

WHERE WILL OBAMA TRY HIMSELF FOR MATERIAL SUPPORT FOR TERRORISM?

I consider this a wicked brain teaser:

The Obama administration is engaged in a fierce debate over whether to supply weapons to the rebels in Libya, senior officials said on Tuesday, with some fearful that providing arms would deepen American involvement in a civil war and that some fighters may have links to Al Qaeda.

The debate has drawn in the White House, the State Department and the Pentagon, these officials said, and has prompted an urgent call for intelligence about a ragtag band of rebels who are waging a town-by-town battle against Col. Muammar el-Qaddafi, from a base in eastern Libya long suspected of supplying terrorist recruits.

“Al Qaeda in that part of the country is obviously an issue,” a senior official said.

On a day when Libyan forces counterattacked, fears about the rebels surfaced publicly on Capitol Hill on Tuesday when the military commander of NATO, Adm. James G. Stavridis, told a Senate hearing that there were “flickers” in intelligence reports about the presence of Qaeda and Hezbollah members among the anti-Qaddafi forces. No full picture of the opposition has emerged, Admiral Stavridis said. While eastern Libya was the center of Islamist protests in the late 1990s, it is unclear how many groups retain ties to Al Qaeda.

After all, according to *Holder v. Humanitarian Law Project* any help to a terrorist group—even counseling on how to make peace—is material support. And no matter how we try to spin arming rebels as an act of peace, it’s a good deal more help than legal counsel.

And, as the DC Circuit’s decision yesterday in Uthman Abdul Rahim Mohammed Uthman’s habeas suit makes clear, it’s not enough for a person to stop associating with al Qaeda in the 1990s, nor does the government need any real evidence of a tie between someone in al Qaeda’s vicinity to claim that person is a member of al Qaeda.

Uthman filed a challenge, and in February 2010, District Court Judge Henry H. Kennedy, Jr. ruled that he was being improperly held and that the United States had failed to demonstrate that he was a member of al-Qaeda. As ProPublica detailed, the government censored Kennedy’s decision and quickly appealed the case to a court that was already lowering the government’s burden for proving a prisoner’s detainability.

In another case last year, known as *Salahi*, the appeals court rejected a lower court’s standard that the government show direct evidence the detainee was a member of al-Qaeda. In that case, the court sent the detainee back to the district court to have his habeas corpus petition reheard.

In today’s opinion, written by Judge Brett Kavanaugh, the appeals court went further by reversing the habeas win outright. In doing so, the court determined that circumstantial evidence, such as a detainee being in the same location as other al-Qaeda members, is enough to meet the standard to hold a prisoner without charge.

That standard, the court wrote in its decision today, “along with uncontested

facts in the record, demonstrate that Uthman more likely than not was part of al Qaeda.”

By the DC Circuit’s standards, it seems clear, at least some of the rebels we’ve been helping (and are debating arming) are the same as al Qaeda for legal purposes.

Which would mean we’ve already been offering material support to terrorists.

If I were Obama, I’d make the decision quickly about where he wants to be tried for material support of terrorism. If Bud McKeon has his way, he’ll take away the President’s decision-making authority on whether to try Americans in civilian or military trials.

So if you’re the President and need to decide where to try yourself for material support for terror, where do you do it?

Update: Mark Hosenball cites four different sources saying Obama signed a covert order to arm the rebels 2-3 weeks ago.

Obama signed the order, known as a presidential “finding”, within the last two or three weeks, according to four U.S. government sources familiar with the matter.

I forget. Does material support for terrorists done under cover of a Finding qualify as material support for terror?

It’s all so confusing!!!