Administrative and Tax anti-NGO Laws and Civil Society Decline

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This paper will discuss the importance of civil society in democracy and human rights and trends in authoritarian and anti-democratic force attacks on civic space. It will then examine case studies from three countries that have implemented administrative and transparency anti-NGO laws, and how these laws have impacted civil society within those countries. Finally, it will turn to the U.S., and analyse the current environment for U.S. civil society and the ways that U.S. civil society and democracy are vulnerable to these tactics; examine recent attempts in the U.S. to advance administrative and transparency anti-NGO laws; and, propose policy recommendations to U.S. lawmakers and civil society on how to protect U.S. civil society from these types of attacks.

I. Introduction

"Civil society are the ones who protect and insulate our societies from the conditions that produce violence." Finnouala Ní Aoláin, former Special Rapporteur for Counter-Terrorism and Human Rights[1]

American democracy is in decline. Once considered to be one of the strongest democracies in the world, the U.S.'s democratic institutions are under increasing threat; in 2020, the U.S. was downgraded from the ranks of "full democracies," such as those in Western Europe and Canada, to join countries such as Greece, Brazil, and Poland as a so-called "flawed democracy."[2]

This trend towards authoritarianism is a global one, as democracies around the world and the civil societies that empower them are increasingly under attack.[3] This wave of democratic backsliding has heavily utilized distrust of outside influence to create emergency powers and silence dissent.[4] Many of the tactics used against civil society by authoritarian and anti-democratic regimes utilize a framework akin to the "Material Support" counterterrorism

[1] Finnouala Ní Aoláin, Megan Manion, and Alyssa Yamamoto, "Global Study on the Impact of Counter-Terrorism on Civil Society & Civic Space" (United Nations Human Rights Special Procedures, 2023) https://defendcivicspace.com/.
[2] Vanessa Williamson, "Understanding Democratic Decline in the United States," Brookings, October 17, 2023, https://www.brookings.edu/articles/understanding-democratic-decline-in-the-united-states/.
[3] Thomas Carothers and Saskia Brechenmacher, "Closing Space: Democracy and Human Rights Support under Fire" (Carnegie Endowment for International Peace, 2014) 2-3, https://carnegieendowment.org/research/2014/02/closing-space-democracy-and-human-rights-support-under-fire?lang=en.
[4] See, e.g., Kenneth Roth, "How Authoritarians Are Exploiting the COVID-19 Crisis to Grab Power," Human Rights Watch, April 3, 2020, https://www.hrw.org/news/2020/04/03/how-authoritarians-are-exploiting-covid-19-crisis-grab-power; Yuki Dionis, "A New Wave of Repression on Civic Space," European Democracy Hub, September 13, 2024, https://europeandemocracyhub.epd.eu/a-new-wave-of-repression-on-civic-space/.

framework developed by the United States to couch the repression of civil society as a justifiable, legitimate counterterrorism action.[5]

Counterterrorism-justified attacks on civil society have taken many forms over the decades, from so-called "foreign agent" or "FARA" laws that require nonprofit organizations to register as foreign agents and disclose the sources of their funding[6] to constraints on public gatherings and the right to assembly in the name of public safety.[7] The use of these tactics has grown exponentially in the last two decades, and while global attention in the human rights space and attempts to counter these tactics have emerged, such as the creation of the United Nations Special Rapporteur on Counter-terrorism and Human Rights in 2005,[8] they have been unable to keep up with the tidal wave of new tactics for oppression.

An understudied and under-scrutinized tactic that has emerged in the past few years is the passage of "transparency" and "administrative" anti-NGO laws. These laws focus on administrative and tax burdens on nonprofits, rather than civil or criminal cases, and aim to either overwhelm NGO resources as they attempt to comply or directly target NGO nonprofit status as a way of making organizations disappear.[9] This paper will examine the recent rise of these **administrative, tax, and regulatory anti-NGO laws**, and look at case studies in countries that have implemented these types of laws as a way of understanding what the negative effects on civil society are. These anti-NGO laws use administrative and regulatory hurdles as well as

[5] Anne Charbord and Finnouala Ní Aoláin, "The Role of Measures to Address Terrorism and Violent Extremism on Closing Civic Space" (University of Minnesota Human Rights Center, 2019) 3-8, https://Www.icnl.org/Wp-Content/Uploads/Civil_society_report_-_final_april_2019.Pdf.
[6] See, e.g, Russia's 2012 Foreign Agent Law (Samuel Rebo, "FARA in Focus: What Can Russia's Foreign Agent Law Tell Us about America's? ," Journal of National Security Law and Policy 12, no. 2 (July 25, 2021): 277–325, https://jnslp.com/wp-content/uploads/2022/02/Fara_in_Focus_2.pdf.)
[7] Megan Manion, "The Right to Assemble in Times of Emergency and the Encroachment of Counterterrorism," in The Oxford Handbook of Peaceful Assembly, ed. Tabatha Abu El-Haj (Oxford Academic, 2024), https://doi.org/10.1093/oxfordhb/9780197674871.001.0001.
[8] UN Special Procedures, "OHCHR | Special Rapporteur on Counter-Terrorism and Human Rights," OHCHR, n.d., https://www.ohchr.org/en/special-procedures/sr-terrorism.
[9] Devon Kearney, "'Regulatory Repression' Comes Full Circle," Open Global Rights, 2023, https://www.openglobalrights.org/regulatory-repression-comes-full-circle/.

tax status to suppress the work of civil society in the name of counter-terrorism. The administrative laws discussed below are specifically designed to be overbroad in order to repress civil society; they have been couched in counterterrorism only to give justification to otherwise clearly suppressive measures.

These types of laws are particularly dangerous as they are understudied and often seem innocuous to lawmakers; for example there have been multiple instances in the U.S. (H.R. 6408 and H.R. 9495, for example) where this type of legislation easily slipped through parts of the Congress before civil society organizations caught on and worked to prevent these harmful bills from becoming laws.[10] While this legislation passed the House because they appeared to be innocuous or even important measures to counter terrorism, in reality they were brought forward under a specific agenda to suppress civil society. Under the second Trump administration, these attempts will undoubtedly continue, and it is vital for American lawmakers and American civil society to understand the real and permanent damage that these types of laws have had on civil society and democracy in countries where they have been implemented.

This paper will discuss the importance of civil society in democracy and human rights and trends in authoritarian and anti-democratic force attacks on civic space. It will then examine case studies from three countries that have implemented administrative and transparency anti-NGO laws, and how these laws have impacted civil society within those countries. Finally, it will turn to the U.S., and analyse the current environment for U.S. civil society and the ways that U.S. civil society and democracy are vulnerable to these tactics;

[10] See the civil society response to H.R. 6408 (David Kustoff, Pub. L. No. H.R. 6408 (2023), https://www.congress.gov/bill/118th-congress/house-bill/6408) and H.R. 9495 (Claudia Tenney, "Stop Terror-Financing and Tax Penalties on American Hostages Act," Pub. L. No. H.R. 9495 (2024), https://www.congress.gov/bill/118th-congress/house-bill/9495); Charity & Security Network, "Updated: New House Bill Repeats Language with Dangerous Implications for Charities - Charity & Security Network," Charity & Security Network, November 25, 2024, https://charityandsecurity.org/news/new-house-bill-repeats-language-with-dangerous-implications-for-charities/.

examine recent attempts in the U.S. to advance administrative and transparency anti-NGO laws; and, propose policy recommendations to U.S. lawmakers and civil society on how to protect U.S. civil society from these types of attacks.

II. Background on Civil Society and its Importance

"Civil society" refers to a diverse range of organizations and individuals that make up the sector of society that is neither private nor governmental. Civil society includes nonprofit organizations (NPOs), non-governmental organizations (NGOs), individual human rights defenders and activists, trade unions, bar associations, religious charities, and more.[11] In this paper, I will be referring to both NGOs and nonprofit organizations as NPOs when discussing impacts on civil society.

Civil society's vital role in democracy is well recognized, both by those who support greater freedom and those who are trying to close all pathways to dissent. Civil society organizations provide vital services, hold governments accountable, encourage free speech and dissent, promote free and fair elections, protect human rights defenders, and provide checks on state power (among many other vital roles).[12] Importantly, civil society steps into situations where the government cannot or will not act. As authoritarian rulers around the world have tightened their grip, they have also squeezed out civic space and those civil society organizations that would constrain them.[13] Along with limiting threats to authoritarian power, repression of

[11] UNESCO, "INGOS or NGOS," uis.unesco.org, June 22, 2020, https://uis.unesco.org/en/glossary-term/ingos-or-ngos.
[12] See, e.g. Zama Neff, "The Role of Civil Society in Accountability Systems: A Human Rights Perspective," Human Rights Watch, November 20, 2017, https://www.hrw.org/news/2017/11/20/role-civil-society-accountability-systems-human-rights-perspective;
[13] See, e.g. Sarah Repucci and Amy Slipowitz, "The Global Expansion of Authoritarian Rule" (Freedom House, 2022), 1-5https://freedomhouse.org/report/freedom-world/2022/global-expansion-authoritarian-rule; Kenneth Roth, "The Great Civil Society Choke-Out," Foreign Policy, January 27, 2016, https://foreignpolicy.com/2016/01/27/the-great-civil-society-choke-out-human-rights-democracy-india-russia-china-kenya/.

civil society allows authoritarians to weaken human rights and prevent external support for human rights and humanitarian efforts.[14]

While civil society has been attacked from all angles, there are two particular targets that tend to be utilized by authoritarian regimes: attacks on advocacy and freedom of association and attacks on dissent and freedom of speech. The attacks on freedom of speech have focused primarily on shutting down independent voices and on targeting organizations that support dissent by associating certain types of speech with terrorism and providing either civil "lawfare" or criminal mechanisms to persecute organizations that engage in such speech.[15] Examples of this type of tactic includes Nicaragua's "cybercrime" law outlawing speech that criticizes the Ortega regime[16] and attempts in the U.S. and at the U.N. to equate speech that is critical of Israel to antisemetic hate speech.[17] Additionally, FARA laws have also targeted free speech by de-legitimizing NGOs and independent media by labeling them as untrustworthy "foreign agents" that are tools of enemy countries.[18]

Attacks on freedom of association have particularly focused on outlawing NGOs and those they work with. FARA laws, including U.S. FARA laws,[19] are rife for abuse under this playbook, aiming to bring public and legal scrutiny to NGOs, their employees, and anyone who

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[14] Carothers, "Closing Space," 5-6.
[15] See, e.g., UN OHCHR, "The Impact of Counter-Terrorism and Other Criminal Legislation on Media Freedom and the Safety of Journalists," OHCHR, 2023, https://www.ohchr.org/en/documents/tools-and-resources/impact-counter-terrorism-and-other-criminal-legislation-media-freedom; Amnesty International, "Freedom of Expression," Amnesty International, 2024, https://www.amnesty.org/en/what-we-do/freedom-of-expression/.
[16] Human Rights Watch, "Nicaragua: Ortega Tightening Authoritarian Grip" October 8, 2020, https://www.hrw.org/news/2020/10/08/nicaragua-ortega-tightening-authoritarian-grip.
[17] Human Rights Watch, "Human Rights and Other Civil Society Groups Urge United Nations to Respect Human Rights in the Fight against Antisemitism," April 4, 2023, https://www.hrw.org/news/2023/04/04/human-rights-and-other-civil-society-groups-urge-united-nations-respect-human.
[18] Iskra Kirova, "Foreign Agent Laws in the Authoritarian Playbook," Human Rights Watch, September 19, 2024, https://www.hrw.org/news/2024/09/19/foreign-agent-laws-authoritarian-playbook.
[19] Nick Robinson, "FARA Is a Catchall Statute—and That's a Problem," Lawfare, 2025, https://www.lawfaremedia.org/article/fara-is-a-catchall-statute-and-that-s-a-problem.

contributes (financially or otherwise) to their work. FARA and other administrative laws operate as surveillance on the work of NPOs and those who contribute to them, stifling NPOs support and making them dangerous to work with or donate to.[20]

Additionally, broader material support for terrorism laws that were originally designed to prevent money laundering, the financing of terrorism and preventing violent extremism (AML/CFT/PVE) have been manipulated into tools to attack civil society. In the U.S., for example, the material support framework is broad and has allowed both the government and private actors to charge humanitarian and peacebuilding organizations as "terrorist supporting," effectively slowing or shutting them down as they face these legal battles.[21]

These modern attacks on civil society differ from the traditional authoritarian playbook. Cold War authoritarianism was marked by oppressive governments that controlled all aspects of society and governance, and did not allow meaningful opposition or independent civil society to exist at all.[22] Modern "competitive" authoritarianism differs from this model, and the tactics used by leaders to consolidate power and repress dissent also differ. Under competitive authoritarianism, opposition and civil society are not outright banned, at least not on paper. Democratic frameworks are not fully dismantled, but are instead skewed and twisted so that no opposition or dissent can overpower the consolidated power of the executive. Even many modern countries that are fully non-democratic such as Venezuela do not utilize exclusively the repression tactics of traditional authoritarianism, and instead slide from democracy to modern,

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[20] Amnesty International, "Global Assault on NGOs Reaches Crisis Point," February 21, 2019, https://www.amnesty.org/en/latest/news/2019/02/global-assault-on-ngos-reaches-crisis-point/.

[21] Kay Guinane, "The Alarming Rise of Lawfare to Suppress Civil Society: The Case of Palestine and Israel" (Charity & Security Network, September 28, 2021), https://charityandsecurity.org/csn-reports/the-alarming-rise-of-lawfare-to-suppress-civil-society-the-case-of-palestine-and-israel/.

[22] Steven Levitsky and Lucan A Way, "The Path to American Authoritarianism," Foreign Affairs, February 11, 2025, https://www.foreignaffairs.com/united-states/path-american-authoritarianism-trump.

competitive authoritarianism.[23] This modern authoritarianism differs in that it acts gradually; its playbook does not use immediate repression, but steadily works within the democratic and legal system to consolidate power and squeeze out opposition and civil society.

Like more traditional Cold War-era authoritarianism, one of the best defenses to the advance of modern competitive authoritarianism is a thriving civil society.[24] Consolidating executive power in a democratic system requires a civil society that is unable to keep up, one that is bogged down by information, by lawsuits, by the sheer volume of attacks, and by administrative hurdles.[25] These modern attacks often begin with seemingly legitimate concerns, such as countering foreign influence or countering terrorism.[26] These "concerns" fuel legislation that seems innocuous but in reality serves as the beginning of civil society decline. Under the modern, "competitive" authoritarian playbook, those in power focus on first passing laws that employ broad and vague language. At first, these laws are only used to target political and advocacy organizations, which creates a false sense of security for NPOs that distance themselves from politics. But with the legislative groundwork laid, authoritarian leaders eventually broaden their targets and go after all aspects of civil society that threaten their power, including humanitarian organizations and even faith based organizations.[27]

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[23] *Id.*
[24] Rachel Kleinfeld, "Closing Civic Space in the United States: Connecting the Dots, Changing the Trajectory," Carnegie Endowment for International Peace, March 6, 2024, https://carnegieendowment.org/research/2024/03/closing-civic-space-in-the-united-states-connecting-the-dots-changing-the-trajectory?lang=en.
[25] Kleinfeld, "Closing Civic Space in the United States: Connecting the Dots, Changing the Trajectory."
[26] *Id.*
[27] See for example the Maduro and Ortega administrations' attacks on the catholic church: Edgar Beltrán, "Is the Church in Venezuela Facing New Risks of Persecution?," The Pillar, August 2, 2024, https://www.pillarcatholic.com/p/is-the-church-in-venezuela-facing; Giovanna Dell'orto, "Nicaraguan Exiles Say Country's Crackdown on Religious Freedom Worsens," AP News, April 9, 2025, https://apnews.com/article/nicaragua-religion-freedom-ortega-exiles-catholic-church-e345c96c0ca5118dc05b3880cb33cc7e.

III. Case Studies

The cases presented here were chosen because they are all countries that have passed administrative and transparency anti-NGO laws that have supported and contributed to authoritarianism and democratic backsliding. These laws were passed not as innocuous but misguided attempts to counter terrorism but as tools of broader campaigns to suppress civil society by authoritarian leaders. These countries are all from the same region, Latin America, and share weakened democratic status and authoritarian-leaning or outright authoritarian rulers. Despite the differences in democratic strength, the effects of the administrative anti-NGO laws in these countries still provide a warning of what types of damage they can do, even to a strong democracy. These countries were chosen because unlike other countries that have proposed this type of legislation, they have fully enacted administrative and transparency anti-NGO bills into law, allowing us to examine the practical effects these laws have on civil society. These case studies discuss specific administrative and transparency measures that were implemented simultaneously with a barrage of other anti-NGO legislation, including FARA laws. The entanglement of these different anti-civil society tactics means that many of the laws discussed go beyond the administrative, tax, or transparency repressions reflected in U.S. anti-NGO bills; however they still represent useful examples of how these laws can be dangerous. Additionally, this entanglement highlights another concern for U.S. civil society: the "burying" of less obviously oppressive legislation within larger bills (or bills that are more clearly controversial) to distract the attention of civil society and the media and attempt to slip dangerous but less obvious measures through Congress without a fuss.

While the case studies examined in this paper are from countries that have slid far from democracy, these examples from more authoritarian systems are still important and informative

for the U.S. Even though U.S. democratic systems and norms are demonstrably stronger than those of the countries examined in these case studies, they are not impervious to democratic backsliding and authoritarianism. The U.S. is unlikely to devolve into the type of fascist, single-party dictatorship many associate with authoritarianism, but it is at great risk for a more modern, competitive authoritarianism.[28] Even without overturning our constitutional order, unscrupulous leaders risk sliding our democracy into a "grey zone," one where the "formal architecture" of democracy remains but consolidated executive power tilts the playing field in an insurmountable manner.[29] The formal structures of democratic government are co-opted and weaponized to suppress civil society. This involves sowing doubt and mistrust in the normal systems of democracy while simultaneously leveraging them against civil society and opposition.

The countries examined in the case studies did not start out as authoritarian. Over time, sustained attacks on civil society and the steady consolidation of executive power eroded democratic institutions and allowed leaders to shift to authoritarianism. A major component of democratic backsliding and the shift towards authoritarianism is the closing of civic space. Examining the pathway of democratic backsliding in countries like Venezuela, Nicaragua, and Paraguay gives us an important lens through which we can better understand how to protect American democracy and civil society.

I. Nicaragua

President Daniel Ortega was re-elected in 2006 (after serving as President for one term in 1984) and has been steadily consolidating his control and eliminating all that threatens his regime in the almost two decades since.[30] In 2014, after reaching the constitutional two-term

[28] Levitsky & Way, "The Path to American Authoritarianism."
[29] *Id.*
[30] BBC, "Profile: Nicaraguan President Daniel Ortega, from Revolutionary Leader to Opposition Hate Figure," BBC News, July 19, 2018, https://www.bbc.com/news/world-latin-america-15544315.

consecutive limit as president, Ortega supported an amendment to the Constitution that allows for unlimited four-year terms.[31] With this new power, Ortega ran a campaign that eliminated his opposition and drew international criticism; barring Ortega's opponent from running and winning by a landslide.[32]

Ortega's third consecutive term marked a new extreme in democratic backsliding. Social protests erupted in 2018 in response to the Ortega government's crackdown on free expression and curtailing of social benefits programs.[33] The government's response to these protests was swift and brutal; over 300 protesters were killed and countless who participated or reported on the protests were arrested and prosecuted for serious crimes without due process.[34]

The brutal response to these protests marked a turn in intensity for the Ortega regime, which began a crackdown against NGOs, students, opposition leaders and even the Catholic Church.[35] In the runup to the 2021 election, Ortega adopted a series of laws designed to repress his opposition and lay the groundwork for another landslide victory in a deeply contested election.[36] Immediately following this dubious victory, Ortega began pushing through a barrage of new laws designed to consolidate presidential power, silence dissent, and suppress civil

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[31] BBC, "Nicaragua: Ortega Allowed to Run for Third Successive Term," BBC News, January 29, 2014, https://www.bbc.com/news/world-latin-america-25937292.

[32] Jonathan Watts, "Nicaragua President Re-Elected in Landslide amid Claims of Rigged Vote," The Guardian, November 28, 2017, https://www.theguardian.com/world/2016/nov/07/nicaragua-president-daniel-ortega-reelected-landslide-vote-rigging ; Oliver Stuenkel, "Nicaragua's Farcical Election Marks Consolidation of Ortega's Autocracy," Carnegie Endowment for International Peace, November 8, 2021, https://carnegieendowment.org/posts/2021/11/nicaraguas-farcical-election-marks-consolidation-of-ortegas-autocracy?lang=en.

[33] Organization of American States, "Nicaragua: Six Years after Social Protests, IACHR Urges Reestablishment of Democracy, End to Repression and Impunity," Inter-American Commission on Human Rights (IACHR), April 18, 2024, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2024/075.asp.

[34] Human Rights Watch, "Crackdown in Nicaragua: Torture, Ill-Treatment, and Prosecutions of Protesters and Opponents," Human Rights Watch, June 19, 2019, https://www.hrw.org/report/2019/06/19/crackdown-nicaragua/torture-ill-treatment-and-prosecutions-protesters-and.

[35] Zara Ali, "Nicaragua on the Brink: Protests, Elections, and Mass Atrocity," Georgetown Journal of International Affairs, March 17, 2023, https://gjia.georgetown.edu/2023/03/17/nicaragua-on-the-brink-protests-elections-and-mass-atrocity/.

[36] BBC, "Nicaragua Vote: Ortega Tightens Grip on Power in 'Pantomime Election,'" BBC News, November 9, 2021, sec. Latin America & Caribbean, https://www.bbc.com/news/world-latin-america-59202881.

society.[37] The first target of this crackdown was the independent media in Nicaragua; using counter-terrorism and anti-violent extremism laws the Ortega government shut down over 50 independent news outlets between 2018 and 2022.[38] Ortega's government then turned to NGOs and civil society organizations, and in March of 2022 passed the "Regulation and Control of Non-profit Organizations."[39] This law is only the latest in a campaign by the Ortega government aimed at dismantling civil society.[40]

i. The Law

The Regulation and Control of Non-profit Organizations passed in March, 2022. This law replaced the prior law regulating NGOs in Nicaragua. It allows the government of President Daniel Ortega to unilaterally seize assets and revoke nonprofit status of any organization it deems to be engaged in "political propaganda."[41]

ii. Pathways for Dissent

The intense crackdown in Nicaragua on all forms of dissent has left few pathways for civil society to push back on these legislative attacks. Nicaragua's judiciary is not independent, and there are effectively no checks or balances left to counter Ortega's administration.[42]

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[37] Gabriela Selser, "Nicaragua's Ortega Expands Power as Reforms Win Final Approval," Reuters, January 30, 2025, https://www.reuters.com/world/americas/nicaragua-congress-gives-final-approval-sweeping-constitutional-reforms-2025-01-30/.
[38] Human Rights Watch, "Nicaragua: Events of 2023," Human Rights Watch, December 15, 2023, https://www.hrw.org/world-report/2024/country-chapters/nicaragua.
[39] Redacción Confidencial, "Nicaragua Passes a New Law 'Regulating' Non-Profits," Confidencial, April 2, 2022, https://confidencial.digital/english/nicaragua-passes-a-new-law-regulating-non-profits/.
[40] Human Rights Watch, "Nicaragua: Ortega Tightening Authoritarian Grip."
[41] Redacción Confidencial, "Nicaragua Passes a New Law 'Regulating' Non-Profits," Confidencial, April 2, 2022, https://confidencial.digital/english/nicaragua-passes-a-new-law-regulating-non-profits/.
[42] *See, e.g.*, Inter-American Commission on Human Rights, "Nicaragua: Concentration of Power and the Undermining of the Rule of Law," October 25, 2021, https://www.oas.org/en/iachr/reports/pdfs/2021_Nicaragua-EN.pdf (IACHR Report on how Ortega as fully consolidated power in Nicaragua and effectively controls all branches of government); Group of Human Rights Experts on Nicaragua, "Nicaragua's People Defenseless in Face of Grave Human Rights Violations, UN Group of Experts Says," OHCHR (U.N. Office of the High Commissioner for Human Rights, 2024), https://www.ohchr.org/en/press-releases/2024/09/nicaraguas-people-defenseless-face-grave-human-rights-violations-un-group.

iii. Impact on Civil Society and Democracy

This latest crackdown has effectively stifled civil society in Nicaragua. Since the law's passage, Nicaragua has outlawed over 1,500 NGOs, including vital international humanitarian organizations like the Red Cross and Catholic Charities.[43] Combined, over 5,000 organizations and independent media outlets have been shut down since 2018.[44]

In addition to the direct impacts on civil society, there are also concerns that this legislation will embolden the Ortega administration in its crackdown on dissent, both inside and outside Nicaragua. The UN recently published a report investigating the crack down on the civic space, highlighting that Nicaraguan lawmakers introduced legislation that "allow the prosecution of individuals abroad for alleged crimes, including money laundering, terrorism and its financing, as well as cybercrime, raising new concerns that such broad laws will also be used to further pressure and intimidate exiled citizens and foreigners for the legitimate exercise of their right to freedom of expression, and other rights."[45]

The effect of this administrative anti-NGO law, along with other laws targeting civil society, was swift and dramatic. In 2021, Nicaragua had a Freedom House score of 30 out of 100,[46] calculated based on the political rights and civil liberties of individual Nicaraguans.[47] By the end of 2022, the score dropped to 19,[48] and the most recent report at the end of 2024 showed

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[43] Al Jazeera, "Nicaragua Bans 1,500 NGOs in Latest Crackdown against Civil Society," Al Jazeera, August 19, 2024, https://www.aljazeera.com/news/2024/8/19/nicaragua-bans-1500-ngos-in-latest-crackdown-against-civil-society.
[44] UN OHCHR, "Nicaragua: UN Report Highlights Continued Human Rights Violations and Erosion of Civic and Democratic Spaces," OHCHR, 2024, https://www.ohchr.org/en/press-releases/2024/09/nicaragua-un-report-highlights-continued-human-rights-violations-and-erosion.
[45] UN OHCHR, "Nicaragua: UN Report Highlights Continued Human Rights Violations and Erosion of Civic and Democratic Spaces."
[46] Freedom House , "Nicaragua: Freedom in the World 2021 Country Report," Freedom House, 2021, https://freedomhouse.org/country/nicaragua/freedom-world/2021.
[47] See Freedom House, "Freedom in the World Research Methodology," Freedom House (Freedom House, 2024), https://freedomhouse.org/reports/freedom-world/freedom-world-research-methodology.
[48] Freedom House, "Nicaragua: Freedom in the World 2023 Country Report," Freedom House, 2023, https://freedomhouse.org/country/nicaragua/freedom-world/2023.

a score of just 14,[49] in the bottom 15% of all countries and with the third lowest score in Latin America, behind Venezuela and Cuba.[50]

II. Venezuela

Once considered one of the strongest economies and democracies in Latin America, Venezuela has experienced democratic backsliding since the 1990s.[51] After the fall of dictator Marcos Pérez Jiménez in 1958, the major political parties in Venezuela made a political agreement to respect elections and share oil wealth regardless of who won.[52] This "Puntofijo Pact," coupled with rising oil prices, brought a period of prosperity and democratic stability to Venezuela throughout the 1960s and 1970s, despite the wave of turmoil and authoritarianism that swept through Latin America.[53] While Venezuela was the wealthiest country in the region in the 1960s and 1970s, the 1980s brought an unprecedented economic crisis as oil prices plummeted.[54] Inflation soared, international debt rose, and the government was forced to implement extreme austerity measures as part of a bailout from the International Monetary Fund to prevent economic collapse.[55] As prices rose and government services were halted or sold, the situation for Venezuelans became dire, and in 1989 riots broke out in Caracas.[56] The government responded brutally, killing hundreds or thousands of protestors depending on the source.[57]

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[49] Freedom House, "Nicaragua: Freedom in the World 2025 Country Report," Freedom House, 2024, https://freedomhouse.org/country/nicaragua/freedom-world/2025.
[50] Freedom House, "Freedom in the World Data," 2025, https://freedomhouse.org/report/freedom-world#Data.
[51] Jason Margolis, "Venezuela Was Once the Richest, Most Stable, Democracy in Latin America. What Happened?," The World from PRX, February 7, 2019, https://theworld.org/stories/2019/02/07/venezuela-was-once-richest-most-stable-democracy-latin-america-what-happened.
[52] Jennifer McCoy, "Chavez and the End of 'Partyarchy' in Venezuela," Journal of Democracy 10, no. 3 (1999): 64–77, https://doi.org/10.1353/jod.1999.0049.
[53] *Id.*
[54] Amelia Cheatham and Diana Roy, "Venezuela: The Rise and Fall of a Petrostate," Council on Foreign Relations, July 31, 2024, https://www.cfr.org/backgrounder/venezuela-crisis.
[55] *Id.*
[56] Council on Foreign Relations, "Venezuela's Chavez Era," Council on Foreign Relations, 2022, https://www.cfr.org/timeline/venezuelas-chavez-era.
[57] *Id.*

In the backdrop of this violence and uncertainty, Hugo Chavez was elected president in 1998, promising a bright and socialist future for Venezuelans.[58] Chavez's tenure saw many important social programs that helped Venezuelans, but was also the start of democratic backsliding: Chavez abolished term limits; packed the Supreme Court with government judges and successfully moved it under the power of the presidency; eroded independent media; and blocked international human rights and democracy monitoring.[59] When Chavez died in office in 2013, Nicolás Maduro took office as Chavez's hand-picked successor.[60]

After narrowly winning reelection in 2013, Maduro quickly consolidated power and began a steady campaign to eradicate civil society, democracy, and any opposition. Building off the policies of Chavez (but without continuing the social programs that were so popular), the Maduro regime has effectively cut off all channels for political dissent and massively suppressed civil society.

i. The Law

The "Law for the Control, Regularization, Operations and Financing of Non-Governmental and Related Organizations" was passed in August, 2024.[61] First debated in Jan. 2023, it introduces a slew of measures that aim to regulate NGOs, supposedly to prevent terrorism and facism.[62] The law effectively strips nonprofit status of all NGOs, and requires them to undergo a series of onerous administrative hurdles to regain status and continue to operate in

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[58] *Id.*
[59] *Id.*, Human Rights Watch, "Venezuela: Chávez's Authoritarian Legacy," Human Rights Watch, March 5, 2013, https://www.hrw.org/news/2013/03/05/venezuela-chavezs-authoritarian-legacy.
[60] Javier Corrales, "Authoritarian Survival: Why Maduro Hasn't Fallen," Journal of Democracy 31, no. 3 (2020): 39–53, https://doi.org/10.1353/jod.2020.0044.
[61] Reuters, "Venezuela Legislators Approve Law to Regulate NGOs," Reuters, August 15, 2024, https://www.reuters.com/world/americas/venezuela-legislators-approve-law-regulate-ngos-2024-08-15/.
[62] Directorio Legislativo, "The Anti-NGO Law Approved in Venezuela: Its History and Scope – Directorio Legislativo," DL , 2023, https://directoriolegislativo.org/en/the-anti-ngo-law-approved-in-venezuela-its-history-and-scope/.

Venezuela.[63] It also requires NGOs to submit lists of donors, members, and staff and their assets to the government, and to register all financial transactions and report those that come from international sources.[64] The law also prohibits CSOs engaging in activities that support "fascism, intolerance, or hatred," as determined by Maduro's government and without further defining what this means.[65]

The ambiguity of the language opens the door for the Maduro government to utilize discretionary power to shut down any NGOs that it deems counter to its agenda. NGOs and CSOs that violate the law risk being shut down, having their nonprofit status removed, and potentially face criminal prosecution.[66] While no specific punishment is articulated for NGOs receiving international funding, its timing amidst President Nicolas Maduro's contested re-election and a wave of repression and anti-international rhetoric by his government shows that it will likely punish NGOs that receive foreign funding.[67]

ii. Pathways for Dissent

Because of the long wave of repression in Venezuela and the weakening of democratic institutions, civil society has focused on the importance of external pressure from countries that

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[63] Tony Frangie Mawad, "Maduro's New Crackdown on Venezuela's Civil Society," Americas Quarterly, February 26, 2024, https://www.americasquarterly.org/article/maduros-new-crackdown-on-venezuelas-civil-society/.
[64] Fact-Finding Mission on Venezuela, "Venezuela: Draft NGO Law, Reaching a Point of No Return in the Closure of the Civic Space," UN Human Rights Council, January 3, 2023, https://www.ohchr.org/en/press-releases/2023/01/venezuela-draft-ngo-law-reaching-point-no-return-closure-civic-space.
[65] Reuters, "Venezuela Legislators Approve Law to Regulate NGOs."
[66] Holland & Knight LLP, "Venezuela's National Assembly Passes Law Regulating NGOs," Lexology, September 17, 2024, https://www.lexology.com/library/detail.aspx?g=5369c42b-27bb-401b-993c-54b9ab899035.
[67] See Reuters, "Venezuela's Top Court Ratifies Maduro Election Win as Government Tightens Control," Reuters, August 22, 2024, https://www.reuters.com/world/americas/venezuelas-top-court-ratifies-maduro-election-win-government-tightens-control-2024-08-22/; UN OHCHR, "Unprecedented Venezuela Repression Plunging Nation into Acute Human Rights Crisis, UN Fact-Finding Mission Says," OHCHR, 2024, https://www.ohchr.org/en/press-releases/2024/09/unprecedented-venezuela-repression-plunging-nation-acute-human-rights-crisis; Human Rights Watch, "International Organizations Express Concern over Legislation Aiming to Criminalize and Obstruct Civil Society Work in Venezuela," Human Rights Watch, January 17, 2024, https://www.hrw.org/news/2024/01/17/international-organizations-express-concern-over-legislation-aiming-criminalize-and.

have influence over the Venezuelan government, emphasizing the use of diplomatic pressure to support civil society and Venezuelans.[68] Within Venezuela, the judiciary effectively acts as another arm of the executive. Strategically packed with pro-Maduro justices, the Venezuelan courts act not as a check on executive power but as another tool of repression for Maduro to wield against civil society.[69]

The lack of political pathways to challenge the government coupled with a crackdown on all forms of independent media has created an environment where NGOs alone are reliable sources of information, acting as crucial monitors in the struggle for democratic transition. By targeting civil society, Maduro's government is closing one of the few remaining challenges to his regime.[70]

iii. Impact on Civil Society and Democracy

Due to the ambiguous language of the law, civil society is concerned that the new law will allow the Maduro government to further silence critics and human rights defenders.[71] Additionally, the similarities between this law and Nicaragua's anti-NGO law raise concerns that

[68] Alí Daniels, "Venezuela: The government wants a civil society aligned with its interests, tamed and silent," Civicus.org, August 28, 2024, https://www.civicus.org/index.php/media-resources/news/interviews/7255-venezuela-the-government-wants-a-civil-society-aligned-with-its-interests-tamed-and-silent.

[69] *See e.g.* Mac Margolis, "Opinion: Want to Reform the Supreme Court? These Strongmen Can Show a Thing or Two," NPR, August 13, 2024, https://www.npr.org/2024/08/12/nx-s1-5069716/opinion-supreme-court-packing-latin-america (describing how court reform in Venezuela as solidified Maduro's authoritarian power); Reuters, "Venezuela Uses Judicial System to Suppress Dissent, U.N. Investigators Say," September 16, 2021, https://www.reuters.com/world/americas/venezuela-uses-judicial-system-suppress-dissent-un-investigators-say-2021-09-16/; Human Rights Watch, "Venezuela: Events of 2021," December 10, 2021, https://www.hrw.org/world-report/2022/country-chapters/venezuela.

[70] Freedom House, "Venezuela: Country Profile," Freedom House, 2024, https://freedomhouse.org/country/venezuela.

[71] Amnesty International, "Venezuela Passes 'Anti-NGO Law' That Punishes Efforts to Assist Victims and Defend Human Rights," Amnesty International, August 19, 2024, https://www.amnesty.org/en/latest/news/2024/08/venezuela-aprobacion-ley-anti-ong-castiga-asistencia-victimas-defensa-derechos-humanos/.

civil society in Venezuela will face the same challenges of civil society in Nicaragua, where over 3,000 organizations have been shut down in the first year of its passing.[72]

While it is difficult to isolate the effects of this administrative and transparency anti-NGO law, as it was passed along with a slew of other laws targeting civil society, the results of this crackdown are still useful in understanding how these types of laws intersect with and amplify other legal attacks to suppress civil society. In 2024, before this anti-NGO law went fully into effect, Venezuela had a Freedom House score of 15 out of 100, scoring a one out of four for freedom for NGOs to operate.[73] Amidst this already dismal environment for civil liberties, the anti-NGO laws appear to have further reduced civic space; in 2025, Venezuela scored a zero out of four for NGO freedom and a 13 out of 100 overall, ranking behind only Cuba in the region.[74]

III. Paraguay

While Paraguay's government has been dominated by a single party since 1947, the Colorado Party, its democratic institutions are stronger than those in Venezuela and Nicaragua.[75] Freedom House categorizes Paraguay as "Partly Free," compared to the "Not Free" designations of Nicaragua and Venezuela.[76] Paraguay's president, Santiago Peña, took office in 2023 with promises to bring greater economic prosperity and less corruption under his tenure.[77]

Despite these promises, Peña's track record has been mixed. While the president is officially the head of state in Paraguay, a lot of power remains in the hands of the leader of the Colorado Party, Horacio Cartes.[78] Cartes was president from 2013-2018, and retains a significant

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[72] Daniels, "Venezuela: The government wants a civil society aligned with its interests, tamed and silent."
[73] Freedom House, "Venezuela: Freedom in the World 2024 Country Report," Freedom House, 2024, https://freedomhouse.org/country/venezuela/freedom-world/2024.
[74] Freedom House, "Freedom in the World Data."
[75] Freedom House, "Paraguay: Country Profile," Freedom House, 2025, https://freedomhouse.org/country/paraguay.
[76] *Id.*; Freedom House, "Venezuela: Country Profile;" Freedom House, "Nicaragua: Country Profile," Freedom House, https://freedomhouse.org/country/nicaragua.
[77] Laurence Blair, "Under Peña, Paraguay Grows but Its Politics Look Uncertain," Americas Quarterly, August 19, 2024, https://www.americasquarterly.org/article/under-pena-paraguay-grows-but-its-politics-look-uncertain/.
[78] *Id.*

portion of power and control over the effectively one-party legislature.[79] Cartes has been accused of corruption and is sanctioned by the U.S. government, along with the tobacco companies that he owns.[80] While he no longer holds the top office, Cartes and his supporters (known as *Cartismos*) still wield immense power in Paraguay.[81] Part of this power includes the power to prevent opposition leaders and those who threaten the Colorado Party; in February 2024 the Paraguayan Senate, led by Cartismo members, expelled Senator Kattya González, the strongest opposition voice in parliament.[82] The Colorado Party, and in particular the Cartismo faction led by Cartes, has also arbitrarily applied legislation designed to combat organized crime and terrorism as a way of controlling civil society.[83]

i. The Law

The Establishing Control, Transparency, and Accountability of Non-Profit Organizations Act was signed into law on November 15, 2024.[84] The law places onerous administrative requirements on NGOs in Paraguay, forcing them to disclose all sources and destinations of funding. Organizations that fail to comply face audits and the suspension of their staff for up to five years.[85] This law falls within the broader narrative tactic of so-called "front organizations," or the (false) idea that NGOs are acting as fronts for terrorism or foreign influence, and thus that the government is justified in imposing heavy burdens on civil society and unilaterally shutting

[79] Esteban Caballero, "A Turning Point for 'Cartismo' in Paraguay," Wilson Center, March 1, 2024, https://www.wilsoncenter.org/blog-post/turning-point-cartismo-paraguay.
[80] U.S. Department of the Treasury , "Treasury Sanctions Paraguay's Former President and Current Vice President for Corruption," Treasury.gov , January 26, 2023, https://home.treasury.gov/news/press-releases/jy1221.
[81] Esteban Caballero, "A Turning Point for 'Cartismo' in Paraguay," Wilson Center, March 1, 2024, https://www.wilsoncenter.org/blog-post/turning-point-cartismo-paraguay.
[82] Reuters, "Paraguay Senate Expels One of Few Opposition Members, Sparking Protests," The Guardian, February 14, 2024, sec. World news, https://www.theguardian.com/world/2024/feb/14/paraguay-opposition-expelled-senate.
[83] Directorio Legislativo, "Non-Profit Organizations under Threat in Paraguay ," Directoriolegislativo.org, 2023, https://directoriolegislativo.org/en/non-profit-organizations-under-threat-in-paraguay/.
[84] Laurence Blair, "Alarm over New Law Giving Paraguay Powers to Crack down on NGOs," The Guardian, November 19, 2024, https://www.theguardian.com/global-development/2024/nov/19/paraguay-new-law-ngos.
[85] *Id.*

down certain organizations.[86] This is the same narrative that has been used in Venezuela and Nicaragua, as well as by other authoritarian-leaning regimes around the world like Russia.[87]

NGOs in Paraguay were already subject to 13 types of mandatory registration before this law passed, demonstrating that this new law is rife for abuse as a way to unilaterally and arbitrarily impose administrative burdens on organizations that the Government deems undesirable.[88]

ii. Pathways for Dissent

The new law has been heavily criticized, both by opposition parties within Paraguay and by international legal experts, advocacy organizations, and United Nations Special Rapporteurs.[89] Despite this outcry, and the stronger democracy of Paraguay compared to Nicaragua and Venezuela, pathways for fighting this law are still limited. The Colorado Party, under the direction of Cartes and Cartismos, has worked to eliminate any effective opposition party or politician.[90] Without the support of the Colorado Party or the President, who proposed and enacted the law, there are few legislative remedies available.

While it has not reached the status of merely rubber-stamping the executive's power as in Venezuela and Nicaragua, the courts in Paraguay are far from independent.[91] Corruption and politicization is rampant within the Paraguayan judiciary, and experts are particularly concerned

[86] Directorio Legislativo, "Non-Profit Organizations under Threat in Paraguay."
[87] *Id.*
[88] *Id.*
[89] Organization of American States, "Democracy for Peace, Security, and Development," OAS, August 1, 2009, https://www.oas.org.
[90] Freedom House, "Paraguay: Freedom in the World 2024 Country Report," Freedom House, 2025, https://freedomhouse.org/country/paraguay/freedom-world/2024.
[91] U.S. Department of State, "2023 Country Reports on Human Rights Practices: Paraguay," April 22, 2024, https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/paraguay/; Freedom House, "Paraguay: Freedom in the World 2024 Country Report."

about the acceleration of attempts by the Colorado Party to further encroach on judicial independence.[92]

iii. Impact on Civil Society and Democracy

Paraguay's "transparency" anti-NGO law is the most recent of those examined in this paper, and thus there is less data on its impacts than for Nicaragua or Venezuela. In the immediate wake of the law's enactment, however, some Paraguayan NGOs have already been targeted by politicians for "lack of transparency" and threatened with the new law.[93] Additionally, independent journalists are concerned that the law could be used to suppress freedom of information, particularly for journalists that work with international outlets or opposition news sources.[94]

IV. Civil Society and American Democracy

Historically, the U.S. has been discussed as if it is immune to the trends that are threatening civil society and democracy globally.[95] In the last decade, however, it has become clear that far from being immune, the U.S. has been slipping into democratic decline.[96] Along with our democracy, by many measures U.S. civil society has also been steadily in decline over the past few decades.[97]

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[92] *See, e.g.* UN OHCHR, "Paraguay's Case against Judges Erodes Independence of Judiciary, Says UN Expert," U.N. Office of the High Commissioner for Human Rights, 2018, https://www.ohchr.org/en/press-releases/2018/11/paraguays-case-against-judges-erodes-independence-judiciary-says-un-expert..

[93] The Association of Technology, Education, Development, Research, Communication, "Anti-NGO Law in Paraguay: Major Setbacks and Concerns for Democracy," TEDIC, December 20, 2024, https://www.tedic.org/en/anti-ngo-law-in-paraguay-major-setbacks-and-concerns-for-democracy/.

[94] Silvia Higuera, "Crackdown on Independent Journalism Looms as Paraguay Advances Controversial Bill," Latin American Journalism Review (The Knight Center, August 14, 2024), https://latamjournalismreview.org/articles/crackdown-on-independent-journalism-looms-as-paraguay-advances-controversial-bill/.

[95] Saskia Brechenmacher, "Defending Civic Space in the United States: Lessons Learned around the World," Carnegie Endowment for International Peace, 2024, https://carnegieendowment.org/research/2024/05/defending-civic-space-in-the-united-states-lessons-learned-around-the-world?lang=en.

[96] Williamson "Understanding Democratic Decline in the United States."

[97] *See, e.g.* Civicus Monitor, "USA Watchlist 2025 ," Civicus, March 10, 2025, https://monitor.civicus.org/watchlist-march-2025/USA/ (adding the U.S. to a "watchlist" of countries with civic

Even as the U.S. faces democratic decline and greater threats to democracy than ever before, our democratic institutions remain intact. The relative strength of our democracy, even in the face of these unprecedented attacks, sets the U.S. apart from the case study countries examined in this paper; while our democracy may be sick, it is not on its deathbed. There is, however, a great risk of accelerated backsliding and increased attacks on civil society. The U.S. has a system of laws already in place that can (and are) being weaponized by authoritarian actors to shrink civic space. Proposed legislation that introduces administrative and transparency anti-NGO laws, like those implemented in the case studies, represents a dangerous acceleration of these attacks.

A. Ongoing Threats to Civil Society

As in the countries examined in the case studies of this paper, restrictions on U.S. civil society are being justified through legitimate concerns. In the U.S., the most common justification for laws and policies that restrict civil society is countering terrorism, and most of these laws fall under the U.S. "material support" framework. This framework consists of laws under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), the Immigration and Nationality Act (INA), and under various executive orders that prohibit the "material support" of terrorism. The U.S. legal system governing "material support" of terrorism was hastily created in the wake of 9/11, and has not been meaningfully updated or clarified since. Designed to prevent terrorist organizations from hiding financial and other support in the nonprofit sector, the U.S. legal system does not clearly define "Material Support" and the legal framework is both overly

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freedoms under threat); Finnouala Ní Aoláin, Megan Manion, and Alyssa Yamamoto, "North American Outcome Report," in Global Study on the Impact of Counter-Terrorism on Civil Society & Civic Space (United Nations Human Rights Special Procedures, 2023), https://defendcivicspace.com/ (outcome report describing declining civic space and threats to civil society in the U.S. and Canada); Kleinfeld, "Closing Civic Space in the United States: Connecting the Dots, Changing the Trajectory."

broad and non-specific.[98] This is a system that can easily be weaponized against humanitarian and advocacy organizations that can be targeted for their work. These "lawfare" attacks[99] or attacks that utilize the U.S. legal system as a weapon for political purposes, are designed to suppress civil society and chill speech.[100] The emerging regulatory and administrative anti-NGO laws examined in this paper fall under this broad umbrella of material support laws, and like the other aspects of material support law they present an effective tool for bad faith actors and authoritarians to attack civil society in the name of counterterrorism.

The statute at the heart of the U.S. material support legal framework is 18 U.S.C. § 2339.[101] The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) expanded § 2339A and added § 2339B, the two statutes that are most used to prosecute material support of terrorism.[102] Broadly, the statutes prohibit any organization or individual from providing "material support" to a Foreign Terrorist Organization (FTO), as designated by the Secretary of State.[103] In the wake of 9/11, the U.S. PATRIOT Act dramatically expanded § 2339A and § 2339B, and critically added the prohibition of "expert advice or assistance" to the list of prohibited material support activities.[104] A crucial issue with this framework is the lack of a clear definition of what counts as "material support;" AEDPA's expansion after 9/11 means that the statute now applies not only to tangible support (such as funding or providing weapons) but also to intangible property and services.[105] There is an exception for humanitarian work, but it is

[98] Charity & Security Network, "Material Support," Charity & Security Network, April 27, 2021, https://charityandsecurity.org/issue-areas/material-support/.
[99] For a more in-depth definition of the term lawfare, see: Lawfare, "'Lawfare': A Brief History of the Term and Our Site," n.d., https://www.lawfaremedia.org/about/our-story.
[100] Guinane, "The Alarming Rise of Lawfare to Suppress Civil Society"
[101] Congressional Research Service, "Terrorist Material Support: An Overview of 18 U.S.C. § 2339A and § 2339B," Congress.gov, 2025, https://www.congress.gov/crs-product/R41333.
[102] *Id.*
[103] *Id*.
[104] Id., Charity & Security Network, "Background," January 11, 2021, https://charityandsecurity.org/background/.
[105] CRS, "Terrorist Material Support: An Overview of 18 U.S.C. § 2339A and § 2339B."

narrow and has not been applied consistently.[106] While the Justice Department has attempted to clarify which activities count and which do not, the definition of material support under § 2339A and § 2339B remains extremely broad.

This landscape is made even more confusing and treacherous for NPOs, as the "clarifications" that the Justice Department has provided for the definition of material support don't apply to material support under the Immigration and Nationality Act or under executive orders.[107]

Beyond criminal prosecution and economic sanctions, NPOs in the U.S. also face attacks in civil court. The Anti-Terrorism Act (ATA), 18 U.S.C. §2333, gives standing to private individuals who have been affected by terror attacks to sue in U.S. courts.[108] These civil cases are even more dangerous for NPOs, as plaintiffs in civil court do not have to meet the same evidentiary standards as government prosecutors. This means that individuals or groups can fairly easily file what are effectively nuisance lawsuits, or lawsuits that lack merit but are effective at damaging NPOs. These suits require extensive time, effort, and money, even if they are entirely unsubstantiated, and can successfully damage NPOs even if they are eventually dismissed. Beyond the resources necessary to fight these cases, ATA cases tie NPOs to terrorism; merely being accused of terrorism can have lasting damage for NPOs. These cases not only harm NPOs that are directly targeted with lawsuits, but also have a chilling effect on civil society more broadly. In the wake of these ATA cases, NPOs are hesitant to operate in fields where NPOs are being particularly targeted, such as humanitarian work in Palestine and support of student

[106] Charity & Security Network, "Background."
[107] *Id.*
[108] Charity & Security Network, "C&SN Files Amicus Brief in Anti-Terrorism Act Case - Charity & Security Network," March 23, 2021, https://charityandsecurity.org/litigation/csn-files-amicus-brief-in-anti-terrorism-act-case/.

activism.[109] These material support laws are being used to silence civil society and suspend vital humanitarian and peacebuilding work.

In sum, the current U.S. laws prohibiting material support are both broad and vague, creating an environment where any NPO operating in areas where designated terrorist groups (FTOs) are in control, or even merely operating, are at risk of criminal or civil prosecution for their work.

i. Attacks on Humanitarian and Peacebuilding Organizations

The largest target of attacks in the U.S. on civil society in the name of counterterrorism has been NPOs involved in humanitarian and peacebuilding operations in Palestine.[110] These organizations and their vital work have been targeted in criminal and civil cases, and in the past two decades these attacks have increased.

A 2010 Supreme Court decision in *Holder v. Humanitarian Law Project* set the stage for increased suppression of peacebuilding NPOs. In *Holder*, the Court held that Humanitarian Law Project (HLP), a peacebuilding organization, violated 18 U.S.C. 2339B by providing non-violent conflict resolution training to two terrorist designated groups, Partiya Karkeran Kurdistan (PKK) and the Liberation Tigers of Tamil Elaam (LTTE).[111] This set the precedent that even interactions with designated organizations or individuals designed to facilitate peacebuilding or the peace process could count as illegal material support.

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[109] For a background on the ways that Palestinian organizations are specifically targeted in U.S. counterterrorism law, see Center for Constitutional Rights and Palestine Legal, "Anti-Palestinian at the Core: The Origins and Growing Dangers of U.S. Antiterrorism Law" (Center for Constitutional Rights, February 2024), https://ccrjustice.org/sites/default/files/attach/2024/02/Anti-Palestinian%20at%20the%20Core_White%20Paper_0.pdf.

[110] *Id.*

[111] Charity & Security Network, "Holder v. Humanitarian Law Project: Addressing the Impact of Material Support Laws on Peacebuilding Programs," Charity & Security Network, June 21, 2010, https://charityandsecurity.org/litigation/hlp/.

Additionally, lawfare attacks under the material support framework have been utilized to shut down vital humanitarian assistance. The act of carrying out a humanitarian mission inherently involves giving aid and support, as well as seeking permission or notifying relevant local, international, or non-governmental entities that operate or control a specific area. These situations are normally both complex and chaotic, and can involve interacting with designated groups or individuals. While the material support framework has humanitarian exceptions, this has not stopped lawfare attacks on humanitarian NPOs.

In March of 2024, a group of plaintiffs sued UNRWA USA, a U.S. based charity providing support for the U.N. Relief and Works Agency for Palestine Refugees (UNRWA), for violating material support. In this ATA case, the plaintiffs claim that the humanitarian work performed by UNRWA and UNRWA USA materially supports Hamas, a designated FTO.[112] In this case, the only evidence of aiding and abetting that the plaintiffs point to are unsubstantiated claims that UNRWA was part of the Oct. 7 attack and that UNRWA USA is serving as a "propaganda arm" for Hamas. The legal standard to reach aiding and abetting liability requires hard evidence of intent; or strong evidence that the organization in question knowingly assisted a terrorist organization.[113] Here, the plaintiffs rely solely on circumstantial and unsubstantiated evidence to try and make this claim. The lack of evidence demonstrates that this lawsuit is an example of the type of meritless attack that aims to suppress humanitarian work and scare humanitarian organizations away from working in areas like Palestine.[114]

This use of material support laws to shrink civic space through both public (the Department of Justice) and private (private plaintiffs under the ATA) actors demonstrates that the

[112] Charity & Security Network, "Lavi et al v. UNRWA USA National Committee," Charity & Security Network, July 18, 2024, https://charityandsecurity.org/litigation/lavi-et-al-v-unrwa-usa-national-committee/.
[113] *Id.*
[114] Center for Constitutional Rights, "U.S. Non-Profit Supporting Palestinian Refugees Faces Baseless Lawsuit Aimed at Defunding UNRWA," Center for Constitutional Rights, May 29, 2024, https://ccrjustice.org/home/press-center/press-releases/us-non-profit-supporting-palestinian-refugees-faces-baseless.

U.S. has a legal system in place already that can and is used to target civil society and silence dissent.

ii. Attacks on Free Speech and Academia

Perhaps the most obvious use of U.S. material support laws to shrink civic space and support the consolidation of executive power, paving the way for democratic backsliding, is the material support attacks on free speech and academia. Both private plaintiffs and the government have utilized material support laws to crack down on the freedom of speech and association on college campuses. These lawfare attacks also contribute to the broader attacks on academia orchestrated by the Trump administration, who have used protests around the war in Gaza and the supposed countering of terrorism to encroach on academia.

This targeting of academia is particularly concerning, as in the U.S. (and around the world) academia and higher education play a vital role in maintaining democracy.[115] The Trump administration has launched a sustained attack on universities and higher education, and appears to be going after academic freedom.[116] Additionally, these material support attacks on academia and student protestors represent a sharp turn towards authoritarianism. Protestors and the schools they attend have been painted by the Trump administration as terrorists or supporting terrorism, and beyond the material support lawsuits the government has targeted student protestors with questionably legal deportations.[117] While thousands of students have been targeted, many have

[115] Darrell West, "Why Academic Freedom Challenges Are Dangerous for Democracy," Brookings, September 8, 2022, https://www.brookings.edu/articles/why-academic-freedom-challenges-are-dangerous-for-democracy/.
[116] Alan Blinder, "Trump Has Targeted These Universities. Why?," The New York Times, April 9, 2025, https://www.nytimes.com/article/trump-university-college.html.
[117] See, e.g., the attempted deportation of green card holder Mahmoud Khalil for his involvement in the Columbia University Gaza protests (American Civil Liberties Union, "Khalil v. Trump ," ACLU, March 14, 2025, https://www.aclu.org/cases/khalil-v-trump).

been chosen because of their involvement in campus protests and with advocacy groups, or even for simply publishing articles about current events.[118]

Taken together, these attacks on freedom of speech and association in the name of counterterrorism paint a deeply concerning picture about the future of American civil society and American democracy. The structure of material support laws in the U.S. is already in place and is already being used to suppress civil society.

B. Emerging Threats--Administrative and Tax Anti-NGO Legislation

In addition to the ongoing material support attacks on civil society, the U.S. has seen a rise in attempts to pass administrative and tax anti-NGO legislation similar to the laws examined in this paper's case studies. This new tactic would represent an alarming escalation of executive power consolidation and shrinking civic space and civic freedom. The proposed administrative and tax anti-NGO laws would place even more power in the executive branch, giving the Department of Treasury unilateral power to revoke nonprofit status from NPOs with little evidentiary requirements and no due process. While none of the bills discussed here have successfully passed both chambers of Congress, it is important to bring attention to these types of laws and to look out for future attempts to further shrink civil society.

i. Bills in Congress

The first administrative and transparency anti-NGO bill proposed in the U.S. was H.R. 6408, introduced in November 2023.[119] This bill was intended to "revoke the tax-exempt status for any organization that provides financial support or resources to designated terrorist groups," and was introduced specifically to target pro-Palestinian and student protest organizations.[120] The

[118] Brandon Drenon, "Anxiety on US College Campuses as Foreign Students Deported," BBC, April 18, 2025, https://www.bbc.com/news/articles/c20xq5nd8jeo.
[119] H.R. 6408 (2023).
[120] Charity & Security Network, "Charity & Security Network Opposes Legislation That Targets Charities," Charity & Security Network, April 25, 2024, https://charityandsecurity.org/news/charity-security-network-opposes-legislation-that-targets-charities/.

bill introduced language that would give the Secretary of the Treasury unilateral authority to revoke 501(c)(3) nonprofit status from any organization it deemed "terrorist supporting" even if that organization was not designated by the Department of State or another U.S. government agency.[121] The bill did not require the government to provide evidence that an organization is supporting terrorism, and there was no appeals process;[122] essentially, it gave unilateral power to the executive branch to target any organization it did not agree with.

While the bill was introduced to specifically target pro-Palestinian organizations, NPOs from many different sectors raised concerns that it could easily be used to target any organization that the President disliked.[123] The bipartisan bill passed the U.S. House relatively quickly, before stalling in the Senate after hundreds of NPOs raised concerns.[124]

a. H.R. 9495

In September, 2024 H.R. 9495 was introduced to the U.S. House.[125] This bill included identical language to H.R. 6408 and proposed the same unilateral power to revoke nonprofit status for the U.S. Treasury. As with H.R. 6408, H.R. 9495 was introduced specifically to target pro-Palestinian organizations and student protests, and like H.R. 6408, NPOs from many different sectors expressed deep concerns.[126] A statement by the Ways and Means Committee chair Jason Smith explicitly states the purpose of the bill as "...to require the IRS to revoke the tax-exempt status of any organization that provides financial support or resources to designated

[121] Matthew Petti, "This Bill Would Give the Treasury Nearly Unlimited Power to Destroy Nonprofits," Reason.com, April 24, 2024, https://reason.com/2024/04/24/this-bill-would-give-the-treasury-nearly-unlimited-power-to-destroy-nonprofits/.
[122] H.R. 6408 (2023).
[123] Human Rights Watch, "US House Passes Bill That Threatens Civil Society Organizations," HRW, November 21, 2024, https://www.hrw.org/breaking-news/2024/11/21/us-house-passes-bill-threatens-civil-society-organizations.
[124] Charity & Security Network, "Charity & Security Network Opposes Legislation That Targets Charities."
[125] H.R. 9495 (2024).
[126] Kearney, "'Regulatory Repression' Comes Full Circle."

terrorist groups like Hamas."[127] Additionally, a letter from the Ways and Means Committee sent to the IRS after H.R. 6408 stalled in the Senate suggests that the IRS should use nonprofit status as a tool to "promote conduct that is counter to public policy."[128] This language is particularly concerning, and gives away the bigger goal of shrinking civil society as a way to minimize dissent and facilitate the consolidation of executive power.

Despite this outcry from across civil society, the bill quickly passed the House 219-184.[129] Since that time, Republicans have taken control of both chambers and Donald Trump is President; NPOs are concerned that the language from these bills will be reintroduced in the new Congress and that it will quickly pass.[130]

b. Broader Congressional Attacks

It is already illegal for nonprofits to support terrorism. As demonstrated by the many, many legal cases accusing nonprofits of material support,[131] the current legal regime is already over-inclusive and overly-cautious, and already stifles important humanitarian and advocacy efforts. These new legislative attacks are offering a pathway to shutting down civil society that misses the few checks that remain on politically motivated attempts to solidify power and silence criticism and advocacy.

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[127] Jason Smith, "House Passes Ways & Means Bill Ending Tax-Exempt Support for Terrorism & Tax Penalties for American Hostages – Ways and Means," U.S. House Ways and Means Committee, November 21, 2024, https://waysandmeans.house.gov/2024/11/21/house-passes-ways-means-bill-ending-tax-exempt-support-for-terrorism-tax-penalties-for-american-hostages/.

[128] Committee on Ways and Means to Daniel Werfel, "Letter to the Honorable Daniel Werfel ," Letter; https://waysandmeans.house.gov/wp-content/uploads/2024/04/4-24-2024-Werfel-CCP-Singham-Letter.pdf, April 24, 2024.

[129] Alice Herman, "US House Passes Bill to Punish Non-Profits Deemed to Support 'Terrorism,'" The Guardian, November 21, 2024, https://www.theguardian.com/us-news/2024/nov/21/house-republicans-bill-nonprofits-terrorism.

[130] NEO Law Group, "H.R. 9495: What's Next?," Nonprofit Law Blog, February 12, 2025, https://nonprofitlawblog.com/h-r-9495-whats-next/.

[131] See, e.g, Keren Kayemeth LeIsrael - Jewish Nat'l Fund v. Educ. for a Just Peace in the Middle E. (D.C. Cir. 2023); United States ex. rel. TZAC, Inc. v. Christian Aid (S.D.N.Y. 2022).

D. Potential Impacts

If passed, these proposed administrative and tax anti-NGO laws could further slide American democracy towards competitive authoritarianism. As President Trump increases his attacks on some nonprofits and academia, the passage of a law like H.R. 6408 or H.R. 9495 would give him unprecedented power and support in his campaign against civil society. Trump has already publicly attacked a number of universities,[132] lawyers, pro-Palestinian organizations, and environmental nonprofits.[133] Experts fear that administrative anti-NGO laws would only further embolden Trump.[134]

These proposed bills are particularly troubling as they consolidate further power into the executive branch and don't allow for judicial review. Both H.R. 6408 and H.R. 9495 allow for the use of "secret" evidence, and unlike the current IRS laws on nonprofit status only allow judicial review after an organization has already been stripped of its status.[135] The lack of due process in these laws and the way they further consolidate executive power is similar to the laws passed in Nicaragua, Venezuela, and Paraguay; while U.S. democracy is far stronger, looking at the effects of these laws in those countries shows the power and danger that they present.

Additionally, as with material support allegations, even if a version of these anti-NGO laws that provided due process protections was passed it could still cause considerable damage to civil society. A major aspect of lawfare attacks under the material support framework is not the success or failure of the individual lawsuits but the time and resources they demand, as well as the reputational damage they produce. Even organizations that are "cleared" of wrongdoing face

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[132] Blinder, "Trump Has Targeted These Universities. Why?"
[133] Rachel Leingang and Dharna Noor, "Fear Spreads as Trump Targets Lawyers and Non-Profits in 'Authoritarian' Takedown," The Guardian, April 10, 2025, https://www.theguardian.com/us-news/2025/apr/10/trump-administration-authoritarian.
[134] *Id.*
[135] Kia Hamadanchy, "Congress Must Reject a Bill That Would Give Trump New Power to Silence Critics," The Nation, November 13, 2024, https://www.thenation.com/article/politics/free-speech-democracy-trump/.

irreparable damage to their image, affecting their ability to fundraise, protect donors, and operate. Lawfare is wielded as a bully pulpit, threatening all of civil society and targeting specific NPOs as "examples" of what happens when organizations fall out of the government's line. This is a major part of democratic backsliding, an environment where civil society is afraid to even approach topics deemed controversial or undesirable by the government.

The risks of being targeted by this type of legislation has also created a chilling effect on civil society, as NPOs avoid engaging in topics and areas that have attracted the ire of the Trump administration.[136] If this type of legislation succeeds in the U.S., it will empower Trump to shrink civil society just as similar legislation empowered Ortega, Maduro, and the Colorado Party.

V. Policy Recommendations

1. **Increase awareness among policymakers of the importance of civil society and the threat that anti-NGO legislation presents.** Fortunately, U.S. democratic systems are still functioning and have greater checks and balances than those in the countries that have already passed this type of legislation. Despite the relative strength of our systems, it is vital for civil society and policymakers to understand the threat that these laws pose. Previous attempts to pass this type of legislation were stopped because of a concerted campaign by civil society to inform policymakers about the ways that these laws harm civil society.
2. **Require any proposed legislation on counterterrorism and nonprofit status to include adequate due process**. The legislation discussed here is particularly dangerous to civil society as it does not allow for sufficient due process and judicial review. Unlike the case studies discussed here, the U.S. still has an independent judiciary that must serve as a check on attempts to consolidate executive power.

[136] *Id.*

3. **Foster solidarity among civil society.** While these bills were introduced to specifically target pro-Palestinian organizations, no NPO is safe from their reach. Civil society needs to work together across issue areas, party lines, and even religious differences to address this emerging threat.

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