

BRENNAN  
CENTER  
FOR JUSTICE

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December 2, 2015

The Honorable Chuck Grassley  
Chairman  
Senate Judiciary Committee  
135 Hart Senate Office Building  
Washington, DC 20510

The Honorable Patrick J. Leahy  
Ranking Member  
Senate Judiciary Committee  
437 Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Grassley, Ranking Member Leahy, and Judiciary Committee Members:

The Brennan Center for Justice at NYU Law School strongly opposes S. 247, which the Senate Judiciary Committee should reject as an unconstitutional infringement on U.S. citizenship rights that would not increase the security of the United States in any meaningful way.

S. 247 would amend 8 U.S.C. §1481 to add a provision stripping citizenship for “becoming a member of, or providing training or material assistance to, any foreign terrorist organization designated under section 219.” To be clear, the Brennan Center believes that providing funds, arms, combat services, or the like for the purpose of supporting terrorist activities is an extremely serious offense. Such activities already are prohibited by a broad statute carrying severe criminal penalties. Just this year, Congress increased the maximum sentence for a material support conviction to 20 years.<sup>1</sup> This and multiple other provisions of law give our government a powerful arsenal of legal options for dealing with Americans who support foreign terrorist groups.

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<sup>1</sup> See Timothy McGrath, *The USA Freedom Act Includes a Controversial Provision that Nobody is Talking About*, GLOBALPOST (Jun. 4, 2015), <http://www.globalpost.com/article/6571280/2015/06/04/freedom-act-material-support-terrorism>.

Enacting S. 247 would not meaningfully enhance these options. The U.S. Supreme Court has recognized citizenship as a constitutionally-protected right that Congress cannot take away absent a knowing and voluntary waiver of that right.<sup>2</sup> Thus, the statute, even as amended by S. 247, would require that the individual suspected of materially assisting the designated foreign terrorist organization do so “with the intention of relinquishing United States nationality” in order for citizenship to be revoked. Given the requirement of an affirmative intention to relinquish citizenship in order for this provision to come into effect, it is entirely unclear whether it is necessary or useful in any way in protecting our national security.

On the other hand, the law threatens to chill entirely lawful activity. The Brennan Center and other civil rights organizations have long criticized the material support laws for being unconstitutionally vague and overbroad, potentially inhibiting activities protected by the First Amendment.<sup>3</sup> Indeed, the law is so broadly written, it could be construed to criminalize the provision of humanitarian aid to women and children in regions of war-torn countries that have fallen under terrorist control, as well as counseling in non-violent conflict resolution. The concern about the chilling effect of material support laws would only be exacerbated by the additional penalty of loss of citizenship.

The new provision created by S. 247 raises an additional due process concern, because it does not require a criminal conviction for materially supporting terrorism in order to revoke citizenship, as is currently necessary for other criminal acts such as treason or conspiring to overthrow the government of the United States.<sup>4</sup> Without the procedural safeguard of a criminal trial and a finding of guilt beyond a reasonable doubt, Congress would be authorizing the revocation of citizenship based on a mere accusation. The government already has an almost unfettered authority to designate groups as foreign terrorist organizations, with little opportunity for groups to challenge their designation or even see the government’s evidence against them.<sup>5</sup> S. 247 would thus allow unnamed government officials to revoke an American’s citizenship on the basis of an unproven allegation of materially supporting a group that the government has only alleged, with secret evidence, to be a foreign terrorist organization. To say the least, this would represent an untenable expansion of arbitrary government authority, and would be inconsistent with constitutional due process requirements and American notions of limited government.

The Brennan Center for Justice respectfully urges you to oppose S. 247. Please contact Elizabeth Goitein (202-249-7192; [elizabeth.goitein@nyu.edu](mailto:elizabeth.goitein@nyu.edu)) if you have any questions.

Sincerely,



Elizabeth Goitein  
Co-Director, Liberty and National Security Program



Michael German  
Fellow

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<sup>2</sup> See *Afroyim v. Rusk*, 387 U.S. 253 (1967); *Vance v. Terrazas*, 444 U.S. 252 (1980).

<sup>3</sup> See, e.g., Brief for Academic Researchers and the Citizen Media Law Project as *Amici Curiae* in Support of Respondents/Cross-Petitioners, *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), available at [http://www.brennancenter.org/sites/default/files/legacy/Justice/humanitarian\\_v\\_holder\\_amicus.pdf](http://www.brennancenter.org/sites/default/files/legacy/Justice/humanitarian_v_holder_amicus.pdf).

<sup>4</sup> See 8 U.S.C. § 1481(a)(7) (2012).

<sup>5</sup> See 8 U.S.C. § 1189 (2012).