QUESTIONS PRESENTED

Where the actions of petitioner – a criminal defense lawyer – consisted of publicly disseminating the protected speech of her incarcerated client, did her convictions for providing material support to a conspiracy violate the First Amendment and render 18 U.S.C. § 2339A unconstitutional as applied under *Humanitarian Law Project v. Holder*, which was decided as a facial First Amendment challenge.

Do the First Amendment and Due Process bar punishing a defendant more harshly based upon the content of her speech about matters of public concern, made outside of the courthouse, to the public and press?

Should the doctrine of "chilling effect," whereby others are discouraged from exercising a constitutional right, be limited solely to statutes and government regulations, or does it apply to judicial decisions as well?

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Petitioner Lynne Stewart respectfully petitions this Court for a writ of certiorari to review the judgments and opinions of the United States Court of Appeals for the Second Circuit entered on December 23, 2009 and June 28, 2012.

OPINIONS BELOW

On October 24, 2005, following the Petitioner's conviction after trial, Judge John G. Koeltl, of the United States District Court for the Southern District of New York, denied her motion for a judgment of acquittal. *United States v. Sattar*, 395 F. Supp.2d 79 (S.D.N.Y. 2005). (A106-A107). [1]

On November 17, 2009, in a precedential opinion, a panel of the Second Circuit affirmed the Petitioner's conviction, but remanded for resentencing. The decision was amended and reissued for publication on December 23, 2009. *United States v. Stewart*, 590 F.3d 93 (2d Cir. 2009). (A26-A105).

On February 23, 2010, although neither of the parties sought rehearing *en banc*, several judges of the Court of Appeals published opinions in support and

[1] "A" refers to the Appendix to this petition for certiorari. "GX" refers to the exhibit number from the trial. "T" refers to the page number of the trial transcript. "JA1" refers Joint Appendix filed with the Court of Appeals in the First Appeal. "JA2" refers to the Joint Appendix filed with the Court of Appeals in the Second Appeal. All other documents are identified by date and/or subject matter.

opposing a *sua sponte* suggestion (that did not prevail) to review the panel opinion *en banc*. *United States v. Stewart*, 597 F.3d 514 (2d Cir. 2010). (A202-A215).

On July 15, 2010, following remand, Judge Koeltl increased the Petitioner's sentence from 28 months to 10 years imprisonment . (A216-A302).

On June 28, 2012, in another precedential opinion, the Second Circuit affirmed the Petitioner's substantially enhanced sentence in a published decision. *United States v. Stewart*, 686 F.3d 156 (2d Cir. 2012). App. (A1-A25).

The Petitioner's petition for rehearing was denied on September 24, 2012, in an unpublished order. (A201).

JURISDICTION

The Court of Appeals' judgment – affirming the Petitioner's conviction but remanding for resentencing – was entered on November 17, 2009. A new judgment setting forth the new sentence was entered on July 29, 2010. The Petitioner's new sentence was affirmed by the Second Circuit on June 28, 2012. The Second Circuit denied rehearing by an order entered on September 24, 2012.

The 90-day period for filing this Petition for Certiorari would have expired on or about December 26, 2012. However, on December 11, 2012, Justice Ruth Bader Ginsburg extended the time to file the Petition until February 21, 2013. The petition is being filed by postmark on or before that date. Rules 13.1, 13.3, 13.5, 29.2, 30.1. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in relevant part, that

> Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble.

The Fifth Amendment to the United States Constitution provides, in part, that

> No person shall be ... deprived of life, liberty, or property, without due process of law.

Title 18, United States Code (2000), provides, in pertinent part:

§371. Conspiracy to commit offense or to defraud United States

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one of more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both….

§ 2339A. Providing material support to terrorists

(a) **Offense. --** Whoever, within the United States, provides material support or resources or conceals or disguises 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 [enumerated statutes] or in preparation for, or in carrying out, the concealment or an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than 10 years, or both.

(b) **Definition. --** In this section, the term "material support or resources" means currency or other financial securities,

financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

STATEMENT OF THE CASE

Lynne Stewart is a lawyer and civil rights veteran who has spent her entire life fighting for the poor, the disadvantaged and the unpopular. In 1994, at the request of former Attorney General Ramsey Clark, she agreed to join him in representing Sheik Omar Abdel Rahman, known to many as the "Blind Sheik," at trial. Abdel Rahman was convicted in 1995 of seditious conspiracy and sentenced in January 1996. While General Clark, Ms. Stewart, and a third lawyer, prosecuted his appeals, Abdel Rahman was incarcerated in virtual total isolation. He was blind, unable to speak English to his jailers, denied even a radio, and subject to Special Administrative Measures ("SAMs") that sharply curtailed his ability to communicate with anyone, including his family and lawyers. *See* 28 C.F.R. §501.3.

During this time, General Clark met several times with Abdel Rahman and made several public statements about Abdel Rahman's views on activities in Egypt: In 1997 General Clark disseminated Abdel Rahman's views on the Egyptian ceasefire to the media (GX 22) and helped him draft a statement that General Clark was to deliver to leaders of the Arab world (JA1 291-293). In early 1998, General Clark facilitated an interview of Abdel Rahman by *Il Corriere della Sera*, the leading Italian newspaper, on subjects that included his views on the Egyptian ceasefire, violence, and President Mubarak. (JA1 307-316). In November 1999, General Clark spoke to the press about Abdel Rahman's views

on the ceasefire and the formation of a political party (GX 1034X), and in January 2000, General Clark facilitated a written interview of Abdel Rahman by Japanese Public Television. (JA1 335-336). In addition, starting in 1996 and continuing to this day, General Clark has participated in twice weekly telephone calls – literally hundreds of calls – with Abdel Rahman.

By contrast, between 1996 and the end of 2001, Ms. Stewart had only six contacts with Abdel Rahman. She visited with him three times and participated in three telephone conversations total. At issue here is her contact with the press in June 2000. Shortly after returning from a visit with Abdel Rahman, Ms. Stewart spoke with a Reuters reporter in Cairo on the telephone. She told him that "Abdel Rahman is withdrawing his support for the ceasefire that currently exists." (T. 5569-72, 5605-06) The statement caused controversy with some in Egypt claiming that it was not Abdel Rahman's statement. Accordingly, the next day Ms. Stewart clarified for the reporter that Abdel Rahman's view was that he "did not *cancel* the ceasefire…I did withdraw my support for the initiative. I expressed my opinion and left it to my brothers to examine it and study it because they are the ones who live there…I also ask them not to repress any other opinion within the [IG]." (JA1 1534-1538) (emphasis in original).

Ms. Stewart agreed to talk to the reporter because "it was a communication that we felt was necessary to maintain his posture within the support group in Egypt." (JA1 136).

> It was my belief, my underlying belief…that…I needed to keep him in the public eye, that the worst thing that could happen to him was to be…locked in a box in Minnesota with no support whatsoever. (JA1 121. *See also* JA1 123, JA1 124, JA135).[2]

Ms. Stewart was nonetheless clear that she did not support the goals of the Islamic Group or share Abdel Rahman's politics:

> Q. Did your representation of him in your view involve furthering his political goals?
>
> A. No. I'm my own person. I have my own politics. They are not fundamentalist.

(T. 7472).

Ms. Stewart was indicted in April 2002, and along with a legal translator and a paralegal, Mohammad Yousry and Ahmed Sattar, respectively, was charged with, *inter alia*, providing material support to a terrorist organization in violation of 18 U.S.C. § 2339B and conspiracy to commit the same by providing "personnel" and "communications equipment." After motion practice that resulted in dismissal of the material support charge under Section 2339B because the statute was unconstitutionally vague as applied, in November 2003 a superseding indictment charged Ms. Stewart with, *inter alia*, conspiracy to provide material support to a terrorist activity (18 U.S.C. § 371) and providing and concealing material support to terrorist activity (18 U.S.C. § 2339A). It was the government's theory that Ms. Stewart provided material support by providing "personnel" to the

[2] Keeping Abdel Rahman in the public eye was part of the lawyers' long-term strategy for seeking his repatriation to Egypt in the event of a change in that country's

alleged conspiracies, namely the opinions of Abdel Rahman that she related to the Reuters reporter. The government did not claim that any violence or other harm occurred as the result of Abdel Rahman's comments. After almost 10 months of trial, in February 2005, a jury convicted Ms. Stewart on all counts.[3]

The prosecution sought life imprisonment for Ms. Stewart. Judge Koeltl first sentenced Ms. Stewart on October 16, 2006. Judge Koeltl adopted the factual findings in the presentence report, except as noted, and then calculated the sentence that would obtain under the advisory Sentencing Guidelines, stating that this calculation was the required starting point. The court first addressed application of the Guidelines' terrorism enhancement. Ms. Stewart objected to the enhancement arguing that it should not be applied because her sole motive was to secure her client's repatriation to Egypt and therefore outside of the "heartland" of terrorism cases (JA1 210).[4] Judge Koeltl overruled her objection. In addition, the court denied Ms. Stewart's motion to depart laterally from Criminal History Category VI, the category mandated by the terrorism enhancement and her other requests for Guideline departures premised on U.S.S.G. § 5H1.4 (extraordinary

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government. At trial, the prosecution ridiculed that idea. Recent events have proved the government wrong.

[3] Petitioner's joint trial with Messrs. Yousry and Sattar resulted in an avalanche of prejudicial evidence that was not admitted against Ms. Stewart and/or not admitted for its "truth". The District Court issued no fewer that *750 limiting instructions while denying Ms. Stewart's repeated severance motions.*

[4] As Ms. Stewart said in her letter to the court, "[m]y actions were intended only to foster the possibility that my client might one day be permitted to return to Egypt even as a prisoner of the current regime or one akin to it." (Quoted at JA1 210).

medical conditions), U.S.S.G. § 5K2.11 (lesser harms) and U.S.S.G. § 5K2.20 (aberrant behavior)(A366-A370).

The court then addressed the government's motion for a Guidelines enhancement pursuant to U.S.S.G. § 3C1.1, obstruction of justice, based on Ms. Stewart's purported perjurious trial testimony. The government argued that Ms. Stewart testified falsely when she (1) stated that she believed the SAMs gave her leeway to communicate Abdel Rahman's views to others in the course of her representation (the so-called "bubble") and (2) denied knowing "Taha" was a leader of the Islamic Group. While Judge Koeltl noted that "[t]here is evidence to indicate that these statements were false," he found it unnecessary to determine whether Ms. Stewart's testimony constituted perjury for two reasons. First, even without any enhancements, the advisory Guideline sentence was 360 months, the statutory maximum. An obstruction enhancement, therefore, could not raise the Guideline range. Second, even if the enhancement was appropriate, the court had nonetheless determined that it was going to vary downward from the advisory Guideline range (A371-A372). Judge Koeltl determined that under the advisory Sentencing Guidelines Ms. Stewart's total offense level was 41 and her Criminal History Category was VI. This resulted in an advisory Guidelines imprisonment term of 360 months, the statutory maximum (A372).

The court turned its attention to the remaining § 3553(a) factors and the determination of a sentence that would be "sufficient, but not greater than necessary" to accomplish the statutory goals. Relying on the advisory Guideline

sentence as its "benchmark," the court observed that Ms. Stewart's "is an atypical case for the terrorism enhancement." "A number of factors" weighed in favor of a substantial downward variance (A373). First, the charges themselves were unique. Even the government could not point to more than a few cases "where the thrust of the violation was the provision of a co-conspirator to a terrorist conspiracy." *Id.* Second, there was no evidence that anyone was harmed as a result of Ms. Stewart's actions. *Id.* Third, the increase from Criminal History Category I to Category VI was "dramatically unreasonable in the case of Ms. Stewart" as it "overstates the seriousness of [her] past conduct and the likelihood that [she] will repeat the offense." *Id.*

After evaluating the factors required by § 3553(a) to consider, *i.e.*, the "history and characteristics of the defendant," Judge Koeltl recited his findings in support of the sentence to be imposed. He listed the following characteristics of Ms. Stewart that "argue strongly in favor of a substantial downward variance."

> [Ms. Stewart] is now [i.e. in 2006] 67 years old. She was a teacher at inner city schools before becoming a lawyer.
>
> For over 30 years she has practiced law concentrating on criminal law. In the course of that practice, while she has become well known and celebrated as an excellent lawyer, she did not use the practice of law to earn personal wealth. She has represented the poor, the disadvantaged and the unpopular, often as a Court-appointed attorney.
>
> Indeed, she was appointed by the Court to represent Sheikh Omar Abdel Rahman, and thus it was through initially responding to a call for representation of a

> very unpopular client that she became involved in the crimes of conviction.
>
> Having spent her professional career often representing the poor, she is now, at the end of her career, financially destitute.
>
> By providing a criminal defense to the poor, the disadvantaged and unpopular over three decades, it is no exaggeration to say that Ms. Stewart performed a public service not only to her clients but to the nation.

(A375-A376). Unlike some defendants, Ms. Stewart "did not [turn] to charity in response to an indictment…[She] built a record of accomplishment over more than three decades…[warranting] a substantial downward variance." (A376).

Ms. Stewart's advanced age and deteriorating health also supported a substantial downward variance. Even without a life-threatening illness, Judge Koeltl found that "imprisonment will be particularly difficult for [Ms. Stewart] and will represent a greater portion of her remaining life than for a younger defendant." (A377). Finally, after recognizing the mass of materials submitted relevant to her sentencing, including 400 letters from prominent members of the community seeking leniency, Judge Koeltl imposed a sentence of 28 months, which he believed to be sufficient to satisfy the objectives of 18 U.S.C. § 3553(a)(2).

Immediately after sentence was imposed, Lynne Stewart spoke with the press and her supporters who had gathered outside the courthouse to hear from

her. As a cancer survivor[5] and grandmother, she expressed her deep gratitude for the judge's consideration of her life's work by stating, "I tell you, he did a fair and right thing, and I am grateful to him." In an effort to buoy the spirits of her family and many supporters, she quoted a common expression used by her clients to describe a sentence that is more lenient than expected, as one that could be served, "standing on my head." Subsequently, in response to a reporter's question, she indicated that she would "do it again," which she later explained meant she would continue to represent people such as Abdel Rahman who are involved in unpopular and controversial causes.[6]

Lynne Stewart appealed her conviction and the government cross-appealed the sentence. Ms. Stewart urged, *inter alia*, that her convictions under Counts Four and Five violated the First Amendment because both she and her client engaged in nothing more than protected speech. On December 23, 2009, the Court of Appeals affirmed the conviction but remanded for resentencing. *United States v. Stewart*, 590 F.3d 93 (2d Cir. 2009)(A26-A105). Like the District Court, the Court of Appeals was "impressed by the factors that figured in Stewart's modest sentence, particularly her admirable history of providing at no little cost to herself proficient legal services in difficult cases to those who could not afford them." *Id.*

[5] Presently incarcerated at the BOP Federal Medical Center in Carswell, Texas, Ms. Stewart learned only recently that her cancer has metastasized in her lungs and lymph system and invaded her scapula.

[6] The complete text of Ms. Stewart's remarks after the sentencing is set forth in footnote 14 *infra*.

at 148. Nonetheless, the Court ruled that two procedural errors required resentencing, *i.e*. the District Court's alleged failure to make explicit findings on the advisory Guidelines obstruction enhancement and to clarify the record as to whether it had, in fact, imposed the advisory Guideline terrorism enhancements.

Ms. Stewart did not petition for rehearing *en banc*. Nonetheless, two months later, on February 23, 2010 the Court of Appeals issued an order denying *en banc* review after one or more of the active judges of the Court *sua sponte* requested a poll on whether the case should be reheard. *United States v. Stewart*, 597 F.3d 514 (2d Cir. 2010) (A202-A215). Three opinions were published. Two concurred in the order denying rehearing, one dissented. Chief Judge Jacobs, writing for himself and Judges Wesley and Hall concurred in the order denying rehearing because "[t]he panel majority opinion makes no law with which I disagree…". *Id.* at 517. In Chief Judge Jacobs view, however, the panel's decision was "a missed opportunity, and fail[ed] to give the district court sufficient guidance…it does not make law for other cases; it scarcely makes law of the case." *Id.* Chief Judge Jacobs urged the District Court to consider Ms. Stewart's post-sentencing public statements (discussed *infra*) at Ms. Stewart's resentencing because in his view they are relevant in determining a sentence "sufficient but not greater than necessary" to comply with 18 U.S.C. §3553(a)'s purposes. *Id.* at 518.

Judge Pooler also concurred in the order denying *en banc* review but wrote separately. Judge Pooler expressed concern that Chief Judge Jacobs' concurring

opinion "mistakenly asks the district court to apply the panel's dissenting opinion." *Id.* at 519. An unsuccessful request for *en banc* review, Judge Pooler observed, "becomes an occasion for any active judge who disagrees with the panel to express a view on the case even though not called upon to decide it… This amounts to an exercise of free speech rather than an exercise of any judicial function." *Id*.

Judge Cabranes, writing for himself and Judge Raggi, would have granted *en banc* review. Judge Cabranes opined that "[t]he unreasonableness of [Ms. Stewart's] sentence for a crime whose ultimate object-terrorism-threatens countless innocent lives, would appear obvious." *Id.* at 521. "If there was ever a case that afforded the opportunity to further develop the 'abuse of discretion' and 'shocks the conscience' standard," Judge Cabranes wrote, "it was this case where the District Court sentenced to only 28 months in prison a member of the bar who aided a particularly nefarious and notorious terrorist to continue pursuing his deadly objectives." *Id.* at 524.

After further briefing, Judge Koeltl resentenced Ms. Stewart on July 15, 2010. The defense urged that the original sentence was reasonable and proper. At the October 2006 sentencing the District Court had, in fact, applied the terrorism enhancement and made factual findings regarding the obstruction of justice enhancement but concluded that the 28-month sentence was "sufficient but not greater than necessary" to achieve 18 U.S.C. §3553(a)'a goals. Rejecting these arguments, Judge Koeltl drastically increased Petitioner's punishment from 28

months to 10 years imprisonment. The Court identified only one reason not to re-impose the 28 month term – Ms. Stewart's post October 2006 public statements. Judge Koeltl interpreted her statement on the courthouse steps after the October 2006 sentencing, *i.e.,* that she could do the 28 months "standing on her head," as an expression of Ms. Stewart's opinion that the sentence to be served was a "trivial" one. "A trivial sentence would not be sufficient to reflect the seriousness of the offense, promote respect for the law and provide just punishment as required by law." (A275)).

Judge Koeltl concluded that her statement that she would do "it" again "indicated a lack of remorse for conduct that was both illegal and potentially lethal. These [two] statements indicate that the original sentence was not sufficient to accomplish the purposes of Section 3553(a)(2), including to reflect the seriousness of the offense and to provide adequate deterrence." (A276).

The District Court neither addressed nor acknowledged Ms. Stewart's explanations and efforts to place both statements in context. Rather, the court nearly quadrupled Ms. Stewart's prison sentence, imposing a sentence of 120 months imprisonment on Count Five, and 60 months on Counts One, Four, Six, and Seven (all to run concurrently) and a two year term of supervised release. (A276).

Ms. Stewart appealed the new sentence to the Court of Appeals. The Second Circuit affirmed. *United States v. Stewart*, 686 F.3d 156 (2nd Cir. 2012). The court held that Lynne Stewart's speech was "clearly a factor that the court was

permitted to take into account" in enhancing her sentence by eight years. *Stewart*, 686 F.3d at 173 (A19). A petition for rehearing was timely filed and denied. This petition follows.

REASONS FOR GRANTING CERTIORARI

I. LYNNE STEWART'S PUBLIC STATEMENTS CONVEYING THE OPINIONS OF ABDEL RAHMAN ON THE FUTURE OF THE EGYPTIAN CEASEFIRE WERE AS PROTECTED BY THE FIRST AMENDMENT AS IF HE HIMSELF WAS SPEAKING AND CANNOT CONSISTENT WITH THE CONSTITUTION BE USED AS THE BASIS FOR A CONVICTION FOR PROVIDING PERSONNEL IN SUPPORT OF A TERRORIST ORGANIZATION

In *Holder v. Humanitarian Law Project*, 561 U.S.___, 130 S. Ct. 2705 (2010) this Court addressed whether 18 U.S.C. §2339A was facially unconstitutional under the First Amendment because it criminalized "pure political speech." Rejecting that challenge, this Court held that the statute survived First Amendment scrutiny because it criminalized "only a narrow category of speech to, under the direction of, or in coordination with foreign groups that the speaker knows to be terrorist organizations." 130 S. Ct. at 2723. This Court emphasized that under the statute individuals remain free under the First Amendment to

> say anything they wish on any topic. They may speak and write freely about the PKK and LTTE [two of the designated terrorist groups at issue], the governments of Turkey and Sri Lanka, human rights and international law. They may advocate before the United Nations. As the Government states: "The statute does not prohibit independent advocacy or expression of any kind." Brief for Government 13. Section 2339B also "does not prevent [plaintiffs] from becoming members of PKK and LTTE or impose any sanction on them for doing so." *Id* at 60. Congress has not, therefore, sought to suppress ideas or opinions in the form of "pure political speech." Rather, Congress has prohibited "material support" which most often does not take the form of speech at all.

Id.

This case presents the issue mentioned but not resolved by *Holder*. Ms. Stewart brings a legal insufficiency and "as applied" challenge to 18 U.S.C. §2339A involving this Court's express recognition that the statute might well violate the First Amendment where the government sought to punish "independent" speech even where that speech might indirectly benefit a terrorist organization. A certiorari grant is essential to define the limits of governmental power under the First Amendment.

It was the gravamen of the government's case that Ms. Stewart provided material support to the 18 U.S.C. §956(a) conspiracy by providing "personnel" to that conspiracy to wit, Abdel Rahman.[7] But it was not "personnel" in the form of Omar Abdel Rahman that the government's evidence purported to establish Ms. Stewart "made available" to the Islamic Group. Rather, it was Abdel Rahman's *words* – his protected *speech* - that Ms. Stewart allegedly "made available" to the Islamic Group. In holding that the act of publicly communicating Abdel Rahman's words *to the media* amounted to a criminal act cognizable under 18 U.S.C. §2339A, the courts below drastically and unconstitutionally extended the "narrow category" of speech criminalized under the statute.

[7] Co-defendant Sattar alone was charged in Count Two with violating 18 U.S.C. § 956(a), conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country.

"In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue." *Citizen's United v. Federal Election Commission*, 558 U.S. 310, ____, 130 S.Ct. 876, 902 (2010) *quoting First National Bank of Boston v. Belloti,* 435 U.S. 765, 784-785 (1978). The First Amendment protects speech that encourages others to commit violence, so long as the speech does not call for "imminent lawless action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (*per curiam*). It does not matter that the speech makes future violence more likely; advocating "illegal action at some indefinite future time" is nonetheless protected. *Hess v. Indiana*, 414 U.S. 105, 108 (1973) (*per curiam*).

Counts Four and Five of the Indictment allege a conspiracy to violate 18 U.S.C. § 2339A (charged under 18 U.S.C. § 371), and a substantive violation of § 2339A. Under Count Five, the government was obligated to prove, *inter alia* that petitioner agreed with one or more persons to actually provide "material support" knowing that the same would be used to carry out violations of 18 U.S.C. § 956. Count Four charged an 18 U.S.C. § 371 conspiracy that required proof that Ms. Stewart agreed, knowingly and willfully, to violate 18 U.S.C. § 2339A. It was the government's theory that Ms. Stewart provided "personnel" to the § 956 and § 2339A conspiracies (that is, to the Islamic Group of Egypt) in the form of Abdel Rahman's words and that through her actions, she "concealed" his involvement in the conspiracies.

The acts that the government maintained constituted "material support" consisted solely of protected speech. This was acknowledged by the District Court when it denied Ms. Stewart's post-trial motion pursuant to Fed. R. Crim. P. 29. *United States v. Sattar*, 395 F. Supp.2d 79 (S.D.N.Y. 2005).[8] It characterized the government's case against Ms. Stewart as follows:

> [A]n IG member 'requested an opinion from Abdel Rahman as to whether the Islamic Group should form a political party in Egypt. (GX 1005X at 2-4.).' *Sattar 29/33,* 395 F. Supp.2d at 85;
>
> A rational jury could find that, during the course of the March 1999 visit, Stewart and Yousry relayed to Abdel Rahman the requests from Taha and from Sultan and Habib, and received Abdel Rahman's response. (GX 2415-6T.). *Id.*
>
> In response to Sultan's and Habib's letter, Abdel Rahman rejected the proposal that the Islamic Group form a political party. Abdel Rahman stated that the 'cessation of violence' was a 'matter of tactics and not of principle.' (GX 2415-6T; see *also* GX 1007X at 3, 6-7.) In response to Taha's request for Abdel Rahman's support in ending the cease-fire, Abdel Rahman stated that he had 'no objection,' even though others were calling for the halt of violence. *Id.*, at 85-86;
>
> On June 13, 2000, Stewart and Sattar relayed Abdel Rahman's withdrawal of support for the cease-fire to Reuters reporter Esmat Salaheddin, who was based in Cairo, Egypt. (Tr. 5569-72, 5605-06.) Salaheddin testified at trial as to his conference call with Stewart and the accuracy of his article. (Tr. 5569-75.) In disseminating Abdel Rahman's statement, Stewart told Salaheddin that 'Abdel Rahman is withdrawing his support for the cease-fire that currently exists.' (Tr. 5574, 5617; GX 524.)[.] *Id.*, at 87;

[8] The decision is reproduced at A106-A127.

> Stewart's dissemination of Abdel Rahman's withdrawal of support for the cease-fire and its publication in the media produced conflict within the Islamic Group between pro-cease-fire and pro-violence factions, with pro-cease-fire advocates denying that Abdel Rahman had issued the withdrawal. (GX 1111X at 4-22; GX 1114X at 2; GX 1250X at 1-4.) *Id.* at 87-88.
>
> Stewart and Sattar responded by issuing Abdel Rahman's reaffirmation of his withdrawal of support for the cease-fire on June 21, 2000, by relaying it to Salaheddin. (GX 2663; GX 1151X at 1-3; GX 1152X at 1-4; GX 1153X at 1-4; GX 1155 at 1-3.) The statement reaffirmed that everything that was said in the previous statement was correct and that Abdel Rahman said those things. The statement also stated, '... I did not *cancel* the cease-fire. I do withdraw my support to the initiative. I expressed my opinion and left the matters to my brothers to examine it and study it because they are the ones who live there and they know the circumstances where they live better than I. I also ask them not to repress any other opinion within the Gama'a, even if that is a minority opinion.' (GX 2663 (emphasis in original).) The jury could reasonably find that the 'other opinion' was a reference to Taha. *Id.*, at 87-88.

Even when viewed in the light most favorable to the government, the foregoing fails to establish that Ms. Stewart engaged in any activities that were not protected by the First Amendment. Ms. Stewart simply communicated to the world at large Abdel Rahman's opinion regarding the Egyptian ceasefire. Abdel Rahman's speech was also protected. It was not something that was done at the direction of a designated group. He made that clear when he stated that he could not "cancel" the ceasefire and only those on the ground in Egypt could do so. Moreover, nothing contained in his statements could rationally be deemed a solicitation of imminent lawless action. Abdel Rahman said that he withdrew his

own support for the ceasefire. He did not encourage, or even advocate, the imminent resumption of violence. Thus, his comments on the propriety of the ceasefire did not cross a line into the "narrow category" of speech that can constitutionally be criminalized and remained protected under the First Amendment.

The Court of Appeals held that "a reasonable jury might have found, in light of Abdel Rahman's role as "spiritual leader" of the Islamic Group, that his messages were ultimately intended to sway al- Gamaa'a members to end the ceasefire, and by implication to commit criminal acts of violence." *United States v. Stewart*, 590 F.3d 93, 115 (2nd Cir. 2009) (A47). Assuming *arguendo* that this was Abdel Rahman's intent,[9] his speech was nonetheless protected. Advocating that violence may *ultimately* be necessary is not the same as advocating *imminent* "lawless action." *Brandenburg v. Ohio*, 395 U.S. at 447.

In *Brandenburg* this Court considered the constitutionality of the Ohio Syndicalism statute. That statute criminalized

> advocate[ing]…the duty necessity or propriety of crime, sabotage, violence or other unlawful methods of terrorism as a means of accomplishing industrial or political reform' and for 'voluntarily assembl(ing) with a any society, group or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism.

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[9] Abdel Rahman clarified that he did not "cancel" the ceasefire and reiterated that any decision would have to be made in Egypt. Additionally, he stressed that he only expressed an opinion and that future discussions should include expressions of contrary opinions. (GX 2663)

Brandenburg v. Ohio 395 U.S. at 444-445 (quoting statute). Quoting its earlier decision in *Noto v. United States*, 367 U.S. 290, 297-298 (1961), this Court reiterated that "the mere abstract teaching of the moral propriety or even the moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action." *Brandenburg,*395 U.S. at 447-448. Abdel Rahman expressed an opinion regarding the continuation of the ceasefire. That is not the same as ordering or inciting violence at some definite point in the future. Consistent with the First Amendment, he could express an opinion that the ceasefire was not working and that violence may one day be necessary. *Brandenburg v. Ohio*, *supra*; *Noto v. United States*, *supra*. *See also NAACP v. Claiborne Hardware Company*, 458 U.S. 886, 927-928 (1982) (speech urging that those who do not comply with boycott should have their "necks broken" protected by First Amendment as it was not a direct threat of violence); *Watts v. United States*, 394 U.S. 705 (1969) (*per curiam*) (alleged statement by potential draftee that "if they ever make me carry a rifle, the first man I want in my sights is [President Lyndon Johnson]" protected as not a direct threat to the President).

The First Amendment protection afforded Abdel Rahman's statements cannot be evaded by characterizing them as "personnel," as the District Court

did repeatedly in denying Ms. Stewart's post-trial motions. *See, e.g.,* 395 F. Supp.2d at 100-01. *See also id.,* at 100 n. 5 and as the Court of Appeals did when it affirmed her conviction. Abdel Rahman's activity (and Ms. Stewart's by extension) with respect to the Islamic Group was no different: there were no *acts,* only expressions of opinion.

To the extent there was any "concealment" of "providing" Abdel Rahman to Count Two's alleged §956(a) conspiracy to kill - a particularly unsustainable claim in light of the *manner* in which he was allegedly provided, *i.e.*, statements to a reporter - all that was concealed was the very same protected speech by Abdel Rahman. It is fundamentally and fatally incongruous for Ms. Stewart to have "concealed" providing Abdel Rahman to Count Two's alleged §956(a) conspiracy to kill persons in a foreign country by use of newspapers and the international media to make Abdel Rahman's position *publicly known as widely as possible.*

If "concealment" had been Ms. Stewart's goal (or if she wished to aid the Islamic Group as opposed to Abdel Rahman in his effort to secure a prisoner transfer to Egypt), she would not have communicated his opinions to the public at large. Her public dissemination of Abdel Rahman's position was consistent with her exercise of First Amendment rights, and her position presented at trial

that it was part of a transparent and widely-known legal strategy to keep Abdel Rahman's name in the news for the purpose of facilitating a transfer to Egypt. (JA210). As noted by this Court in *Legal Services Corp. v. Velazquez,* 531 U.S. 533, 542-543 (2001), and *Gentile v. State Bar of Nevada,* 501 U.S.1030, 1034 (1991), a lawyer's speech on behalf of her client constitutes protected, private speech under the First Amendment. Significantly, the Court in *Gentile* explicitly rejected a "balancing test" with respect to noncommercial attorney speech, 501 U.S. at 1051-1052, finding instead that attorney speech may be restricted (in language shadowing the *Brandenburg* standard) only to the extent it creates "a danger of imminent and substantial harm." *Id.* at 1036. Ms. Stewart's statements did not remotely approach that level.

Nor can the presence of Bureau of Prisons Special Administrative Measures (SAMs) in this case transform otherwise constitutionally protected speech into a violation of § 2339A. For example, if Abdel Rahman were not in prison or even under indictment, the statements by him at issue here – for which Ms. Stewart has been held responsible – could not, for the reasons set forth *supra*, sustain a prosecution under § 2339A. Similarly, if Abdel Rahman were in prison, but not subject to SAMs, the statements by him, and by Ms. Stewart, would not constitute "material support." While SAMs can

arguably regulate the communications between a defendant and the outside world, and his counsel's ability to convey his statements, *see* 28 C.F.R. §501.3, at worst that dissemination constitutes a violation of the terms of the attorney affirmation attendant to the SAMs. It does not transform the statements into "material support," or strip them of First Amendment protection in the context of § 2339A. As long as the speech is protected "conduct" in support of group advocacy, it cannot be punished. *See NAACP v. Claiborne Hardware Co,* 458 U.S. at 907-912 (1982).

In *Humanitarian Law Project*, this Court stressed that "we in no way suggest that a regulation of independent speech would pass constitutional muster, even if the Government were to show that such speech benefits foreign terrorist organizations." 130 S. Ct. at 2730. That is exactly what has happened here. Petitioner, entirely independent of the IG, communicated the protected, independent speech of her client to the media. That the speech may somehow have indirectly benefited the IG by providing it with policy guidance does not place it in that "narrow category" of pure speech that Congress intended to criminalize. Events since this trial have shown that there is a congeries of political forces at work in Egypt and myriad voices raised in favor of widely divergent views.

Abdel Rahman's and Ms. Stewart's speech were independent actions. To place that speech within the scope of 18 U.S.C. § 2339A is contrary to the holding of *Noto v. United States*, 367 U.S. 290 (1961), where this Court reversed a conviction that criminalized membership in an organization that advocated overthrowing the government and contrary to the express statement in *Holder* that only a "narrow category" of speech could be constitutionally criminalized. The writ should be granted so that this Court may prevent the unconstitutional infringement of First Amendment freedoms that will result if the Court of Appeals' decision is allowed to stand.

II. LYNNE STEWART'S SPEECH OUTSIDE THE COURTHOUSE AND TO THE PRESS ON MATTERS OF PUBLIC CONCERN WAS PROTECTED BY THE FIRST AMENDMENT AND COULD NOT CONSISTENT WITH THE REQUIREMENTS OF THE CONSTITUTION BE USED TO ENHANCE HER SENTENCE.

Chief Justice Warren once noted that the "quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of its criminal laws." *Miranda v. Arizona*, 384 U.S. 436, 480 (1966). That is why it is so difficult to understand how a lawyer like Lynne Stewart can have her sentence enhanced by *eight years* based on speech she made on the steps of the federal courthouse and to the press. This is especially true where she was merely expressing her reaction to a 28-month sentence and reaffirming her ideological dedication to continue representing the poor, underprivileged and unpopular.

Thus, we begin with the proposition that there is no greater urgency, no sense of larger purpose or more emergent meaning, which stands on a higher footing than the protection of free speech. In an unbroken series of cases, it has been held postulate that, absent a true threat, no one should be punished for the content of their expression. *See, e.g., Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949) ("freedom of speech, though not absolute, is nevertheless *protected against censorship or punishment*, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest") (emphasis supplied).

Nevertheless, in an unprecedented decision, the Second Circuit has announced a new constitutional standard by holding that a defendant's punishment can be enhanced based upon the content of her speech. The Second Circuit's chilling new rule is in direct defiance of the First Amendment. As a consequence, review by this Court is needed to settle the law relating to this highly publicized which is destined to have sweeping consequences.[10]

The Voices that Will be Silenced

The profound policy implications of the Second Circuit's decision are at once apparent and harrowing in their consequences. There is now a genuine risk that literally thousands of other defendants will be inhibited from expressing their views to the public about their cases or sentences for fear of enduring additional punishment for their speech.[11]

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[10] This decision, which was prominently covered in newspapers and journals, is certain to have a profound influence on future cases. *See, e.g.,* Benjamin Weiser, *10-Year Sentence for Lawyer in Terrorism Case is Upheld*, N.Y. Times, Jun. 29, 2012, at A3; Colin Moynihan, *Free-Speech Argument in Appeal of Disbarred Lawyer's Sentence*, N.Y. Times, Mar. 1, 2012, at A26; John Eligon, *Conviction is Sharply Increased for Lawyer Convicted of Aiding Terror*, N.Y. Times, Jul. 16, 2010, at A22; Mark Hamblett, *Circuit Rejects Speech Claim in Upholding Stewart Term*, N.Y.L.J., Jun. 29, 2012. *See also* Mark Hamblett, *Stewart Challenges Resentence, Claims Penalty for Speech*, N.Y.L.J., Mar. 1, 2012; Mark Hamblett, *Stewart Gets a New 10-Year Prison Sentence*, N.Y.L.J., Jul. 16, 2010; Mark Hamblett, *Stewart Resentenced Today*, N.Y.L.J., Jul. 15, 2010. This sample of the news coverage received by the case is by no means exhaustive.

[11] Significantly, 83,946 federal defendants were sentenced nationwide in 2010. Bureau of Justice Statistics. *http://bjs.ojp.usdoj.gov*. Of those defendants, 4,399 were sentenced in the Second Circuit. *Id.* Thus, if this widely publicized decision is adopted by other courts, then every one of these defendants could have their sentences radically increased based merely on their remarks on subjects of great public interest made outside the courtroom and in a public forum. The scope and scale of this issue are further enhanced by the realization that post-sentencing statements posted on Facebook and other social media could subject other defendants to the same fate as Lynne Stewart.

Indeed, the perils presented by this case have already been widely recognized by renowned journalists and leading legal commentators. For instance, in *A Defendant Pays the Price for Talking to Reporters*, N.Y. Times, Jul. 17, 2010, at A17, John Eligon wrote that after Lynne Stewart was sentenced to 10 years in prison, "it became somewhat clearer why many lawyers advise their clients to *keep their mouths shut*" (emphasis supplied).[12]

But, keeping mouths shut is unthinkable in a nation whose people take pride in our freedom to criticize the actions of government. The broader policy implications are just as worrisome because the indispensable service that the First Amendment provides to a free people will be drastically curtailed.

The Second Circuit's Approach is Overly Broad and Gives No Guidance to Defendants

Today, the most significant glimpse the average defendant gets of our system of justice is the sentence meted out. Therefore, the administration of that punishment takes on extraordinary importance. However, the Second Circuit does not specify what words would be permissible in commenting on government action in this crucial area of our criminal justice system.

With no guidance as to what can and cannot be said, defendants will speak at their peril concerning the subject of government action. If they should speak

[12] The Second Circuit concedes that enhancing a defendant's sentence —based upon her speech – is bound to have chilling consequences beyond the parameters of this case. *See United States v. Stewart*, 686 F.3d 156,171 (A17) ("[i]ndeed it is easy to imagine that sometime in the future at least one lawyer will use the story of Stewart's

out, under the auspices of the First Amendment, either to the press or public, their speech may be construed as a "lack of remorse" under that liquid phrase – and their sentence enhanced.[13] As a consequence, there is a real risk that no defendant will ever speak about his sentence for fear it will constitute a basis for increasing his punishment.

Requiring people to self-censor – and not speak freely about issues – can be as pernicious, if not more so, than direct governmental censorship. *See, e.g., Smith v. California*, 361 U.S. 147, 154 (1959) (the fear of criminal sanctions will "tend to restrict the public's access to forms of the printed word which the State could not constitutionally suppress directly"). Thus, it is the voices that will be silenced that is so intolerable in a free society.

Because of the high position free speech occupies in our hierarchy of constitutional values, Ms. Stewart had every right to believe that the First Amendment protected her speech concerning her own reaction to her sentence. The comprehensive protections of the First Amendment also barred the use of the contents of her speech to punish her more stringently by *increasing her imprisonment by eight years*.

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resentencing as an object lesson as to the kind of statements his or her client should avoid making while awaiting sentencing, thus 'chilling' that person's speech").

[13] The District Court interpreted certain parts of Ms. Stewart's speech, made outside of the courtroom after her initial sentence was imposed, as evincing a "lack of remorse." *Stewart*, 686 F.3d at 164 (A10).

Lynne Stewart's views concerning her case and sentence were thick with public interest because of her special prominence in the affairs of society. Her speech consisted of an expression of an ideology that she would not give up her dedication to fight for the poor, the disadvantaged and the unpopular. And, just as important, it was critical that the public hear her message. The Petitioner's speech constituted her abiding faith in her work. Without lawyers like Lynne Stewart, these unfortunates would have no representation.

The prosecution and sentencing court focused on snippets of Lynne Stewart's speech to suggest that she did not evince sufficient remorse or take the original sentence seriously enough. For example, the district judge increased Ms. Stewart's sentence because, immediately after the 28-month sentence was imposed, she addressed the press and her supporters on the courthouse steps and said "I can do that standing on my head."

This statement was merely a colloquialism used by prison inmates she had represented and was taken out of context. A reading of the complete statement reveals that Lynne Stewart was tremendously relieved when the judge imposed the humane sentence of 28 months rather than a sentence of the appalling scale of life imprisonment sought by the prosecution.[14] Thus, her jubilation came from

[14] Ms. Stewart actually said: "I am very grateful to the judge that he gave me time off for good behavior, and he gave it to me in advance of the sentence, when he said that my extraordinary work meant that I could not get a sentence that the government wanted. They were disappointed, but I tell you, he did a fair and right thing, and I am grateful to him, but I am more grateful to the people – the people who showed up today, the people who have showed up, the people who had the meetings, the people who had dinners in their apartments, the people who raised funds, whatever it is. The support and love of the people is what has sustained me. I am standing here with three of my 14 grandchildren.

avoiding a life sentence – not from believing that the 28-month sentence was "trivial."

Lynne Stewart also told the press and her supporters about the case and said that

> [t]he circle continues. We are going to go on. We have more struggle here. This is a time that cries out for renewed resistance to a government that is not only overreaching in a case like mine – I am the point person – but to a government that overreaches into all our lives.

In other words, Lynne Stewart said that her struggle against government oppression of the poor and unpopular would continue. This was "pure speech" in its most powerful form – which Court has repeatedly held is entitled to the highest and most comprehensive protection under the First Amendment. *See, e.g., Snyder v. Phelps*, 562 U.S. ____, 131 S. Ct. 1207, 1215 (2011).

Once a court starts down the road of selecting phrases or portions of a person's protected speech to use as a basis for enhancing their punishment, the real hazard is that it will inhibit speech altogether. And, the Court should consider

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My lawyers pointed out to the judge that under new regulations, the government could have forbade me to ever see them again. This is how we have become in this county. And I hope the government realizes their error, because I am back out and I am staying out until after an appeal that I hope will vindicate me, that I hope will make me back into the lawyer I was. Any regrets? I don't think anybody would say that going to jail for two years is something you look forward to, but as my clients have said to me, I can do that standing on my head. No, the circle continues. We are going to go on. We have more struggle there. This is a time that cries out for renewed resistance to a government that is not only overreaching in a case like mine – I am the point person – but to a government that overreaches into all our lives. I see the people before me today. We are not torturers. They are torturers, and we have to stop the torture. I do hope that we will be vindicated on appeal. We are surely going to take a militant and timely appeal and that there are plenty of issues, and we hope that that will be the result. But, I tell you, it is such a feeling of relief. I had my medications, my book. I had a pair of sweatpants to change

whether a lack of remorse is even a valid factor in determining whether to enhance a person's sentence.

Review is Needed to Resolve Whether Speech, Made Outside the Courtroom, Can be Used to Enhance Punishment

Review by this Court is also necessitated to address whether a sentencing court could consider a defendant's speech, made outside the courthouse to the public, the same as if it had been made in the courtroom. The Second Circuit has stated that "a person's history and personal characteristics can often be assessed by a sentencing court only or principally through analysis of what that person has said — in public, in private, or before the court. *Stewart*, 686 F.3d at 166 (A13).

There is, however, a significant difference between speech made in the courtroom and words said in private or a public forum. For example, a defendant speaking in the courtroom is on notice that the judge may consider her speech in deciding the degree of punishment to impose. But, after the sentencing is completed, and a defendant has left the courthouse, she is not on notice that what she says to the public or in private will be used to increase her punishment in the future.[15]

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into, because I was prepared for the worst. But like all Irish people, you prepare for the worst, something good happens. And something good did happen." (JA2.336a).

[15] Lynne Stewart was punished for speech at the very moment one would think is the "safest to open up" about the case, *i.e.*, after the defendant's punishment has been handed down. *See* John Eligon, *A Defendant Pays the Price for Talking to Reporters*, N.Y. Times, Jul. 17, 2010, at A17. There is nothing is 18 U.S.C. §3661 (use of information for sentencing) or § 3742(b) (grounds for government appeal) to the contrary. Notice of an unconstitutional basis for government action cannot be implied by statute.

What is particularly disturbing about the Second Circuit's decision is its suppression of protected speech through the power of punishment, solely on the basis of where the speech was delivered and how it was construed. This brand of speech, made on the steps of a courthouse, forms a crucial part of our constitutional heritage because it sustains a sense of liberty for the individual and contributes to our overall culture of freedom, passed on from one generation to the next.

Finally, review is called for because the Second Circuit's holding – that speech made outside the courtroom and in a public forum can be used to increase a defendant's punishment – is standardless. The ruling fails to meet the requirements of Due Process because it is so wide sweeping and indefinite it leaves the public uncertain as to what speech *is* available to a defendant to address the process of sentencing, and which words are not.

Lynne Stewart's speech and beliefs are controversial. She has spent her life being an outspoken advocate for the poor and the unpopular, who so desperately need an unyielding and strong voice. Lynne Stewart is the very reason why the First Amendment exists. For, as recently recognized by this Court, "one of the costs of the First Amendment is that it protects the speech we detest as well as the speech we embrace." *United States v. Alvarez*, 132 S. Ct. 2537, 2551 (2012) (finding that the Stolen Valor Act, which makes it a crime to falsely claim receipt of military decorations or medals, infringes on speech protected by the First Amendment). As a consequence, review by this Court is needed to resolve

whether the content of a defendant's speech can be used to enhance her punishment.

II. REVIEW IS WARRANTED TO CORRECT THE SECOND CIRCUIT'S MISTAKEN HOLDING THAT THE DOCTRINE OF "CHILLING EFFECT" APPLIES ONLY TO STATUTES AND REGULATIONS, AND DOES NOT APPLY TO JUDICIAL DECISIONS

A chill occurs when a person's speech is inhibited by government action and the consequences are that others are silent out of fear that they may suffer the same fate. *See Dombrowski v. Pfister*, 380 U.S. 479, 486-487 (1965). Under the "chilling effect" doctrine, courts must subject restraints on speech to strict scrutiny to avoid the suppression of permissible speech. *See Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2817 (2011).

However, the Second Circuit has created a rule whereby the "chilling effect" doctrine only applies where speech is curtailed by "government regulation" or an "overbroad statute." *Stewart*, 686 F.3d at 171-72. Thus, the Second Circuit has limited the benefits of the strict scrutiny rule to speech that is curtailed under a statute or regulation – rather than through judicial action, including sentences. 686 F.3d at 171.

This is mistaken because judicial decisions are a form of government action, and a chilling effect can be instigated by judicial rulings. *See Noto v. United States, supra; Bouie v. City of Columbia*, 378 U.S. 347 (1964); *Marks v. United States*, 430 U.S. 188 (1977) (all applying to judicial rulings, via Due Process analysis, constitutional restrictions that would otherwise apply to the

legislature). Ours is a jurisprudential system whereby caselaw can have the same effect as a statute or regulation; judges are in the same position as legislators to produce the censorship of speech. Judicial determinations can silence and chill expression in the same way statutes and regulations can. Thus, this Court is also called upon to resolve these critical questions regarding the proper scope and application of the doctrine of chilling effect.

Freedom of speech does not exist in the abstract. It can only flourish in an effective forum. For, in reality, free speech is found in a multitude of circumstances. Not long ago it was young people, with long hair, tramping around a federal courthouse chanting, "No. No. We won't go!" It is an American flag sewn to a pair of old blue jeans. It's all this and much more that defy description. It is indivisible. We cannot save it for one person and deny it to another. It must exist for all of us, or there is a real risk that, someday, it may not exist for any of us. And, so, it must exist for Lynne Stewart along with everyone else because her words are entitled to the same protection from prosecution as other political speech. Under no circumstances should her words and beliefs subject her to eight more years of imprisonment. If this is to become the law of our nation, that final decision, on such a critically important subject, should be made by the highest court in the land.

CONCLUSION

For all the foregoing reasons, the Petitioner Lynne Stewart prays that a Writ of Certiorari issue to review the opinion of the United States Court of Appeals for the Second Circuit in this case.

Respectfully submitted,

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February 21, 2013