

This document serves as an FAQ and briefing about the crimes of material of support of terrorism. MLFA seeks to educate individuals about the state of the law in order to both empower them in their protected political activities and protect them from unintentional violations of the law as it stands.

Criminal Defense attorneys defend their clients against charges and allegations made by the government. **The below information is generalized and aims to provide you with information about how the criminal statutes regarding “material support” of terrorism operate. If you have questions, concerns, or believe you are under investigation, please reach out to MLFA directly for individualized advice.**

MLFA’s Criminal Defense Department specializes in defending Muslims and others that are investigated by the FBI Counterterrorism division and charged with federal crimes related to terrorism and speech. MLFA provides direct representation pre-indictment through trial and in post-conviction proceedings. The most common among these charges are “attempted material support of foreign terrorist organization.”

### **What is “material support of a foreign terrorist organization”?**

There are several federal criminal statutes that prohibit various types of “support” of foreign terrorist organizations. 18 USC § 2339A, § 2339B, § 2339C, and § 2339D. These statutes criminalize:

**2339A** - providing material support or resources, or concealing or disguising the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of a list of terrorism-related offenses. Often charged as attempting to provide services/support to fighters who are engaged in terrorist activities as defined by US law.

**2339B** – providing (or attempting or conspiring to provide) material support or resources to a designated foreign terrorist organization (FTO). Often charged as attempting to provide financial support or personnel (themselves) to assist the FTO.

**2339C** – prohibitions against the financing of terrorism (or attempts or conspiracies to do so), including concealing or disguising the nature, source, ownership or location of resources knowing or intending they are to be provided to a foreign terrorist organization, or will be under the direction and control of the FTO.

**2339D** – prohibitions on receiving military-type training from an FTO.

### **Who decides what a foreign terrorist organization is? Can’t a criminal defense lawyer argue why their client doesn’t believe a resistance group are terrorists?**

The Secretary of State designates organizations as FTOs (including several organizations in Palestine). This designation can be made very broadly (if the foreign organization engages in terrorist activity, terrorism, or material support of terrorism, or retains the capability and intent to engage in terrorist activity; and the terrorist activity/terrorism threatens the security of U.S. nationals or national security of the U.S.). A designated FTO can petition the Secretary of State for revocation via administrative review two years after it has been designated, but that process is very limited.

Individuals charged criminally with material support of terrorism charges cannot challenge the designation of the FTO in their criminal case as a federal judge in that capacity cannot decide on FTO designation. A designated FTO itself can seek judicial review but that is limited as the judicial branch cannot review the question of whether the FTOs activities threaten U.S. nationals or national security.

## What can constitute material support? Only sending money, right?

No, the federal government has expanded the definition of what constitutes material support or resources. Some examples include:

- Sending money to aid organizations that also benefit members of a terrorist organization has been found to constitute material support.
- Giving contact information for someone to another individual has been charged as material support if it was given with the intention of helping that person travel abroad to marry someone in a terrorist organization.
- Joining an FTO, or helping someone else to join an FTO, or agreeing or attempting to join an FTO.
- Speech made in coordination with, or at the direction of, an FTO can potentially be charged as providing material support to a FTO.
- Sharing a link to the FTO's website where they raise money has been charged as attempted material support.

Material support and resources has been broadly defined. The only things that been specifically excluded are medical and religious supplies.

**NOTE:** For personnel, prosecution is only possible if the individual(s) were going to be provide to work under the FTO's direction or control, or to organize, manage, supervise, or otherwise direct the operations of the FTO. Similarly, speech is criminalized as potential material support only where it is under the direction of, or in coordination with FTOs or terrorists.

Direction and coordination/control has been established in many investigations by approaching the individual with an undercover who claims to be associated with the FTO.

**No one would do any of those things. They might have said some things online about it, but that's not real life, they're fine right?**

**There are a few serious speech concerns regarding "material support".**

### 1. Attempt

Discussing the possibility of providing any type of support, even humanitarian aid, that would *knowingly* benefit an FTO or its members, and then taking a substantial step (buying a ticket, sending a link) can be charged as attempted provision of material support.

### 2. Conspiracy

Many criminal charges for material support are charged as attempts and conspiracies. A conspiracy is when two or more people conspire to commit the offense and any one of them do any act to advance the conspiracy. This is essentially when a group, often including an undercover, agree that support should be provided to an FTO or terrorist and one of the individuals suggests a method for doing so.

### 3. Speech under direction of or in coordination with the FTO

As explained above, speech is only criminalized where it is made under the direction of or in coordination with the FTO. Speech activity that is made entirely independently of any FTO is protected. If you have questions or concerns about your speech or speech you have seen and want specific advice please reach out to MLFA's Criminal Defense department.

**Why would anyone agree to or attempt to support a terrorist organization online if they didn't intend to try and help that organization?**

**1. Entrapment and FBI undercover operations**

Many of the material support of terrorism charges brought in the last 10 years have been the result of an FBI undercover operation. The legal defense of entrapment has not been used as a successful defense because to prove entrapment the individual must not have been “predisposed”. In many of these cases the individual’s social media posts liking or supporting political or religious posts about the FTO or its activities have been used to show that the individual was predisposed to attempting, conspiring to or providing material support. Many layers of anti-Muslim, anti-Arab, and anti-Asian bias are at play in the courtroom as well which often cast sinister aspersions onto innocent online activity.

**2. Online world/young people/less inhibited/baited/isolated people**

Many young people believe their online speech and activity is less “real”, or doesn’t matter, or that hyperbole or passionate language don’t count as much. Unfortunately, in many recent material support cases, all of the “criminal conduct” took place online, among friends, in private chat groups, etc. The lack of inhibition on the internet can make people targets if there are concerns about their speech. If you have questions or concerns about your speech or online activity, please reach out to MLFA for specific advice.

**No one has been recently prosecuted yet for material support of Hamas, or any other FTO in Palestine, so it won't happen, right?**

FBI counterterrorism investigations take anywhere from several months to several years. In many of our cases involving undercover agents and informants, the investigation took more than two years. That included significant surveillance, informants and undercovers whom were close friends of the subject, and charges were brought on the basis of statements and online actions made on just a few days in that timeframe.

Let’s be clear, being pro-Palestine and speaking against the atrocities in Gaza is not equivalent with supporting Hamas, or any other FTO. Attempts to conflate the two in order to bring material support charges can only be successful if the individual knowingly provides, attempts to provide, or conspires to provide material support or resources to the FTO (or under the direction/control of the FTO, or speech under the direction of or in coordination with the FTO). For specific questions about the different statutes and how they operate please reach out to MLFA. Several individuals and organizations in the past have been prosecuted for providing material support to Hamas.

**When should one call a federal criminal defense attorney with expertise in national security law?**

Speaking to a criminal defense attorney with experience in these cases can educate you about where the lines of the law actually are and help you feel confident that your activities are protected and vetted. If you have questions or concerns, reach out to MLFA or other experienced legal counsel. The best chance of a successful resolution if you are under investigation is to seek legal counsel as early as possible. Don’t talk to law enforcement without an attorney present. It is not only your right, but is also critical for your protection to have an attorney present. Many individuals who are under investigation are never charged with a crime related to their activities, they are charged with making a false statement to the FBI in an unrepresented interview. MLFA provides representation at all stages of investigation, pre-trial, trial, and post-conviction proceedings for cases within our scope of representation.

**I have a client who is charged with material support or some other terrorism-related crime. I don't have experience in this area and need MLFA's expert assistance in this case.**

We provide both direct experienced representation in cases and partner with local attorneys as non-profit co-counsel to provide expert assistance in their cases. Please reach out to MLFA if you would like

assistance and advice about the unique and complex issues and procedures in a national security criminal case.