not for a number of deficiencies in the immigration system.<sup>2</sup> Immigration reform was imperative, but the slew of legislative responses to September 11<sup>th</sup> was unprecedented and

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<sup>1</sup> Emma Lazarus, *The New Colossus* (1883), poem inscribed on a tablet within the pedestal of the Statute of Liberty National Monument.

<sup>2</sup> The 9/11 Commission Report, 384 (2004).

excessive.<sup>3</sup> One of the more notorious pieces of legislation resulting from September 11<sup>th</sup> was the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, more commonly known as the Patriot Act. Not only did the Patriot Act infringe on Americans' fundamental liberties, but it also imposed excessive immigration reform. This paper intends to explore the multitude of shortcomings with the Patriot Act's creation of the Tier III terrorist organization, a provision that has wasted copious amounts of time and resources by investigating individuals that pose *no threat* to the United States. Time and resources better spent enforcing laws denying relief to individuals that actually pose a threat to the United States.<sup>4</sup>

## II. THE THREE CLASSIFICATIONS OF TERRORISTS ORGANIZATIONS

In 2001, the Patriot Act created three classifications of terrorist organizations.<sup>5</sup> Tier I terrorist organizations are foreign organizations that pose a threat to the United States by “engag[ing] or retain[ing] the capability and intent to engage in terrorist activity or terrorism . . . .”<sup>6</sup> Tier I terrorist organizations are subject to bank account freezes, criminal penalties, and immigration

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<sup>3</sup> Legislative responses include Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. No. 107156, 115 Stat. 272 (26 Oct. 2001); Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108458, 118 Stat. 3638; REAL ID Act of 2005, Pub. L. No. 109113, 119 Stat. 302 (11 May 2005). For an overview of the legislation post-September 11<sup>th</sup>, see “Racial Profiling of Immigrant Communities,” In *Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States* (New York: Amnesty International USA, 2004).

<sup>4</sup> Tier I and Tier II terrorist organizations, discussed below, deny relief to a wide-range of individuals that pose a potential threat to the United States. In addition, there are a slew of other grounds that bar dangerous individuals. An individual can be denied admission from the United States if there are reasonable grounds to believe that they will commit *any unlawful activity* in the United States. INA § 212(a)(3)(A)(ii). Further, an individual may be found inadmissible or deportable if they have committed acts that constitute a crime involving moral turpitude. INA § 212(a)(2)(A)(i) and INA § 237 (a)(2)(A)(i). A crime of moral turpitude “is a reprehensible act committed with an appreciable level of consciousness or deliberation.” *Partyka v. Attorney Gen. of U.S.*, 417 F.3d 408, 414 (3d Cir. 2005). “[W]here knowledge is a necessary element of a crime under a particular criminal statute, moral turpitude inheres in that crime.” *Michel v. INS*, 206 F.3d 253, 263 (2d Cir. 2000). Accordingly, a wide-range of activities can be classified as a crime involving moral turpitude. *See also* U.S. Dep’t of State, Defining “Moral Turpitude,” 9 Foreign Affairs Manual (FAM) 40.21(a), N2.3-1, N2.3-3 (2010), available at [www.state.gov/documents/organization/86941.pdf](http://www.state.gov/documents/organization/86941.pdf).

<sup>5</sup> This portion of the legislation is codified at INA § 212(a)(3)(B)(vi).

<sup>6</sup> Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214, adding INA §219. 8 U.S.C.A. § 1189 (a)(1).

sanctions<sup>7</sup> and include organizations such as HAMAS, the Shining Path, al-Qa'ida, and al-Shabaab.<sup>8</sup>

Tier II terrorist organizations are foreign organizations that engage in terrorist activity or provide material support to further terrorist activity.<sup>9</sup> Tier II terrorist organizations are subject to immigration sanctions only and include organizations such as the Lord's Resistance Army, the Revolutionary United Front, and the Libyan Islamic Fighting Group.<sup>10</sup> Tier I and Tier II terrorist

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<sup>7</sup> 18 U.S.C. §§2339A and 18 U.S.C. §§2339B; *See also* Arthur L. Rizer, *The National Security Implications of Immigration Law* (Chicago, Ill.: American Bar Association, Standing Committee on Law and National Security, 2012), 106.

<sup>8</sup> The other Tier I terrorist organizations are the Abu Nidal Organization (ANO), Abu Sayyaf Group (ASG), Aum Shinrikyo (AUM), Basque Fatherland and Liberty (ETA), Gama'a al-Islamiyya (Islamic Group) (IG), Harakat ul-Mujahidin (HUM), Hizballah, Kahane Chai (Kach), Kurdistan Workers Party (PKK) (Kongra-Gel), Liberation Tigers of Tamil Eelam (LTTE), National Liberation Army (ELN), Palestine Liberation Front (PLF), Palestinian Islamic Jihad (PIJ), Popular Front for the Liberation of Palestine (PFLP), PFLP-General Command (PFLP-GC), Revolutionary Armed Forces of Colombia (FARC), Revolutionary Organization 17 November (17N), Revolutionary People's Liberation Party/Front (DHKP/C), Islamic Movement of Uzbekistan (IMU), Real Irish Republican Army (RIRA), United Self Defense Forces of Colombia (AUC), Jaish-e-Mohammed (JEM), Lashkar-e Tayyiba (LeT), Al-Aqsa Martyrs Brigade (AAMB), Asbat al-Ansar (AAA), al-Qaida in the Islamic Maghreb (AQIM), Communist Party of the Philippines/New People's Army (CPP/NPA), Jemaah Islamiya (JI), Lashkar i Jhangvi (LJ), Ansar al-Islam (AAI), Continuity Irish Republican Army (CIRA), Libyan Islamic Fighting Group (LIFG), al-Qaida in Iraq (AQI), Islamic Jihad Union (IJU), Harakat ul-Jihad-i-Islami/Bangladesh (HUJI-B), Revolutionary Struggle (RS), Kata'ib Hizballah (KH), al-Qa'ida in the Arabian Peninsula (AQAP), Harakat ul-Jihad-i-Islami (HUJI), Tehrik-e Taliban Pakistan (TTP), Jundallah, Army of Islam (AOI), Indian Mujahideen (IM), Jemaah Anshorut Tauhid (JAT), Abdallah Azzam Brigades (AAB), Haqqani Network (HQN), Ansar al-Dine (AAD), Boko Haram, Ansaru, al-Mulathamun Battalion, Ansar al-Shari'a in Benghazi, Ansar al-Shari'a in Darnah, and Ansar al-Shari'a in Tunisia. Bureau of Counterterrorism, "Foreign Terrorist Organizations," U.S. Department of State, Sept. 28, 2012, available at <http://www.state.gov/j/ct/rls/other/des/123085.htm>.

<sup>9</sup> INA § 212(a)(3)(B)(vi)(II).

<sup>10</sup> The other Tier II terrorist organizations are the Afghan Support Committee, Al Taqwa Trade, Property and Industry Company Ltd., Al-Hamati Sweets Bakeries, Al-Ittihad al-Islami (AIAD), Al-Manar, Al-Ma'unah, Al-Nur Honey Center, Al-Rashid Trust, Al-Shifa Honey Press for Industry and Commerce, Al-Wafa al-Igatha al-Islamia, Alex Boncayao Brigade (ABB), Anarchist Faction for Overthrow, Army for the Liberation of Rwanda (ALIR), Asbat al-Ansar, Babbar Khalsa International, Bank Al Taqwa Ltd, Black Star, Continuity Irish Republican Army (CIRA), Darkazanli Company, Dhamat Houmet Daawa Salafia, Eastern Turkistan Islamic Movement, First of October Antifascist Resistance Group (GRAPO), Harakat ul Jihad i Islami (HUJI), International Sikh Youth Federation, Islamic Army of Aden Islamic Renewal and Reform Organization, Jamiat al-Ta'awun al-Islamiyya, Jamiat ul-Mujahideen (JUM), Japanese Red Army (JRA), Jaysh-e-Mohammed, Jayshullah, Jerusalem Warriors, Lashkar-e-Tayyiba (LET), Loyalist Volunteer Force (LVF), Makhtab al-Khidmat, Moroccan Islamic Combatant Group, Nada Management Organization, New People's Army (NPA), Orange Volunteers (OV), People Against Gangsterism and Drugs (PAGAD), Red Brigades-Combatant Communist Party (BR-PCC), Red Hand Defenders (RHD), Revival of Islamic Heritage Society (Pakistan and Afghanistan offices -- Kuwait office not designated), Revolutionary Proletarian Nucleus, Salafist Group for Call and Combat (GSPC), The Allied Democratic Forces (ADF), The Islamic International Brigade, The Pentagon Gang, The Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs, The Special Purpose Islamic Regiment, Tunisian Combat Group, Turkish Hizballah, Ulster Defense Association (a.k.a. Ulster Freedom Fighters), Ummah Tameer E-Nau (UTN) and Youssef M. Nada & Co. Gesellschaft M.B.H. U.S. Department of State, "Terrorist Exclusion List," Dec. 29, 2004, available at <http://www.state.gov/j/ct/rls/other/des/123086.htm>.

organizations require the Bureau of Counterterrorism<sup>11</sup> to prepare a detailed administrative record demonstrating that the statutory criteria for the designation has been satisfied.<sup>12</sup> After consultation with other members of the executive, the Secretary of State notifies Congress of its intent to designate an organization.<sup>13</sup> If designated as Tier I, the organization's name is published in the *Federal Register* whereas a Tier II designation is published in the State Department's Terrorist Exclusion List (TEL). The designation may either be revoked through an order of Congress or based upon a finding that there was a change in circumstances.<sup>14</sup> A Tier I terrorist organization may also seek judicial review of the designation within 30 days of publication in the *Federal Register*.<sup>15</sup>

Tier III terrorist organizations were originally defined by the 2001 Patriot Act as "any group of two or more individuals, whether organized or not, which engages in terrorist activity."<sup>16</sup> In other words, a Tier III terrorist organization consists of two or more individuals engaged in any type of armed resistance considered unlawful by a government. This definition, "mocked as 'two guys and a gun,' sweeps so broadly that it undoes the normal meaning of an 'organization.'"<sup>17</sup> There is no central authority to determine what constitutes a Tier III terrorist organization and therefore the designation is made on a case-by-case basis with no official publication of the designation. The REAL ID Act of 2005 expanded the definition of a Tier III terrorist organization to include any

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<sup>11</sup> The Bureau of Counterterrorism was created by the Department of State as a means to "develop[] coordinated strategies to defeat terrorists abroad and in securing the cooperation of international partners." Bureau of Counterterrorism, Department of State, available at <http://www.state.gov/j/ct/>.

<sup>12</sup> 8 U.S.C. § 1882(a)(3)(A).

<sup>13</sup> 8 U.S.C. § 1882(a)(2)(a). The Secretary of State must consult with the Attorney General and the Secretary of the Treasury before notifying Congress of its intent to designate a Tier I terrorist organization. See 8 U.S.C. § 1882(d)(4). The Secretary of State need only consult with the Attorney General before notifying Congress of its intent to designate a Tier II terrorist organization. Department of State, "Terrorist Exclusion List," Dec. 29, 2004, <http://www.state.gov/j/ct/rls/other/des/123086.htm>.

<sup>14</sup> "The Congress, by an act of Congress, may block or revoke a designation. . . . The Secretary may revoke a designation . . . at any time, [if] the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation; or . . . the national security of the United States warrants a revocation." 8 INA § 1189(a)(5) & (6).

<sup>15</sup> 8 U.S.C.A. § 1189(c).

<sup>16</sup> INA § 202(a)(3)(B)(vi)(III).

<sup>17</sup> Maryellen Fullerton, *Terrorism, Torture, and Refugee Protection in the United States*, Refugee Survey Quarterly, Vol. 29, No. 4, UNHCR [2011], p. 13.

group “whether organized or not, [that has] a subgroup which engages in, terrorist activities.”<sup>18</sup> Consequently, a non-violent movement can be characterized as a terroristic if a small group associated with this movement has *any* violent tendencies.

### III. Deconstructing the Tier III Definition

The Tier III terrorist designation simply does not make the distinction between a terrorist organization and a legitimate resistance group. As a result, individuals rebelling against an oppressive and brutal regime are unjustly categorized as terrorists. This section will elaborate on three troubling components that make the Tier III terrorist definition overreaching and consequentially counterproductive in fighting terrorism: (A) the absence of a specific intent necessary to commit a terrorist activity; (B) the wide-range of acts that constitute “engaging” in terrorist activity; and (C) the lack of any definition or guidelines as to what constitutes a subgroup of a terrorist organization.

#### A. Terrorist Activity

To be considered a Tier III terrorist organization, a group or two or more individuals, whether organized or not, must engage in *terrorist activity*. Terrorist activity is any activity considered unlawful by the government of: (1) the United States; or (2) the country where the activity was committed. Terrorist activity need not necessarily pose a threat to the United States and includes the threat, attempt, or conspiracy to engage in such activity.<sup>19</sup> United States immigration law provides a non-exhaustive list of activities traditionally thought of as terroristic, including hijacking, taking an individual hostage to compel a certain act, and assassination.<sup>20</sup> One of these listed activities, the use of a weapon for reasons other than personal enrichment,<sup>21</sup> does not require any terroristic motive. Without a prescribed motive, legitimate armed resistance taken in self-defense or in defiance against a tyrannical government has been labeled as terroristic, regardless of whether such act was in

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<sup>18</sup> INA § 212(a)(3)(B)(vi)(III).

<sup>19</sup> INA § 212(a)(3)(B)(iii)(VI).

<sup>20</sup> INA § 212(a)(3)(B)(iii).

<sup>21</sup> INA § 212(a)(3)(B)(iii)(V).

absolute compliance with the laws of war.<sup>22</sup> For example, Talal served as a linguist and translator for the United States forces in Iraq. “He received extensive support and commendation from the [United States] officers he worked with for performing the ‘highest quality’ of linguistic support despite the ‘obvious risk to life and limb’ and a ‘substantial amount of personal sacrifice and risk exposure.’”<sup>23</sup> Talal subsequently sought refuge in the United States and was granted asylum. However, he was denied permanent residency based upon his prior involvement with the Kurdish Democratic Party (KDP), an organization that his denial letter described as “conduct[ing] full-scale armed attacks and help[ing] to incite rebellions against [Suddam] Hussein’s regime . . . .”<sup>24</sup> Talal was being punished based on an affiliation with a party that “broke the laws” of a regime that had conducted a full-scale genocide against the Kurds of northern Iraq<sup>25</sup> and had been condemned by the UN Commission on Human Rights for the “widespread and extremely grave violations of human rights and of international humanitarian law . . . .”<sup>26</sup> This is just one of many examples demonstrating the illogical nature of the expansive definition of terrorist activity in the Tier III context. The United States’ inability to distinguish legitimate resistance groups has not only wasted a significant amount of time and resources targeting individuals who do not pose a threat to the United States but it also discourages individuals from supporting the United States abroad based on fear of future penalization.

### **B. Engaging In Terrorist Activity<sup>27</sup>**

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<sup>22</sup> In *Khan v. Holder*, the respondent argued that terrorist activity in fact “incorporate[d] international law, and thus exclude[d] legitimate armed resistance against military targets. . . .” The court disagreed, simply concluding that the plain text of law did not allow for such a distinction. 584 F.3d 773, 781 (9th Cir. 2009).

<sup>23</sup> *Denial and Delay: The Impact of the Immigration Law’s “Terrorism Bars” on Asylum Seekers and Refugees in the United States*, HUMAN RIGHTS FIRST (Nov. 2009), available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/RPP-DenialandDelay-FULL-111009-web.pdf>, 46.

<sup>24</sup> *Id.*

<sup>25</sup> “Saddam charged with genocide of Kurds,” *New York Times*, Apr. 5, 2006, <http://www.nytimes.com/2006/04/05/world/05iht-saddam.html?pagewanted=all>.

<sup>26</sup> United Nations, Yearbook of the United Nations: 2000 Edition (USA: United Nations Publications, 2002), vol. 54 p. 762.

<sup>27</sup> The material support bar is extremely problematic and countless scholarship has been devoted to this issue alone. This section is going to only address the ways the material support bar intersects with the Tier III terrorist designation.

*Engaging* in terrorist activity includes committing, inciting, preparing, planning, gathering information, soliciting funds, or providing some type of material support for a terrorist organization.<sup>28</sup> Material support is not explicitly defined but examples include providing shelter, transportation, weapons, funds, training, or expert advice.<sup>29</sup> An individual may be held liable for material support rendered to an organization that has committed or plans to commit terrorist acts. Moreover, the intent of the individual providing support is not taken into account thereby meaning nonviolent advocacy with a terrorist organization amounts to engaging in terrorist activity.<sup>30</sup> There is also no de minimis exception so long as the support is “material.” In *Sing-Kaur v. Ashcroft*, the Third Circuit referenced the dictionary definition of “material” as a “logical connection with the consequential facts[,] ‘significant’ [or] essential . . . .”<sup>31</sup> The courts have broadly interpreted this provision, finding any support to be material that has some effect on the ability of the terrorist organization to accomplish its goals.<sup>32</sup> Therefore, even the most modest amount of support has the potential to free up more resources for terrorist activity thereby rendering it material.<sup>33</sup> Accordingly, someone who provides one night of shelter to an individual who has engaged in terrorist activity can be liable for the worst acts of a terrorist organization.<sup>34</sup>

The material support bar is even more problematic when applied to the unpredictable designation of a Tier III terrorist organization. The 2001 Patriot Act originally allowed an exception for individuals who did not know, or should not have reasonably known, that material support was

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<sup>28</sup> INA § 212(a)(3)(B)(iv).

<sup>29</sup> INA § 212(a)(3)(B)(iv)(VI). Similar to the listed activities for terrorist activities, the examples for “engaging in terrorist activity” are also non-exhaustive.

<sup>30</sup> See *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010); See also *Viegas v. Holder*, 699 F.3d 798 (4th Cir. 2012).

<sup>31</sup> *Sing-Kaur v. Ashcroft*, 385 F.3d 292, 298 (3d. Cir. 2004), quoting *Black's Law Dictionary* 991 (7th ed. 1999).

<sup>32</sup> *In re S.K.*, 23 I&N Dec. 936, 945 (BIA 2006).

<sup>33</sup> See, e.g., *Hosseni v. Gonzales*, 471 F.3d 953 (9th Cir. 2006) (individual who sold newspapers and who called members to facilitate recruitment was found to have engaged in terrorist activity); *But see Cheema v. Ashcroft*, 383 F.3d 848 (9th Cir. 2004) (individual was found to have not engaged in terrorist activity solely based upon money sent to aid Sikh widows and orphans).

<sup>34</sup> The justification being that “cutting off funding for terrorism would be seriously compromised if terrorist organizations could avoid liability by simply pooling together small donations to fund a terrorist act.” *Boim v. Quranic Literary Inst.*, 291 F.3d 1000, 1015 (7th Cir. 2002).

rendered to a Tier III organization.<sup>35</sup> In 2005, the REAL ID Act heightened this standard, requiring applicants to provide *clear and convincing evidence*<sup>36</sup> that they did not know or should not have reasonably known that material support was rendered to a Tier III organization.<sup>37</sup> Clear and convincing evidence of a subjective mental state poses many challenges. It is difficult to understand how a United States adjudicator can determine what an individual in a war-torn and conflict-ridden country “should have known” in a given situation.<sup>38</sup> For areas consumed by civil unrest, it can be impossible to know the identity of or predict the future actions of everyone you interact with. For example, any storeowner in a conflict zone can be found to have rendered material support if they sold a good or product in the course of business to an individual later found to have engaged in terrorist activity. In February 2014, the Obama administration granted a new set of exemptions for individuals whose material support is deemed unintentional or insignificant. The actual effect of such exemptions is yet to be seen.<sup>39</sup>

### C. Subgroups of a Terrorist Organization

The REAL ID Act of 2005 added “subgroups” of terrorist organizations to the Tier III definition.<sup>40</sup> There is no statutory definition of what constitutes a subgroup, though case law has indicated that such ties can be highly tenuous and may even include coalition partners. For example, Salih was granted asylum based upon his membership in the Democratic Unionist Party (DUP). The

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<sup>35</sup> “The ‘reasonable ground to believe standard’ is akin to the familiar probable cause standard.” In *Matter of U-H-*, 23 I&N DEC. 355, 356 (BIA 2002). The Patriot Act only applied this reasonable ground to believe standard in the Tier III context.

<sup>36</sup> “In order to meet the standard and prove something by clear and convincing evidence, a party must prove that it is substantially more likely than not that it is true.” Legal Information Institute, “Clear and Convincing Evidence,” *available at* [http://www.law.cornell.edu/wex/clear\\_and\\_convincing\\_evidence](http://www.law.cornell.edu/wex/clear_and_convincing_evidence) (last visited Apr. 19, 2014).

<sup>37</sup> INA § 212(a)(3)(B)(iv)(V)(cc).

<sup>38</sup> *Viegas*, 699 F.3d at 802-03.

<sup>39</sup> Federal Register, *Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act*, *available at* [https://www.federalregister.gov/articles/2014/02/05/2014-02357/exercise-of-authority-under-section-212d3bi-of-the-immigration-and-nationality-act?utm\\_content=next&utm\\_medium=PrevNext&utm\\_source=Article](https://www.federalregister.gov/articles/2014/02/05/2014-02357/exercise-of-authority-under-section-212d3bi-of-the-immigration-and-nationality-act?utm_content=next&utm_medium=PrevNext&utm_source=Article); Federal Register, *Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act*, *available at* [https://www.federalregister.gov/articles/2014/02/05/2014-02353/exercise-of-authority-under-section-212d3bi-of-the-immigration-and-nationality-act?utm\\_content=previous&utm\\_medium=PrevNext&utm\\_source=Article](https://www.federalregister.gov/articles/2014/02/05/2014-02353/exercise-of-authority-under-section-212d3bi-of-the-immigration-and-nationality-act?utm_content=previous&utm_medium=PrevNext&utm_source=Article).

<sup>40</sup> INA § 212(a)(3)(B)(vi)(III).



DUP is “the oldest political party in Sudan\_[and] the only Sudanese party to have governed the country through democratic elections . . . .”<sup>41</sup> After Salih left Sudan, the Sudan’s People Liberation Army (SPLA), the South Sudanese rebel group, joined an alliance that the DUP was already a member of. As a result, the United States denied Salih permanent residency based on the reasoning that the SPLA was a subgroup of the DUP thereby making DUP a terrorist organization. This logic was not based on any action taken by the DUP but, rather, based upon the membership of both the SPLA and DUP in the same alliance.<sup>42</sup> As evidenced by Salih’s case, any type of affiliation can render an organization a subgroup. In reality, an organization should only be considered a subgroup if they play a fundamental part in the larger organization. At the very least, Congress should make some attempt to define what constitutes a subgroup rather than leaving it up to the whim of an individual adjudicator.

#### **IV. Addressing the Failures of the Tier III Designation**

The above discussion proffers some provisional measures that could lessen the sweeping reach of the Tier III terrorist designation. Ultimately, the end goal should be the eradication of the Tier III terrorist organization given its imprecision in targeting threats to the United States. Senators Patrick Leahy (D-VT) and Carl Levin (D-MI) introduced the Refugee Protection Act of 2010, a momentous bill that, among other things, would have eliminated the Tier III terrorist designation.<sup>43</sup> This bill has since died, thereby leaving us with arbitrary waivers that may be applied to an organization<sup>44</sup> or a specific set of circumstances.<sup>45</sup> Consideration of such waivers does not even take

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<sup>41</sup> *Political Parties in the Fray*, ALJAZEERA, Apr. 7, 2010, available at <http://www.aljazeera.com/focus/sudanelection/2010/04/2010479459467505.html>.

<sup>42</sup> *Denial and Delay*, *supra* note 23, at 28.

<sup>43</sup> S. 3113, 111th Congress (2010). The legislation was introduced by Senators Patrick Leahy and Carl Levin on 15 March 2010, and referred to the Judiciary Committee on May 19, 2010. s. 4(4).

<sup>44</sup> Consolidated Appropriations Act of 2008 (CAA), Pub. L. No. 110-161, 121 Stat. 1844 (Dec. 26, 2007). Exemptions include Karen National Union, Karen liberation Army, Chin National Front, Chin National Army, Chin National League for Democracy, Kayan New Land Party, Arakan Liberation Party, Karenni National Progressive Party, Appropriate

place “until the applicant has already been ordered deported and that order is considered administratively ‘final,’ [which can] result[] in years of unnecessary delay and, in some cases, prolonged detention, as well as significant expense to the government. . . .”<sup>46</sup> A scheme to “de-list” Tier III organizations through these waivers is seemingly complicated when they are not even listed in the first place. As explained by the senior director of the Hebrew Immigrant Aid Society, “Nobody thinks they're a threat but we're spending literally hundreds of hours of government staff time to try to figure out how we can come up with a procedure to call them 'not terrorists' . . . .”<sup>47</sup> The “war on terror” will remain convoluted if it continues to be fought with fear-based legislation that fails to serve the national security interests of the United States. Productive and sustainable inroads to counterterrorism can only be made through the enforcement of clear, objective, and well thought out policies.

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groups affiliated with the Hmong, appropriate groups affiliated with the Montagnards, Cuban Alzados, and Tibetan Mustangs.

<sup>45</sup> One of many examples is the new set of exemptions mentioned above that provides an exemption for individuals who have provided insignificant or unintentional support in very specific circumstances.

<sup>46</sup> *Denial and Delay*, *supra* note 23, at 10.

<sup>47</sup> Gregory Pratt, “The Terrorists Next Door,” *Minneapolis City Pages*, Apr. 25, 2012, <http://www.citypages.com/2012-04-25/news/the-terrorists-next-door/2/>.