Nos. 08-1498 and 09-89

IN THE
Supreme Court of the United States

ERIC H. HOLDER, JR., ATTORNEY GENERAL, ET AL.,
Petitioners,

v.

HUMANITARIAN LAW PROJECT, ET AL.,
Respondents.

HUMANITARIAN LAW PROJECT, ET AL.,
Cross-Petitioners,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL, ET AL.,
Respondents.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF *AMICI CURIAE* VICTIMS OF THE MCCARTHY ERA, IN SUPPORT OF HUMANITARIAN LAW PROJECT, ET AL.

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INTEREST OF *AMICI CURIAE*

Amici are 32 individuals and the close family members of individuals who were subject to criminal penalties, a "blacklist" that precluded them from employment in their professions, or other governmental and social sanctions during the "Red Scare" from the 1930s to the 1960s, and especially during the "McCarthy Era" of the 1950s. They were punished for their lawful activity in or association with organizations the government labeled as subversive. Some *Amici* were punished, and even imprisoned, for refusing to testify before congressional committees. Some lost their jobs for failure to testify before state investigative bodies. Some were unable to find work in their field for years. Some left the country because they could not find work or because they feared prosecution. In many cases, the persecution included harassment of the family members and children of the targeted individuals. *Amici* have a strong interest in ensuring that these excesses are not repeated, that political speech is not quashed, and that dissenting individual views and associations are protected. Their stories are described in the Appendix to this Brief.[1]

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[1] Counsel for a party did not author this brief in whole or in part, and no person or entity, other than the *amici curiae* or counsel, have made a monetary contribution to the preparation or submission of the brief. Pursuant to Rule 37 of the Rules of the Supreme Court, the parties have consented to the filing of this brief, and copies of the consents have been filed with the Clerk of the Court.

SUMMARY OF ARGUMENT

Sections 302 and 303 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 8 U.S.C. §§ 1189 and 2339B, recreate the kind of criminal penalties for free speech and association that *Amici* and their families unjustly suffered more than fifty years ago. AEDPA authorizes the Secretary of State to designate "foreign terrorist organizations," and makes it a crime to provide certain statutorily defined "material support" for even the nonviolent and humanitarian activities of such groups. *Id.* Similar to the Smith Act and federal executive orders in the 1940s and 50s, AEDPA grants the Executive Branch unreviewable discretion to designate groups as "terrorist." AEDPA further creates vague bans on providing "expert advice or assistance," "training," "service," or "personnel" to designated groups. It threatens once again unconstitutionally to interfere with the rights of free speech and association.

AEDPA's vague ban on "assistance" and "advice" is essentially no different from the McCarthy Era attempt to root out association with and advocacy for groups unpopular with the government. Starting in the 1930s, and through the 1960s, Congress and the Executive Branch identified organizations -- the Communist Party and groups identified as having ties to the Communist Party -- as using illegal means, including terrorism, with the aim of overthrowing the United States Government by force and violence. The Smith Act and the Subversive Activities Control Act made it a crime to associate with these designated groups or to speak in support of these groups. These were crimes

regardless of whether or not that speech or association supported or furthered the group's unlawful activities.

Our society now recognizes that the McCarthy Era was a shameful episode in American history, characterized by widespread abuses of executive and legislative power and fueled by demagoguery and overzealous government action, ultimately encompassing "loyalty" investigations of over four million American citizens. *See, e.g.,* Ellen Schrecker, *Many Are the Crimes: McCarthyism in America* (1998), at x (The McCarthy Era is "the most widespread and longest lasting period of political repression in American history.").

While few individuals were ultimately prosecuted under the McCarthy Era laws, thousands were persecuted. Among the latter, larger group were *Amici* and their relatives, none of whom intended to or actually did engage in violence against this country. Nonetheless, they were investigated, libeled, terminated from and unable to secure employment, blacklisted, prosecuted, and imprisoned. One of the key lessons from this era is that when the federal government fans the flames of public passion by enacting overreaching criminal statutes, staging congressional hearings, and investigating the loyalty of millions of American citizens, it implicitly condones and sanctions retributions against individuals, such as *Amici*. Eventually, our society and this Court understood that these consequences were unacceptable. We should not make these mistakes again.

It is against this background that this Court issued the decisions that are the controlling law that governs this case. In a series of landmark First Amendment decisions, this Court struck down these statutes, restored freedom of speech and halted guilt by association. This Court concluded that the congressional and executive branch excesses were unconstitutional. The Court held that punishing speech without showing incitement to crime and punishing association without showing specific intent to further illegal ends penalizes innocents and chills the political freedoms at the very core of our democracy.

These principles are equally applicable today, where the federal government (once again) has designated certain organizations as proscribed and purports to make it a crime to speak for or otherwise associate with such organizations. Now, when once again our safety and security have been threatened, this Court should reaffirm the rights to free speech and association.

ARGUMENT

I. AMERICANS PAID A HEAVY PRICE FOR MCCARTHY ERA PENALTIES ON SPEECH AND ASSOCIATION.

In periods of serious external threats to our Nation, the political branches of our government have sought to root out and punish individuals and organizations based on association with those designated as enemies of the State, even if such association was through constitutionally protected speech and activities. *See generally*, Geoffrey R.

Stone, *Perilous Times: Free Speech in Wartime, from the Sedition Act of 1798 to the War on Terrorism* (2004). Beginning after the Bolshevik Revolution of 1917 and the establishment of a communist government in Russia, there was a period of fear and paranoia in America that international communism might destroy this country. In the 1950's, Senator Joseph McCarthy became among the most vocal and visible proponents of government investigations into individual citizens' affiliations with, or sympathies for, Communism. At the height of the McCarthy Era, the House Committee on Un-American Activities ("HUAC") held hearings in which individuals were publicly interrogated about their mere association with, or speech in support of, an organization identified as "Un-American."

Amici personally paid the price for the restrictions on freedom of speech and policies of guilt-by-association during the McCarthy Era. Individuals suffered greatly from "blacklists" that arose out of such hearings: private businesses (including the entertainment industry) and government employers stopped employing and fired individuals who government authorities identified as linked to communists, and those who refused to cooperate were jailed on charges of contempt. *See generally* Schrecker, *supra* (1998). Those who were blacklisted included renowned artists, performers, and writers, including: *amicus* Irwin Corey, a well-known comedian and film actor; *amicus* Clifford Carpenter, a famous radio, television and film actor; entertainer Lionel Stander, father of *amicus* Bella Stander; composers E. Y. Harburg, step-father of *amicus* Roderic Gorney, and Jay Gorney, father of *amicus* Roderic Gorney and husband of *amicus*

Sondra Gorney; screenwriter Robert Lees, father of *amicus* Richard Lees; and actors John Randolph and Sarah Cunningham, parents of *amici* Harrison Randolph and Martha Eoline Randolph. Speech was chilled as people feared government penalties that led to social ostracization; at the height of the furor, few dared to speak out against violations of civil liberties. *Id.*

Ill-conceived unconstitutional restrictions on the freedoms of speech and association enacted to protect against the evils of communism furthered and legitimized this repression. The Smith Act made it a crime to advocate, advise, teach, or publish material espousing the "duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States . . . by force or violence," and prohibited organizing any group that teaches or advocates the "overthrow or destruction of any such government by force or violence." 18 U.S.C. § 2385. Significantly, the Smith Act even made it a crime merely to become a member of, or affiliated with, any such society or group. *Id.* The Smith Act resulted in more than one hundred prosecutions based on involvement with the Communist Party, Stone, Geoffrey, "Free Speech in the Age of McCarthy: A Cautionary Tale," 93 CAL L. REV. 1387 (2006), including *amicus* Paul Harris' uncle and Communist Party leader Fred Fine, whose brother-in-law Sydney Harris was also blacklisted and unable to find a job because he joined the Communist Party after fighting in the Spanish Civil War.

The federal government also issued executive orders to crack down on communism during the

McCarthy Era. On March 21, 1947, President Harry Truman issued Executive Order 9,835, requiring loyalty checks on federal employees. The Executive Order authorized the Attorney General to designate specific groups as "totalitarian, fascist, communist, or subversive" or dedicated to "force or violence." Exec. Order No. 9,835 at III. The program authorized government panels to investigate employees for "membership in, affiliation with, or sympathetic association with" any designated organization, and to place such employees' names on a "master index," and recommend them for dismissal from employment. Exec. Order No. 9,835 at V.2.6. The order afforded no individual or organization the right to contest the designation and there was no right to judicial review. By 1953, 254 organizations were included on the "subversive list." Stone, at 344. The procedures developed under the Truman loyalty program were the model for an expanded guilt-by-association policy, and thus "became standard within other federal agencies, state and local governments, and private institutions." Schrecker, at 274.

In 1953, President Eisenhower expanded the standard of "disloyalty" under Truman's program to include "any behavior, activities or associations which would tend to show that the individual is not reliable or trustworthy." Exec. Order No. 10450 (1953). "In their investigations of more than four million federal civilian employees, the government's two hundred loyalty boards did not uncover a single instance of actual espionage or subversive malfeasance." Stone, at 351. Historian Henry Steele Commager described the loyalty program as "an invitation to precisely that kind of witch-hunting which is repugnant to our constitutional system."

Commager, *Freedom and Order: A Commentary on the American Political Scene*, 73-74 (1966). The incitement and toleration of such personal persecution based on association and speech cast a chilling shadow on political discourse in America.[2]

The McCarthy Era spawned innumerable tales of hardships suffered by "political innocents whose jobs were lost and careers destroyed because they inadvertently associated with groups on the list." Schrecker, at 276. By the mid-1950s, "[l]oyalty programs, emergency detention plans, undercover surveillance, legislative investigations, and criminal prosecutions of Communists swept the nation." Stone, at 313. "Some 11,000 Americans had been fired for suspected 'disloyalty,' more than 100 had been prosecuted under the Smith Act, and more than 130 had been jailed for . . . refusing to cooperate with their interrogators." *Id* at 314.

Some courageous leaders -- including Corliss Lamont (husband of *amicus* Beth Keehner Lamont),

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[2] The men and women called to testify before congressional committees had been among the most active and vocal progressive individuals of that era.

> The repression unleashed against them essentially silenced their voices. They became preoccupied with their own defense. Grappling with a loyalty-security case, coping with unemployment, or fighting criminal charges or deportation left little time or energy for other political work. In addition, though these people certainly cared about peace, unionization, and racial equality, they feared that active involvement with such causes might only lead to more harassment.

Schrecker, 367-68.

who brought key cases to the Supreme Court; *amicus* Yolanda "Bobby" Hall, who challenged the constitutionality of HUAC and its subpoenas; and *amicus* Ann Fagan Ginger, who successfully contested a HUAC contempt citation -- emerged to challenge the worst of the excesses.

It is against this background that the Supreme Court's landmark First Amendment decisions of the 1950s and 1960s restoring freedom of speech and halting guilt by association should be assessed and applied in this case.

II. THE SUPREME COURT IN THE 1950s AND 1960s REJECTED MCCARTHY ERA 'GUILT BY ASSOCIATION' STATUTES AS IMPERMISSIBLE.

In the 1950s, at a time of national fear over the unprecedented threat posed by international communism, Supreme Court cases addressed the constitutionality of statutes and administrative action similar to AEDPA. Clear First Amendment and due process principles in those cases limit criminal liability for association with or advocacy on behalf of designated "subversive" organizations. These principles apply directly to AEDPA. AEDPA does not comply with them, and accordingly is unconstitutional.

A. AEDPA Penalizes the Relationship Between an Individual and a Designated Organization, in Violation of the Freedom of Association.

In the aftermath of the McCarthy Era, this Court established clear limits on civil or criminal "guilt by association," In *Scales v. United States,* 367 U.S. 203 (1961), this Court rejected the Membership Clause of the Smith Act and established two related limits directly relevant to AEDPA: (1) the Constitution bars a blanket prohibition on association with groups with legal and illegal aims; and (2) the Constitution requires that criminal sanctions be limited only to individuals who specifically intend to further a designated group's illegal aims.

1. Congress Cannot Impose a "Blanket Prohibition" on Association With Groups Having Legal and Illegal Aims.

In *Scales*, this Court explained: "A blanket prohibition of association with a group having both legal and illegal aims" would create "a real danger that legitimate political expression or association would be impaired." *Id.* at 229. That same day, the Court also held that convictions under the Membership Clause of the Smith Act require the strictest possible standards, due to the danger that an individual supporting only the lawful aims of an organization "might be punished for his adherence to lawful and protected purposes, because of other and unprotected purposes which he does not necessarily share." *Noto v. United States,* 367 U.S. 290, 299-300 (1961).

In later cases, the Court affirmed and expanded this essential doctrine that association with a proscribed organization by itself cannot justify criminal liability. *See Elfbrandt v. Russell,* 384 U.S. 11, 19 (1966) (concluding that an Arizona law barring Communist party members from teaching in Arizona schools "infringes unnecessarily on protected freedoms" and "rests on the doctrine of 'guilt by association.'"); *Keyishian v. Bd. of Regents of the Univ. of the State of New York*, 385 U.S. 589, 607 (1967) (holding that even membership in the Communist Party by an individual with knowledge of the Party's unlawful goals "cannot suffice to justify criminal punishment.") (*citing Scales*).

AEDPA, in effect, similarly imposes a "blanket prohibition" on association with designated organizations (*i.e.*, whoever the government specifies), and would render conduct criminal on little more than a "guilt by association" theory. The statute prohibits individuals from interacting with the designated organizations in ways that advance legal aims of the organizations, such as providing training or expert advice on international human rights law or political advocacy, teaching community organizing, or providing instruction in principles of non-violent resistance. Indeed, the sweep of the statute is so vast that it potentially encompasses activities that neither "support" a group nor are "material." Criminalizing broad categories of "training," "expert advice," or "service" certainly encompasses activities that are not "material," and accordingly, there is no discernible difference between "material support" and mere association. As such, AEDPA criminalizes behavior that

promotes the group's "lawful and protected purposes," contrary to *Scales* and *Noto*.

2. The Government Must Prove that Individuals Intend to Further the Illegal Aims of an Organization.

This Court in *Scales* noted that requiring proof of an individual's specific intent to support the illegal aims of a proscribed organization is a corollary of the principle that the government may not impose a "blanket prohibition" on association with proscribed organizations. The Court explained:

> In our jurisprudence, guilt is personal, and when the imposition of punishment on a status or on conduct can only be justified by reference to the relationship of that status or conduct to other concededly criminal activity (here advocacy of violent overthrow), that relationship must be sufficiently substantial to satisfy the concept of personal guilt in order to withstand attack under the Due Process Clause of the Fifth Amendment.

Scales, 367 U.S. at 224-25.

The Court construed the Smith Act Membership Clause as not rendering "criminal all association with an organization which has been shown to engage in illegal advocacy" but requiring "clear proof that a defendant 'specifically intend(s) to accomplish (the aims of the organization) by resort to

violence.'" *Id.* at 229 (*citing Noto,* 367 U.S. at 290). A conviction is only appropriate where the government puts forward "proof that [the defendant] knew that the organization engaged in criminal advocacy, and that it was his purpose to further that criminal advocacy." *Id.* at 227, n.18.

The Court has repeatedly reaffirmed this specific intent requirement. *See Elfbrandt,* 384 U.S. at 19 ("A law which applies to membership without the 'specific intent' to further the illegal aims of the organization infringes unnecessarily on protected freedoms" and "rests on the doctrine of 'guilt by association' which has no place here."); *Keyishian,* 385 U.S. at 608 ("[L]egislation which sanctions membership unaccompanied by specific intent to further the unlawful goals of the organization or which is not active membership violates the constitutional limitations."); *NAACP v. Claiborne Hardware Co.,* 458 U.S. 886, 920 (1982) ("civil liability may not be imposed merely because an individual belonged to a group . . . . For liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims.").

Indeed, in the face of this long line of cases, the government eventually acknowledged in defending McCarthy Era statutes that it was required to demonstrate "specific intent," a requirement it now disavows in defending AEDPA. For example, in *United States v. Robel*, 389 U.S. 258 (1967), in defending the provision of the Subversive Activities Control Act allowing summary termination of employees of defense contractors, the

government acknowledged that specific intent was required for criminal convictions, stating flatly that to treat "association, in and of itself, as criminal conduct . . . would conflict squarely with the First Amendment." *See* Appellant United States Br. at 47-48, *Robel*, *supra*.[3]

AEDPA makes association a crime without regard to the specific intent of the individual to support the illegal activities of a designated organization. It violates this crucial constitutional requirement that this Court established in the McCarthy Era cases and that applies with equal force today.

B. Like McCarthy Era Statutes, AEDPA Makes Constitutionally Protected Speech a Crime and is Unconstitutionally Vague, Chilling Free Speech.

1. AEDPA Unconstitutionally Penalizes Protected Speech in the Same Manner as McCarthy Era Laws.

In challenges to the application of the Smith Act, this Court found that advocating or teaching the violent overthrow of the government, even with an evil intent, is protected speech as long as it is "divorced from any effort to instigate action to that

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[3] The Court was unpersuaded by this distinction, and struck the statutory scheme in *Robel* as unconstitutional, because the bar on employment "literally establishe[d] guilt by association alone, without any need to establish that an individual's association pose[d] the threat feared by the Government in proscribing it." *Robel*, 389 U.S. at 264-65.

end." *Yates v. United States*, 354 U.S. 298, 318 (1957); *see also id.* at 331. Even where individuals have advocated for the overthrow of the United States Government, that speech is protected unless "the speech or publication created a 'clear and present danger' of attempting or accomplishing the prohibited crimes. . . ." *Dennis v. United States*, 341 U.S. 494, 505 (1951).

The Court elaborated the standard for evaluating legislative restrictions on teaching and advocacy in *Brandenburg v. Ohio,* 395 U.S. 444 (1969). In *Brandenburg*, the Court struck down the Ohio Criminal Syndicalism Act because the act punished "mere advocacy," even though the speech advocated illegal activity. The Ohio Criminal Syndicalism Act, which was nearly identical to similar laws adopted by 20 states, punished persons who "advocate or teach the duty, necessity, or propriety" of violence as a means of "accomplishing industrial or political reform…." Ohio Rev. Code Ann. § 2923.13 (1969). The Court, overruling its previous decision in *Whitney v. California,* 274 U.S. 357 (1927), held that the government cannot penalize advocacy or teaching of the use of force or violating the law unless it can prove that the speech is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg*, 395 U.S. at 447.

As interpreted by the government, AEDPA makes association a crime, including teaching or advocating on behalf of any designated organization, and AEDPA is strikingly similar to the language of the Smith Act and the Ohio Criminal Syndicalism Act. On its face, AEDPA prohibits speech that is not

"directed to inciting or producing imminent lawless action" and is not likely to "incite or produce such action." *See* 8 U.S.C. §§ 1189, 2339B. Furthermore, the speech that AEDPA prohibits is speech advocating lawful activity, and the Court in cases such as *Dennis* and *Brandenburg* disapproved statutory interpretation that allowed the government to restrict speech advocating even unlawful activity. For example, AEDPA prohibits the teaching of law or human rights, or providing advice on water sanitation to designated organizations. The statute even apparently bars drafting an *amicus* brief in support of a designated organization or advocating on behalf of a designated organization before the United States Government or the United Nations.

Whether or not the executive branch has concluded that an organization engages in illegal conduct, the First Amendment protects the rights of individuals to speak, teach or provide advice to such organizations -- certainly where such speech is in furtherance of non-violent or other legal aims of the organization. *Cf. De Jonge v. Oregon* 299 U.S. 353 (1937) (reversing conviction under Oregon criminal syndicalism law of individual who helped organize Communist Party meeting in 1934); *Claiborne Hardware Co.*, 458 U.S. at 908 (individuals who advocate on behalf of an organization do "not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected."). Such groups may be unpopular. But the First Amendment protects even those who speak to or on behalf of unpopular organizations.

2. AEDPA Chills Protected Speech.

During the McCarthy Era, fear of enforcement of statutes such as the Smith Act and the Ohio Criminal Syndicalism Act caused individuals to refrain from engaging in protected speech or associating with designated organizations. Likewise, here, AEDPA creates the danger of chilling the exercise of First Amendment rights.

In *Keyishian*, *supra* the Court found unconstitutionally vague a New York statute making "treasonable" or "seditious" words or acts grounds for removal from state employment. *Keyishian*, 385 U.S. at 597-99, N.Y. EDUC. LAW §§ 3021, 3022; N.Y. CIV. SERV. LAW § 105. In striking down the statute, the Court found that the "First Amendment freedoms need breathing space to survive…" and emphasized the danger of a "chilling effect upon the exercise of vital First Amendment rights."[4]

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[4] A challenge to a statute based on vagueness grounds requires the court to consider whether the statute is "sufficiently clear so as not to cause persons 'of common intelligence ... necessarily [to] guess at its meaning and [to] differ as to its application.' *Connally v. General Constr. Co.,* 269 U.S. 385, 391(1926).

In *Keyishian*, the Court found that no state employee "can know just where the line is drawn between 'seditious' and nonseditious utterances and acts." *Id.* at 599. The same New York statute prohibited state employment by any person who "advocates, advises or teaches the doctrine" of forceful overthrow of the government. *See* N.Y. EDUC. LAW §§ 3021, 3022; N.Y. CIV. SERV. LAW § 105. The Court found that "[t]his provision is plainly susceptible of sweeping and improper application. It may well prohibit the employment of one who merely advocates the doctrine in the abstract without any attempt to indoctrinate others or incite others to action in furtherance of unlawful claims." *Keyishian*, 385 U.S. at 599.

Keyishian, 385 U.S. at 604. *See generally, NAACP v. Button*, 371 U.S. 415 (1963) ("the threat of sanctions may deter [the exercise of First Amendment Rights] almost as potently as actual application of the sanctions").

Local and state governments relied on statutes similar to New York's to terminate numerous dedicated teachers across the United States without any evidence of unlawful or violent activity. *Amicus* Irving Adler and Samuel Wallach (father of *amicus* Joan Wallach Scott), were fired from New York City teaching jobs for resisting inquiries into their political beliefs; *amicus* Chandler Davis lost his teaching job at the University of Michigan after refusing to testify and was imprisoned after being cited for contempt of Congress; *amicus* Henry Foner was denied a teaching license and his three brothers lost their New York teaching jobs after their "loyalty" testimonies; *amicus* Lee Lorch lost his position at Fisk University for refusing to answer HUAC's questions; Yetta Stromberg, great-aunt of *amicus* Judy Branfman was fired from teaching positions with UCLA and Los Angeles public schools; renowned philosopher Barrows Dunham, father of *amicus* Clarke Dunham, lost his position at Temple University; Frank and Jean Wilkinson, parents of *amicus* Jo Wilkinson, lost their jobs after refusing to testify before a California committee; and Dr. Robert Hodes, father of *amicus* Peter Hodes was fired from Tulane University and had to move abroad to continue his career.

Even children were not immune from the chilling effects of such restrictions on speech and

association: FBI agents questioned classmates and playground friends of *amici* siblings Ernst and Jessica Benjamin when they were schoolchildren, because their parents Herbert and Lillian Benjamin had been blacklisted.

AEDPA similarly creates fear of prosecution for groups and individuals today who would lawfully advocate on behalf of designated organizations or provide those organizations with advice and training relating to lawful activities. In 1951, when HUAC agents attempted to subpoena them, *amici* Jean and Hugo Butler chose to flee to Mexico to avoid arrest. *Amicus* Walter Bernstein, a blacklisted writer in the 1950s, was forced to write under a pseudonym. Screenwriter Michael Wilson, father to *amici* Becca Wilson and Rosanna Wilson-Farrow, had to write "under the table" and did not receive credit for his work, including Oscar-winning films *Bridge Over the River Kwai* (1957) and *Lawrence of Arabia* (1952). Hollywood Ten screenwriters Sam Ornitz, father-in-law of *amicus* Hilda Ornitz, and Adrian Scott, husband, uncle, and great uncle of *amici* Joan Scott, Aemelia Scott, Adam Scott, and Douglas Scott, served nine months in prison and had their careers destroyed for refusing to testify before HUAC.

Like the statutes in *Keyishian*, AEDPA "is plainly susceptible of sweeping and improper application." *Keyishian*, 385 U.S. at 599. The chilling effect on lawful speech is reminiscent of the McCarthy Era where people feared speaking on behalf of or associating with designated groups in part because it was unclear what speech might trigger government action.

The Court should protect those who want lawfully to exercise their First Amendment rights from this sort of vague statute that uses ill-defined and undefined terms to make speech a crime.

C. National Security Concerns Cannot Justify Infringements on Freedom of Association.

The government defends AEDPA on national security grounds. *See Petition for Writ of Certiorari*, at 11 (citing congressional findings that "international terrorism is a serious and deadly problem that threatens the vital interests of the United States"). When the government argued in the 1940s, 50s, and 60s that the national security threat posed by international communism justified infringements on rights of speech and association, this Court closely scrutinized such claims to ensure that the means are narrowly tailored to serve the national security interest. As this Court noted then, "the phrase 'war power' cannot be invoked as a talismanic incantation to support any exercise of congressional power which can be brought within its ambit." *Robel*, 389 U.S. at 263.

In *Robel*, the government argued that the threat of international communism in the aftermath of the Korean War made it "plain beyond all doubt that communism has passed beyond the use of subversion to conquer the independent nations and will now use armed invasion and war." Government Br. at 22, *Robel*, *supra* (cites and quotes omitted). The government contended that the Communist Party "can no longer be viewed passively as a group of mere political and ideological dissidents, but must be looked upon with all seriousness as a military

fifth column actively aiding our enemies." *Id.* at 22. The government cited congressional reports warning of "sabotage" by "hard-core Communists" "which action would coincide with surprise attacks on the country." *Id.* at 26. The government even invoked the now-discredited arguments of *Hirabayashi v. United States,* 320 U.S. 81 (1943) (upholding imposition of a blanket curfew only on Japanese Americans during World War II, absent any evidence of individual guilt or misconduct) to claim that it was owed "the very broad discretion which has traditionally been vested in the legislative and executive branches of government in the area of war and national defense." *Robel* Br. at 29-30 (times of war "call for the exercise of judgment and discretion and for the choice of means by those branches of government on which the Constitution has placed responsibility of war-making, it is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs").[5]

In the face of these claims, this Court responded:

> [The] concept of national defense cannot be deemed an end in itself, justifying any exercise of legislative power designed to promote such a goal. Implicit in the term national defense is the notion of defending

[5] The doctrine of *Hirabayashi* has been widely discredited as an abdication of the Court's historic defense of constitutional rights. *See, e.g., Hirabayashi v. United States,* 828 F.2d 591, 593 (9th Cir. 1987).

> those values and ideals which set this nation apart. For almost two centuries, our country has taken singular pride in the democratic ideals enshrined in the Constitution, and the most cherished of those ideals is found in the First Amendment. It would be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties -- the freedom of association -- which makes the defense of the Nation worthwhile.

Robel, 389 U.S. at 263-64.

The *Robel* Court concluded that despite the government's broad invocation of national security, the "means the Government has chosen to implement" its purpose was not narrowly tailored and violated the right to free association, because the government was not required to prove that any individual in fact engaged in any activity that posed a risk to national security: "The statute quite literally establishes guilt by association alone, without any need to establish that an individual's association poses the threat feared by the government in proscribing it." *Id.* at 265. Likewise here, AEDPA punishes speech without a showing of incitement to crime, and it punishes association with designated organizations without establishing that an individual's association poses a threat. As such, AEDPA is not narrowly tailored to serve an interest in national security and is unconstitutional.

CONCLUSION

For all of the above reasons, and in accordance with the request of Plaintiffs Humanitarian Law Project et al., the Court should affirm the court of appeals' decision with respect to the provisions it held invalid as applied to plaintiffs' speech, and reverse the court's decision with respect to the provisions it upheld.

Respectfully submitted,

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APPENDIX

APPENDIX: LIST OF *AMICI CURIAE*

Irving Adler is a prominent mathematician and math educator, who has authored or co-authored more than 80 books on mathematics, science and education. Adler started his career in 1932 as a math teacher in New York City public schools. He lost his position in 1954 when he refused to answer questions from the New York Superintendent of Schools about his political beliefs. Adler was a plaintiff in a Supreme Court lawsuit challenging the constitutionality of the New York "Feinberg" law, providing for dismissal of teachers belonging to "subversive organizations." *Adler v. Board of Education of City of New York,* 342 U.S. 485 (1952). The Supreme Court upheld the Feinberg law, but later reversed in *Keyishian*, *supra*.

Ernst and Jessica Benjamin are the son and daughter of Herbert and Lillian Benjamin. Ernst is a political scientist and retired General Secretary of the American Association of University Professors. Jessica Benjamin is an internationally known psychoanalytic psychologist and author. Herbert Benjamin was active in the hunger marches of 1930 and 1932, the Unemployed Councils, the campaigns for social insurance, and the Worker's Alliance. He professed his Communist Party membership in congressional testimony in the late 1930s but refused to testify about others after he left the Party about 1946. The Benjamin family was subject to recurrent FBI surveillance both before and long after Herbert Benjamin left the Communist Party, including workplace and neighborhood investigative interviews and deportation efforts intended to persuade Herbert Benjamin to testify about the

activities of others. The Benjamin children were subject to their mother's anxiety about their father's possible deportation, and to harassment at school such as a teacher repeatedly lecturing Jessica on the virtues of Senator McCarthy and a school administrator who noted "needs political guidance" in Ernst's high school record. Ernst's focus on academic freedom has familiarized him with the parallels between "McCarthyism" and current excessive constraints on academic speech and association arising from the "war on terror." Jessica has taught and studied in Chile, Argentina, Germany, and Israel where she has observed and discussed with other mental health professionals how political persecution deprives children of the orderly interpersonal environment that nurtures fully functional adults.

Walter Bernstein is a writer who was blacklisted in the 1950s by HUAC. After being blacklisted, he continued to write under pseudonyms. He was nominated for an Oscar for writing The Front, the Woody Allen/Martin Ritt film about the blacklist. He is a recipient of The Writers Guild of America East Lifetime Achievement Award and he also wrote the book "Inside Out: A Memoir of the Blacklist".

Judy Branfman is the great-niece of Yetta Stromberg. As a 17-year-old leader of the Young Pioneers (the youth organization of the Communist Party) in Los Angeles, she ran a summer camp for working class children. In 1929, the camp began to fly a homemade red flag in the morning and within days it was raided and shut down. Stromberg was sentenced to 1 to 10 years in San Quentin Prison for

violating California's "Red Flag Law," which criminalized displaying a red flag. Stromberg appealed her conviction and the U.S. Supreme Court found portions of the law unconstitutionally vague. *Stromberg v California*, 283 U.S. 359 (1931). While the case set precedent for hundreds of free speech and civil rights cases, the FBI continued to track Stromberg for decades because of her early activism and suspected membership in the Communist Party. She was blacklisted and fired from teaching jobs with UCLA and Los Angeles public schools during the 1940s and 50s. Although never called before HUAC, she lived in constant fear of a subpoena. Prevented from fulfilling her true goals as an educator, she taught in private schools and very rarely talked about her case with anyone.

Jean Rouverol Butler is an author, actress and screenwriter whose husband, screenwriter Hugo Butler, was blacklisted in the 1940s. During that time period, Hugo Butler published under Jean Rouverol Butler's name. In 1951, in order to avoid being subpoenaed by HUAC, she and her husband fled to Mexico, thereby avoiding facing prison sentences for failing to answer questions. She returned to the United States in mid-1960s. The author of several books, in 2001 she published "Refugees from Hollywood: A Journal of the Blacklist Years."

Clifford Carpenter is an actor who was blacklisted in the late 1940s for his political views, and for years was unable to get work in radio, television and film. He was called before HUAC while in a play by Dore Schary called *Sunrise at Campobello* about Franklin Delano Roosevelt.

Carpenter refused to answer questions about his prior involvement in the Communist Party before the Committee. Carpenter led the struggle against the blacklist in the New York local of the American Federation of Television and Radio Artists. He acted in a number of Broadway hits as well as hundreds of radio shows, including playing Terry on the popular radio series, "Terry and the Pirates."

Irwin Corey is a prominent comedian, performer and satirist. He was blacklisted during the 1950s for his left-wing political opinions. As a result of the blacklist he was unable to get the kind of work that his talent and experience would have permitted. Due to the after-effects of the blacklist, Corey was not able to get work on television and movies until the 1970s and 1980s.

Professor H. Chandler Davis (Ph.D. Harvard 1950) was a non-tenured junior faculty member at the University of Michigan when he was questioned by the HUAC in 1954. Refusing to answer was easy: one simply had to invoke the Fifth Amendment protection against self-incrimination. Davis avoided doing so, deliberately incurring indictment for contempt of Congress. He hoped to argue, on appeal to the Supreme Court, that the HUAC hearings were unconstitutional under the First Amendment. His appeal was denied certiorari, and he served time in Danbury Federal Correctional Institution. Blacklisted permanently from regular employment in his profession in the United States, he has had a successful professional life since 1962 at the University of Toronto (but retained his U.S. citizenship). This included vice presidency of the American Mathematical Society 1991-1994; and

many guest lectureships, including in the U.S. In 1990, the University of Michigan Senate Assembly established a special lecture on Academic and Intellectual Freedom in honor of Davis and two other Michigan faculty members fired for refusing to testify before HUAC.

Clarke Dunham is the son of Barrows Dunham, whose book, *Man Against Myth*, a New York Times best-seller in 1947, made him a spokesman for American progressive thought, drawing the attention of the FBI which then tracked which university classrooms used the book as a text. A compelling speaker, Barrows Dunham appeared at many events, and those events appeared within his FBI files. Many friends and acquaintances became victims of the Un-American Activities Committees and professional blacklists. He tested the idea of becoming an ex-patriate, the choice of many others, but soon returned to America—what he referred to as "God's Country". In February 1953, supported by Albert Einstein, Dr. Dunham was a candidate for a Ford Foundation grant when he was subpoenaed to appear before HUAC. Refusing to give the Committee more than his name, date and place of birth, he was quickly indicted for contempt of Congress. That same day the Ford Foundation denied the grant. Temple University suspended him from his position as professor and Chairman of the Philosophy Department the following day. Temple later fired Barrows for "intellectual arrogance" and "obvious contempt of Congress." His trial resulted in a directed verdict of acquittal and in fact established a legal landmark—the point at which a person could legally and safely refuse to testify against one's friends and associates. His contempt no longer

"obvious" and his defiance of government oppression vindicated, Temple nevertheless refused to reinstate him. Twenty-eight years later Temple did reinstate Barrows with a meager pension. Not only Barrows suffered. His wife, Alice Dunham, was forced out of her job at the Philadelphia Museum of Art. Several generations of the Dunham family endured financial hardship and emotional scars directly caused by the blacklist, and two generations of students shared the loss of a well loved and inspiring teacher.

Henry Foner and his three brothers (now deceased) were victims of the McCarthy-like Rapp-Coudert Legislative Committee investigating communism in New York public schools and colleges. Henry's brothers Phillip, Jack and Moe -- along with about fifty other City College teachers -- were suspended due to their political beliefs as a result of the Rapp-Coudert committee, and Henry was denied a public school teacher's license. Later, Philip taught at Lincoln University in Pennsylvania and authored close to 100 books on labor, Black and women's history. Jack taught at Colby College in Maine and was honored by the college upon his retirement there. Moe founded the world-renowned *Bread and Roses* cultural program at the Service Employees International Union - 1199. Henry received the Legion of Merit and Italian Military Valor Cross during his military service and went on to serve as president of the Fur, Leather & Machine Workers Union, covering workers in New York, New Jersey, Pennsylvania, Delaware and West Virginia for 27 years until his retirement in 1988.

Professor Ann Fagan Ginger was a victim and close family member of victims of the McCarthy Era

"red scare." In 1954 the Harvard University Business School broke the contract of Ginger's husband, professor Ray Ginger, when the Gingers refused to answer questions about their political affiliations. He was blacklisted and could only get a teaching job in Canada for many years. This broke his marriage and led to his death at the age of 50 of alcoholism. Ann Ginger could not get admitted to practice law in Massachusetts, New York or California from 1952 until 1972 because she could not pass the FBI-administered "character" test. Nevertheless, during this period she argued and won a case in the U.S. Supreme Court contesting a contempt citation by the Ohio Un-American Activities Commission. *Raley v. State of Ohio,* 360 U.S. 423 (1959). In 1970, after ten years of editing books for the University of California Continuing Education of the Bar, she was fired when the FBI visited her new supervisor. Her brother-in-law, professor Edward Yellin, also suffered from blacklisting after refusing to answer questions before HUAC, although he won his case in the U.S. Supreme Court in 1963. *Yellin v. U.S.,* 374 U.S. 109 (1963).

Roderic Gorney is the son of Jay Gorney and the step-son of E. Y. Harburg. Together, Gorney and Harburg wrote "Brother, Can You Spare a Dime." With other composers, Harburg wrote the lyrics for "The Wizard of Oz," for which he won an Academy Award for the song "Somewhere Over the Rainbow," and "Finian's Rainbow," among other classic American musical works. Both Gorney and Harburg were listed in the initial Blacklist publication, "Red Channels." Harburg was named by a "friendly witness" before HUAC, actor Robert Taylor, based on

lyrics to a song in a movie in which Taylor had starred. When asked by his studio, MGM, to testify before HUAC voluntarily, Harburg refused and responded that "Guilt by association is a European doctrine which has always been repudiated in this country, and it is about time that decent liberals and good Americans fought back. . ." Roy Brewer, the "keeper" of the Hollywood Blacklist, informed Harburg that he was labeled a "Red" based on a song he wrote for a 1940 musical starring Lena Horne, who was also blacklisted. In the hysteria of the McCarthy Era, Brewster accused Harburg of writing the song, "Happiness is Just a Thing Called Joe" as a tribute to Joseph Stalin. Harburg was blacklisted in Hollywood and denied a passport when he sought to leave the country. Roderic Gorney saw first-hand the devastating effect of "guilt by association" on his family and his family friends.

Sondra Gorney is the widow of Jay Gorney, the renowned composer of "Brother, Can You Spare a Dime" and other classic songs. In 1950, both Sondra and Jay Gorney were listed in Counterattack, a publication of the organization AWARE, as "reds." Among the reasons Jay was accused of being a Communist was that he had signed a statement issued by the National Council of Arts, Sciences and Professions (NCASP), calling for the abolition of HUAC. In 1952, both Sondra and Jay Gorney were subpoenaed to testify before HUAC, but only Jay Gorney appeared before the Committee. When asked "Are you now or have you ever been a Communist?", Gorney took the Fifth Amendment. Although he avoided going to prison, both he and Sondra lost their careers. The hysteria of the McCarthy Era cast a lasting pall on the

Gorney family, particularly their two young children who were six and eight at the time of the hearings.

Yolanda "Bobby" Hall was active in racial integration efforts in Chicago on behalf of the League of Women Voters in 1965 when she was subpoenaed to appear before HUAC and refused to give testimony. Hall is a founder of the Working Women's History Project and a former President of Local 330 of the United Automobile Workers Union. Hall was a plaintiff in *Stamler v. Willis,* 287 F. Supp.734 (D. Ill. 1968), a case challenging the constitutionality of the HUAC.

Paul Harris is a graduate of Boalt Hall law school and teaches at Golden Gate School of Law in San Francisco. He is the son of Sydney Harris, who joined the Communist Party while volunteering to fight fascism during the Spanish civil war. After returning to the U.S., Harris was blacklisted and unable to get a job in the labor movement. His phone was tapped by the government in 1952, and he was unable to get a job as a labor journalist until well after he left the Communist Party in the mid 1950s. Paul Harris is also the nephew of Fred Fine, a Communist Party leader indicted under the Smith Act in 1951. Fine went underground for four years and was tried and convicted after his voluntary surrender, despite the absence of evidence that he ever engaged in any act of violence. His conviction was reversed after the Supreme Court decision in *Yates*, *supra*. He resigned from the Party in 1957. He went on to become Commissioner of Culture for Chicago in 1984. Paul Harris' mother, Rose Fine, also an intermittent Communist Party member, was subject to continuous FBI investigation and

harassment due to her brother's affiliation. She left the Party in 1952 and was fired from seven jobs between 1952 and the Fall of 1953, all after she had left the party. Each firing resulted from FBI visits to her employer. She was once threatened with felony prosecution for a minor offense unless she gave information about her brother. The FBI repeatedly harassed the family, visiting neighbors and relatives to ask questions, and once attempting to interrogate 8-year-old Paul.

Peter Hodes is the son of Dr. Robert Hodes, a victim of a McCarthy Era firing. Dr. Hodes was a neurophysiology professor at Tulane University who spoke out in favor of peace in opposition to the Korean War. He tried to integrate the housing for visiting professors attending conferences in New Orleans. He had cooperative relations with some scientists from the Soviet Union. He was fired in 1953 for expressing these unpopular political beliefs, but Tulane University disguised its political motivation and instead charged him with causing "friction" within his department. Dr. Hodes fought unsuccessfully to keep his job at Tulane through the university's internal review process. After he was fired, Dr. Hodes was blacklisted and unable to find another comparable job. Unable to find work in his field, Dr. Hodes moved, with his wife and three children, to England. Then, from 1954 until 1959, he and his family moved to China, where he was able to continue his professional career.

Beth Keehner Lamont is the widow of Dr. Corliss Lamont, a leading philosopher, teacher and defender of human rights. Dr. Lamont was a founder of the National Emergency Civil Liberties

Committee, which later became the Center for Constitutional Rights, and a Director of the American Civil Liberties Union from 1932 - 1954. As a consequence of his political beliefs, Dr. Lamont was investigated by Congress, cited for contempt of Congress, denied a passport by the State Department, and subject to FBI wiretaps and investigations of his finances. Dr. Lamont won a successful lawsuit against the U.S. Postmaster General for opening mail in violation of the First Amendment, *Lamont v. Postmaster General of the United States,* 381 U.S. 301 (1965). Dr. Lamont authored numerous books, including The Philosophy of Humanism.

Richard Lees is the son of Robert Lees. Robert Lees was a well-known screenwriter of comedies for Abbott and Costello, among others, when he was called to testify before HUAC. Lees refused to do so, telling the Committee that "a writer writes for the people, who are both his inspiration and his audience. The political freedom of the people guarantees the writers tools of his trade – freedom of thought and expression." For Lees, it was important that a "writer must also function as a citizen" to guarantee freedom of thought and expression. Lees was blacklisted from Hollywood. Having lost his profession, he moved his family from Hollywood and took a job as a maitre'd to support them. Although Lees later wrote for television under various pseudonyms, he never recovered his screenwriting career.

Professor Lee Lorch is a nationally and internationally recognized mathematician, elected to the Councils of the American and Canadian

Mathematical Societies, and a Fellow of the American Association for the Advancement of Science. He has received four honorary doctorates and other prestigious academic awards. He was elected as a Fellow of the Royal Society of Canada and served on its Council. Professor Lorch paid a heavy professional price, including being blacklisted, for his commitment to civil rights and equal opportunity for women and minorities. In the late 1940s, the Lorches participated prominently in the campaign to eliminate racial segregation in Stuyvesant Town, a housing development in New York City. As a result, Lee lost his position at City College of New York. Later he was dismissed from his position at Pennsylvania State University because he allowed an African American family to live in his Stuyvesant Town apartment. This was reported on the front page of The New York Times, and the paper published an editorial calling for his reinstatement. Lorch was summoned to testify before HUAC in 1955, after attempting to enroll his daughter in a neighborhood, African-American school in Nashville, Tennessee, where he and his family were living and working at the time. When Professor Lorch refused to answer a number of questions the Committee put to him, he was dismissed from his position at Fisk University and indicted for contempt of Congress. Although Professor Lorch was acquitted of the contempt charge, he was blacklisted. Finding himself unemployable in the U.S., he and his family moved to Canada in 1959, where Professor Lorch has had a distinguished career. He has remained a U.S. Citizen. During World War II, he served for three years in the U.S. Army and received an honorable discharge.

Dr. Hilda W. Ornitz is the daughter-in-law of screenwriter Sam Ornitz, one of the "Hollywood Ten." Ornitz was one of the oldest of the group of ten individuals subpoenaed as "unfriendly" witnesses before HUAC. Ornitz was also an organizer and board member of the Screen Writers Guild, the trade union organized in the mid-1930s as an answer to the Academy of Motion Pictures Arts & Sciences. Ornitz was called before HUAC in 1947 to answer questions about the Screen Writers Guild. He invoked his constitutional rights and refused to answer the Committee's questions. Ornitz was charged and convicted for contempt of Congress, and sentenced to a fine of $1,000 and a year in prison. He was blacklisted by Hollywood, and never again wrote for motion pictures. He died a few years after his release from prison.

Harrison Randolph and **Martha Eoline Randolph** are the children of Tony-award winning actors John Randolph and Sarah Cunningham. Both Randolph and Cunningham were blacklisted by the Hollywood studios after having been "named" for supporting progressive causes. They were unable to get film work, or work in radio or television in New York City, after 1951. They invoked their Fifth Amendment rights and refused to testify before the HUAC in 1955. Randolph was not rehired in Hollywood until 1966. After his return to Hollywood, Randolph was a board member of the Screen Actors Guild and other professional organizations. Randolph said he served on these boards as a living reminder not to forget or repeat the McCarthy Era.

Joan Scott, **Aemilia Scott**, **Douglas Scott**, and **Adam Scott** are the wife, great niece, nephew and great nephew, respectively, of Adrian Scott, a member of the so-called "Hollywood Ten," and a producer and screenwriter whose professional life was cut short by the Hollywood blacklist. As a consequence of political activity at Amherst College and in Hollywood, and especially after producing a film entitled "Crossfire" dealing with anti-Semitism in the U.S. Army, Adrian was brought before HUAC to explain his alleged ties to the Communist Party. Rather than taking the Fifth Amendment, Adrian and nine other members of the Hollywood community opted to invoke their First Amendment rights. Adrian argued before HUAC against guilt by association, stating, "I do not believe it is proper for this committee to inquire into my personal relationships, my private relationships, my public relationships." For this, and after being named by 'HUAC friendly' witnesses, he and the other members of the Hollywood Ten were blacklisted and jailed for contempt of Congress. Adrian spent nine months in prison. Adrian's Hollywood career was effectively ended, forcing him to write under a pseudonym, use a "front," and eventually leave the United States entirely to find work. He died in 1971, within a few years of returning to the U.S. Aemilia is herself working to become a screenwriter, and honors the principled stance that Adrian took and the price he paid for his dissent.

Joan Wallach Scott is a professor of Social Science at the Institute for Advanced Study in Princeton NJ. She is the daughter of Samuel Wallach, who was fired from his job as a New York City high school teacher in 1953. Sam Wallach

refused to answer questions about his personal political beliefs in 1948 before a congressional investigating committee and then again when the Board of Education asked whether or not he was a member of the Communist Party. Nothing in Wallach's 18 year record as a teacher indicated that he was unfit to be in a classroom. It was the presumed danger of his political beliefs that led to his firing, and to the dismissal or forced resignation of some 350 New York City public school teachers during that period. In his statement to a congressional committee and the Board of Education, Wallach stated "As a teacher and believer in fundamental principles, it seems to me that it would be a betrayal of everything I have been teaching for me to cooperate with this committee in an investigation of a man's opinions, his political beliefs, his religion, or private views."

Bella Stander is the daughter of the late Lionel Stander, a film, stage, television and radio actor who was active in many progressive social and political causes. Stander was first subject to an early "blacklist" in the 1930s because of his active role in progressive trade unions and anti-Fascist organizations. Although he was publicly cleared of accusations of being a communist by the Los Angeles District Attorney in 1940, years later he was again accused of being one. He was subpoenaed to appear before HUAC in 1953, and as a result was blacklisted from radio, TV and Hollywood. Lionel Stander sparred vigorously with the Committee, defending his constitutional rights and denouncing HUAC for trampling them, which made front-page news from coast to coast. Columnist Walter Winchell, who had supplied material on

Stander to the FBI, then demanded that he be ousted from his role in the touring production of "Pal Joey." J. Edgar Hoover wrote in his FBI file, which covers some 30 years: "Be certain Stander doesn't use FBI to regain respectability."

Jo Wilkinson is the daughter of Frank Wilkinson, the director of the Los Angeles Housing Authority in the 1940s. In early 1952, he was called before the California State Un-American Activities Committee, ostensibly to testify on the alleged infiltration of communists into the administration of public housing. Wilkinson appeared but refused to answer questions, and was fired from his job as a result. Jo Wilkinson's mother, Jean, also refused to testify about her political beliefs, and was fired from her job as a public school teacher. She was not able to obtain employment again as a public school teacher until 1965. In 1956, and again in 1958, Frank Wilkinson appeared before HUAC, but refused to answer questions. Instead, he asserted that the Committee's role and questions violated the First Amendment. In 1961, he was jailed for contempt of Congress and served nine months in federal prison. The Wilkinson home was firebombed during this time and, like many other families, the Wilkinson's were subject to constant surveillance from unidentified men in unmarked cars.

Becca Wilson and **Rosanna Wilson-Farrow** are the daughters of screenwriter Michael Wilson, who was called to testify before the HUAC in late 1951. Wilson served honorably as a Marine lieutenant in the Pacific Campaign during World War II. When he was called to appear before the Committee and refused to answer certain of their questions, Wilson

was branded an "unfriendly witness" and blacklisted. Just six months later, he won his first Oscar for Best Screenplay for "A Place in the Sun," which he had written before being blacklisted. Because of the blacklist, for 15 years Wilson was forced to write "under the table," work for a fraction of his former compensation, and was denied the honors and public acclaim he would have received for his extraordinary creative achievements. Wilson had to live in exile with his family for eight years in order to be able to work as a writer. In 1956 Michael Wilson's screenplay for Friendly Persuasion was nominated for the Academy Award, and was strongly favored to win, but he was quietly disqualified because of the blacklist. His name did not appear in the credits, and became one of the only films in Hollywood history credited to no screenwriter at all. In 1957, Wilson and another blacklisted writer, Carl Foreman, cowrote the screenplay for *The Bridge Over the River Kwai*. Because of the blacklist, the film's screenwriting credit simply said, "Screenplay Based on the Novel by Pierre Boulle." Although the film won the Academy Award for "Best Writing, Screenplay Based on Material from Another Medium," the Oscar statuette went to Boulle, the novelist on whose book the screenplay was based, a Frenchman who barely spoke English. Wilson also wrote the screenplay for 1962's "Best Picture" Oscar winner, *Lawrence of Arabia*. For three decades, he was denied writing credit for these and other films considered among the best screenplays of the twentieth century. As a result of pressure on the Motion Picture Academy exerted by Wilson's surviving friends in the screenwriters' guild, in 1984 Wilson was awarded a posthumous Oscar for *Bridge Over the River Kwai*, and posthumous Oscar

nominations for *Lawrence of Arabia* in 1984, and *Friendly Persuasion* in 1995. Michael Wilson's family suffered emotionally and financially due to the blacklist. All of this took an enormous toll on Wilson, who died at a relatively young age.