



September 17, 2014

RE: Oppose Cruz Bill S. 2779, Expatriate Terrorists Act; S. 2779 Is Unnecessary and Dangerous

Dear Senator:

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The American Civil Liberties Union urges you to refrain from cosponsoring—and oppose if offered—S. 2779, the Expatriate Terrorists Act, which is sponsored by Senator Ted Cruz. The bill would strip U.S. citizenship from Americans who have not been convicted of any crimes, but who are suspected of being involved with designated foreign terrorist organizations. S. 2779 is dangerous because it would attempt to dilute the rights and privileges of citizenship, one of the core principles of the Constitution. As the Supreme Court explained in 1967 in *Afroyim v. Rusk*, “the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. . . . [It creates] a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.” The bill is also unnecessary because existing laws already provide significant penalties for U.S. citizens who engage in acts of terrorism.

The Supreme Court has consistently found that citizenship is a fundamental constitutional right that cannot be taken away from U.S.-born citizens unless voluntarily renounced. An already overbroad federal statute, 8 U.S.C. § 1481, provides that an American can lose his or her nationality by performing either of the following broad categories of acts with the intention of relinquishing his or her nationality:

- acts that affirmatively renounce one’s American citizenship, such as taking an oath of allegiance to a foreign government or serving as an officer in the armed forces of a foreign nation; or
- committing crimes such as treason or conspiracy to overthrow the U.S. government, or bearing arms against the United States, “if and when [the citizen] is convicted thereof by a court martial or by a court of competent jurisdiction.”

The Expatriate Terrorists Act would add a new category of expatriating acts—“becoming a member of, or providing training or material assistance to, any

designated foreign terrorist organization.” This implicates several constitutional concerns.

First, the material assistance provision added by the bill would treat suspected provision of material assistance as an act that affirmatively renounces one’s American citizenship. Thus, unlike treason or conspiracy to overthrow the U.S. government, this provision would not require a prior conviction. It would only require an administrative finding by an unspecified government official that an American is suspected of providing material assistance to a designated foreign terrorist organization with the intention of relinquishing his or her citizenship. This provision would violate Americans’ constitutional right to due process, including by depriving them of citizenship based on secret evidence, and without the right to a jury trial and accompanying protections enshrined in the Fifth and Sixth Amendments. In sum, the bill turns the whole notion of due process on its head. Government officials do not have the power to strip citizenship from American citizens who never renounced their citizenship and were never convicted of a crime.

Second, the material assistance provision suffers from the same constitutional flaws that plague other material support laws, and goes far beyond what the Supreme Court has held is constitutionally permissible when First and Fourth Amendments rights are at stake¹. In 2010, the U.S. Supreme Court disappointingly ruled in *Holder v. Humanitarian Law Project* that teaching terrorist groups how to negotiate peacefully could be enough to be found guilty of material support. That logic might apply to criminal conduct; it should not cause an American to lose his or her citizenship.

For these reasons, the ACLU urges you to refrain from cosponsoring S. 2779, and oppose it if it is offered for a vote. Please contact Arjun Sethi at asethi@aclu.org or 202-715-0823, if you have any questions regarding this letter.

Sincerely,



Laura Murphy
Director
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¹ See ACLU, *Blocking Faith, Freezing Charity* (2009), available at <https://www.aclu.org/human-rights/report-blocking-faith-freezing-charity>.