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NEWS

CONSPIRACY DEFINITION AFFECTS WAR ON TERROR

By Heather Anne Egan

The United States Supreme Court found that members of a criminal conspiracy can be convicted regardless of whether the discovery of the plot by the police has made it impossible for the conspiracy to achieve its goal. *U.S. v. Recio*, 2003 U.S. LEXIS 901, 9-10.

“The Court has repeatedly said that the essence of a conspiracy is an agreement to commit an unlawful act,” Justice Stephen G. Breyer wrote for the court. He added, “the criminal agreement is a distinct evil, punishable whether or not the substantive crime ever takes place.” *Id.*

While the issue in *Recio* involves the war on drugs and specifically whether conspiracy law applies when federal authorities intercept a drug shipment but then send it forward in a sting operation, the effect of the ruling will have a large impact on the war against terrorism. Open Brief for U.S. 28.

By law, a conspiracy is a type of guilt by association. It allows the federal government to prosecute all of those who are involved in a drug gang or terrorist activity and to charge the minor players with a major crime. 21 U.S.C. §846.

Federal prosecutors and law enforcement officials say the same undercover tactics used in the war on drugs are necessary to arrest and prosecute international terrorists before they are able to carry out their plans. App. to Pet. for Cert. 9.

The September 2000 Ninth Circuit Court of

*F e d e r a l
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a n d p r o s e c u t e
i n t e r n a t i o n a l
t e r r o r i s t s b e f o r e t h e y
a r e a b l e t o c a r r y o u t
t h e i r p l a n s.*

Appeals decision reversed the convictions of Francisco Jimenez Recio and Adrian Lopez-Meza for conspiracy drug-trafficking. The court overturned the conspiracy convictions because it found that the conspiracy had effectively been terminated a day earlier when the federal agents arrested the first driver,

took temporary possession of the truck, and enacted a government sting operation. *U.S. v. Recio*, 258 F.3d 1069, 1071 (9th Cir. 2000). The Ninth Circuit reasoned that because the object of the conspiracy had already been frustrated by the time the men arrived, the conspiracy itself had terminated, and the convictions were invalid. *Recio*, 258 F.3d at 1071.

The Ninth Circuit was alone in their view that a conspiracy ends when either the conspirators abort their plans or the object of the conspiracy is defeated because undercover law enforcement agents are already on the case. Therefore, the Supreme Court’s ruling brings the law in the nine western states covered by the Ninth Circuit into line with that of the rest of the country.

The Ninth Circuit’s approach would potentially threaten “the use of properly run law enforcement sting operations,” including the use of undercover agents. *Recio*, 2003 U.S. LEXIS 901, 11. A conspiracy “poses a threat to the public over and above the threat of the commission of the relevant substantive crime,” Justice Breyer added,

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