



VOTE “NO” ON S. 247 AS UNCONSTITUTIONAL

S. 247 STRIPS AMERICAN CITIZENSHIP BASED ON MERE SUSPICION BY AN UNNAMED GOVERNMENT OFFICIAL

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November 18, 2015

RE: Oppose Senator Ted Cruz’s Request for Unanimous Consent on S. 247, the Expatriate Terrorists Act, which Strips U.S. Citizenship without Due Process and based on Suspicion

Dear Senator:

The American Civil Liberties Union strongly urges you to oppose S. 247, 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 merely suspected by an unnamed government official of wrongdoing.

S. 247 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.

An already unconstitutional federal statute, 8 U.S.C. § 1481, provides that an American can lose his or her citizenship 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."

S. 247 would add a new category of expatriating acts—"Becoming a member of, or providing training or material assistance to, any foreign terrorist organization designated under Section 219." 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 citizen is suspected of providing material assistance to a designated foreign terrorist organization with the intention of relinquishing his or her citizenship.

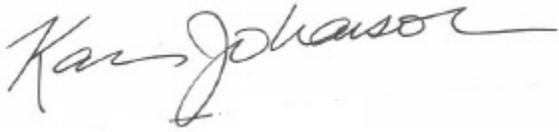
Second, this provision would violate Americans' constitutional right to due process, including by depriving them of citizenship based on secret evidence, and without the right to a jury trial and accompanying protections enshrined in the Fifth and Sixth Amendments. In sum, the bill turns the whole notion 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.

Third, 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 stake.¹ In 2010, the 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. Even if that logic might apply to criminal conduct, it should not cause an American to lose his or her citizenship.

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

For these reasons, the ACLU urges you to oppose S. 247. Please contact Chris Anders at canders@aclu.org or (202) 675-2308, if you have any questions regarding this letter.

Sincerely,

A handwritten signature in black ink that reads "Karin Johanson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Karin Johanson
Director
Washington Legislative Office

A handwritten signature in black ink that reads "Christopher Anders". The signature is cursive and somewhat compact.

Christopher Anders
Senior Legislative Counsel
Washington Legislative Office