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FAR FROM HOME: OVERCOMING THE CHALLENGES TO  
REPATRIATING FOREIGN WOMEN WHO JOINED THE ISLAMIC  
STATE

ALEXIS MARCH\*

*In the wake of the Syrian civil war, al Qaeda regrouped and re-branded itself as the Islamic State, eventually capturing key cities in Northern Iraq and Syria and amassing large swaths of territory. Targeting young Muslim women and exploiting their feelings of alienation in the West was central to the Islamic State’s recruiting strategy. The women who traveled from the West to join the Islamic State were lured by a slick propaganda machine and promises of marrying a fighter or living in a utopian religious state. Most are believed to have been between the ages of fifteen and twenty-five. Although women represent a relatively small portion of foreign recruits, they represent the majority of those imprisoned and detained in camps where they—as well as their children—suffer from malnutrition, exposure, contaminated drinking water, and lack of access to medicine and medical care.*

*As the Syrian Democratic Forces find themselves in geopolitical limbo, a long-term solution to this humanitarian and security crisis is acutely needed. This Note argues that the legal and policy approaches that Europe and the United States have taken are inadequate to address the security and humanitarian crisis resulting from the prolonged detention of their female citizens who joined the Islamic State. Conventional law and policy responses do not take into consideration the complex roles of women in the Islamic State. This Note concludes that the United States and European countries should actively repatriate citizens who joined the Islamic State to address the detainee crisis in Syria and to promote regional stability.*

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\* J.D. Candidate 2021, University of Illinois College of Law; B.A. 2016, University of Illinois at Urbana-Champaign. Special thanks to Professor Patrick Keenan for his insight and guidance, to the editors, members, and staff of the *University of Illinois Law Review* for their careful editing, and to my parents for their unwavering support and encouragement.

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## I. INTRODUCTION

In 2011, the protests against Syrian President Bashar al Assad fomented into an organized civil uprising against his regime.<sup>1</sup> Initially, the Free Syrian Army (“FSA”) emerged as the principal armed opposition to the regime, but the coalition of militias that made up the FSA soon splintered and many fighters aligned themselves with Islamist militias backed by donors from countries including Saudi Arabia, Qatar, and Kuwait.<sup>2</sup> The power vacuum created by civil war and competing militias paved the way for the emergence of the Islamic State.<sup>3</sup>

1. Zachary Laub, *Syria’s Civil War: The Descent Into Horror*, COUNCIL ON FOREIGN RELS. (Feb. 19, 2020), <https://www.cfr.org/article/syrias-civil-war> [https://perma.cc/TA37-6ZJ7]; *How Many IS Foreign Fighters Are Left in Iraq and Syria?*, BBC (Feb. 20, 2019), <https://www.bbc.com/news/world-middle-east-47286935> [https://perma.cc/BN4H-X6Z7].

2. Zachary Laub, *Who’s Who in Syria’s Civil War*, COUNCIL ON FOREIGN RELS. (Apr. 28, 2017), <https://www.cfr.org/background/whos-who-syrias-civil-war> [https://perma.cc/HVD4-ST9J]; Laub, *supra* note 1.

3. See Laub, *supra* note 1.

The Islamic State's origins can be traced to al Qaeda remnants in Iraq.<sup>4</sup> After the American invasion, al Qaeda was weakened and essentially dismantled.<sup>5</sup> But in the wake of the Syrian civil war, the organization regrouped and rebranded itself as the Islamic State, eventually capturing key cities in Northern Iraq and Syria and amassing large swaths of territory.<sup>6</sup> Following this territorial expansion, the Islamic State encouraged Muslims across the world to join its newly established "caliphate."<sup>7</sup> In November 2017, the United Nations estimated that "more than 40,000 foreign terrorist fighters from 110 countries [had] travelled to join the conflicts in Syria and Iraq."<sup>8</sup> Similar figures were released by the International Centre for the Study of Radicalisation in 2018.<sup>9</sup> Additionally, the same study estimated that women comprised about 13% of the Islamic State's foreign recruits, with women from Russia, Tunisia, France, China, and Morocco accounting for the most foreign female members, respectively.<sup>10</sup> Targeting women was central to the Islamic State's recruiting strategy.<sup>11</sup> Most of the women who traveled to join the Islamic State are believed to have been between the ages of fifteen and twenty-five, lured by a slick propaganda machine and the prospect of marrying a fighter or living in a utopian religious state.<sup>12</sup> Diary-style blog and Twitter posts and curated images of life as a "jihadi bride" authored by Western women who had already joined the Islamic State appealed to a generation of young Muslim women who were eager to find belonging and escape the alienation they felt in the West.<sup>13</sup> Researchers have noted, however, that women fulfilled a variety of roles in the organization beyond that of the "jihadi bride."<sup>14</sup> Indeed, it would be a mistake to characterize all of the women who joined the Islamic State as "jihadi brides" because the term inaccurately suggests that

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4. Cameron Glenn, *The ISIS Primer*, WILSON CTR. (Nov. 19, 2015), <https://www.wilsoncenter.org/article/the-isis-primer> [https://perma.cc/DB2H-2QAS].

5. *Id.*

6. *Id.*

7. *Id.*

8. Press Release, Sec. Council, Greater Cooperation Needed to Tackle Danger Posed by Returning Foreign Fighters, Head of Counter-Terrorism Office Tells Security Council, UN (Nov. 28, 2017), <https://www.un.org/press/en/2017/sc13097.doc.htm> [https://perma.cc/V77B-F5FJ].

9. JOANA COOK & GINA VALE, INT'L CTR. FOR THE STUDY OF RADICALISATION, FROM DAESH TO 'DIASPORA': TRACING THE WOMEN AND MINORS OF ISLAMIC STATE 3 (2018), <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf> [https://perma.cc/2GVJ-L5US]; Steven Erlanger, *In West, ISIS Finds Women Eager to Enlist*, N.Y. TIMES (Oct. 23, 2014), <https://www.nytimes.com/2014/10/24/world/europe/as-islamists-seek-to-fill-ranks-more-western-women-answer-their-call.html> [https://perma.cc/2P8Y-TLVB]; see Courtney Vinopal, *Should Thousands of ISIS Fighters be Allowed to Return Home?*, PBS NEWS HOUR (Apr. 5, 2019, 7:04 PM), <https://www.pbs.org/news-hour/world/should-thousands-of-isis-fighters-and-their-families-be-allowed-to-return-home> [https://perma.cc/XQ85-253R].

10. COOK & VALE, *supra* note 9, at 21–22.

11. Vinopal, *supra* note 9.

12. Erlanger, *supra* note 9.

13. AZADEH MOAVENI, GUEST HOUSE FOR YOUNG WIDOWS: AMONG THE WOMEN OF ISIS 105–19 (2019).

14. Elizabeth Buner, Note, *Doing Our Part: Acknowledging and Addressing Women's Contributions to ISIS*, 22 WM. & MARY J. WOMEN & L. 419, 434–37 (2016).

women were only passive participants.<sup>15</sup> Women often facilitated the group's propaganda and recruiting efforts, and served as morality police, intelligence agents, doctors, midwives, and language instructors.<sup>16</sup>

Women's participation was not limited to non-combat roles.<sup>17</sup> Some of the most notorious Islamic State brigades were all-female units, such as the Khadija bint Khuwaylid special operations battalion.<sup>18</sup> This highly trained unit was known for its expertise in carrying out assassinations and infiltrations as well as using explosive vests, sticky bombs, handguns, Kalashnikov rifles, and rocket propelled grenades ("RPGs").<sup>19</sup> The Khadija bint Khuwaylid battalion also carried out intelligence gathering operations.<sup>20</sup> Another all-female unit, the al-Khansa, was composed mainly of French-speaking women from Europe.<sup>21</sup> Similar to the Khadija bint Khuwaylid battalion, women in the al-Khansa battalion conducted surveillance operations and received training on Kalashnikov rifles and RPGs.<sup>22</sup>

As of the writing of this Note, the Islamic State occupied only a few pockets of Syrian territory, having been driven out and defeated by allied U.S.-backed Syrian Democratic Forces.<sup>23</sup> Despite the fact that women represent a relatively small portion of the foreign recruits, they represent the majority of those imprisoned and detained in camps,<sup>24</sup> such as al-Hawl in northern Syria.<sup>25</sup> With 73,000 captured people crammed into a detention camp of less than four square miles, al-Hawl is dangerously above capacity.<sup>26</sup> Among those detained in al-Hawl are more than 10,000 foreign women and children, accounting for about 20% of the camp's population.<sup>27</sup> In October 2019, researchers estimated that at least 1,200 European nationals were in camps, the majority of whom were children.<sup>28</sup>

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15. Azadeh Moaveni, *'Jihadi Bride' Doesn't Fit: We Need a New Language for Female Militants*, GUARDIAN (Feb. 26, 2019, 1:00 AM), <https://www.theguardian.com/commentisfree/2019/feb/26/jihadi-bride-shamima-begum-female-militants> [<https://perma.cc/5S4P-6NJZ>].

16. Robin Wright, *The Dangerous Dregs of ISIS*, NEW YORKER (Apr. 16, 2019), <https://www.newyorker.com/news/dispatch/the-dangerous-dregs-of-isis> [<https://perma.cc/XVP2-X72M>]; Moaveni, *supra* note 15.

17. See Moaveni, *supra* note 15; Wright, *supra* note 16.

18. See Wright, *supra* note 16.

19. Asaad H. Almohammad & Anne Speckhard, *The Operational Ranks and Roles of Female ISIS Operatives: From Assassins and Morality Police to Spies and Suicide Bombers*, INT'L CTR. FOR THE STUDY OF VIOLENT EXTREMISM (Apr. 23, 2017), <https://www.icsve.org/the-operational-ranks-and-roles-of-female-isis-operatives-from-assassins-and-morality-police-to-spies-and-suicide-bombers/> [<https://perma.cc/Y9XF-QDQL>].

20. *Id.*

21. *Id.*

22. *Id.*

23. *How Many IS Foreign Fighters Are Left in Iraq and Syria?*, *supra* note 1.

24. *UN Report on Syria Conflict Highlights Inhumane Detention of Women and Children*, UN NEWS (Sept. 11, 2019), <https://news.un.org/en/story/2019/09/1046102> [<https://perma.cc/K7JU-V8XC>].

25. See Wright, *supra* note 16.

26. See *id.*

27. See *id.*

28. Rik Coolsaet & Thomas Renard, *New Figures on European Nationals Detained in Syria and Iraq*, EGMONT INSTITUTE (Oct. 15, 2019), <https://www.egmontinstitute.be/new-figures-on-european-nationals-detained-in-syria-and-iraq/> [<https://perma.cc/ZS3F-97M6>]; Loveday Morris & Souad Mekhennet, *Europe Has Resisted Taking Back Citizens Who Joined ISIS. Now, It May Not Have a Choice*, WASH. POST (Nov. 14, 2019, 5:30 PM), <https://www.washingtonpost.com/world/europe/europe-has-resisted-taking-back-citizens-who-joined-isis->

Conditions in detention camps are dire.<sup>29</sup> Women and children suffer from malnutrition, exposure, contaminated drinking water, and lack of access to medicine and medical care.<sup>30</sup> At al-Hawl alone, it is estimated that 371 children died in 2019.<sup>31</sup> The gravity of the situation has been compounded by the risk that the Covid-19 virus poses to such a vulnerable population.<sup>32</sup> As of January 2021, there were nearly 14,000 confirmed Covid-19 cases in Syria.<sup>33</sup> The health crisis, however, is not the only tragedy unfolding in the camps.<sup>34</sup> The most radical detainees terrorize others within the camp. In an incident in July 2019, a woman “smothered her 14-year-old granddaughter to death for refusing to wear the niqab outside her tent.”<sup>35</sup> Victims and perpetrators of violence are living side by side in close quarters, adding to the urgency of the peril at al-Hawl.<sup>36</sup> Because many women who are victims of violence by the Islamic State also perpetrated violence or provided operational support to the Islamic State, distinguishing between victims and those who remain committed to the caliphate is not a simple undertaking.<sup>37</sup>

Additionally, continued reliance on detention camps to contain women and children who were part of the Islamic State amplifies the risk of the group’s re-emergence.<sup>38</sup> The heightened level of regional instability following the Fall 2019 Turkish offensive and incursion into Syria has only augmented this security risk.<sup>39</sup> Following the Turkish offensive into Syria, at least 750 women and children who were part of the caliphate escaped from the Ain Issa detention camp.<sup>40</sup>

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now-it-may-not-have-a-choice/2019/11/14/e2137fe0-0590-11ea-9118-25d6bd37dfb1\_story.html [https://perma.cc/93WQ-NR66].

29. See Bethan McKernan, *Inside al-Hawl Camp, The Incubator for Islamic State’s Resurgence*, GUARDIAN (Aug. 31, 2019, 12:00 AM), <https://www.theguardian.com/world/2019/aug/31/inside-al-hawl-camp-the-incubator-for-islamic-states-resurgence> [https://perma.cc/6D7S-V7YP].

30. *Id.*

31. MYRIAM FRANCOIS & AZEEM IBRAHIM, CTR. FOR GLOB. POL’Y, THE CHILDREN OF ISIS DETAINEES: EUROPE’S DILEMMA 8 (2020), <https://cgpolicy.org/wp-content/uploads/2020/06/CGP-Children-of-ISIS-June-2020.pdf> [https://perma.cc/7QPA-QBMQ].

32. *In al-Hol Camp Almost No Healthcare Is Available*, MEDECINS SANS FRONTIERES (Aug. 27, 2020), <https://www.msf.org/covid-19-has-devastating-knock-effect-northeast-syria> [https://perma.cc/C6S5-FH2Z]; Agathe Christien, Emma Jouenne & Elena Scott-Kakures, *How COVID-19 Underscores the Urgent Need to Repatriate Women and Children from Northeast Syria Camps*, GEO. INST. FOR WOMEN, PEACE & SEC. (Dec. 9, 2020), <https://giwps.georgetown.edu/how-covid-19-underscores-the-urgent-need-to-repatriate-women-and-children-from-northeast-syria-camps/> [https://perma.cc/G7JB-LTGJ].

33. *COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University*, JOHNS HOPKINS CORONAVIRUS RES. CTR., <https://coronavirus.jhu.edu/map.html> (last visited Feb. 23, 2021) [https://perma.cc/346E-P6W6] (number as of January 31, 2021).

34. See McKernan, *supra* note 29.

35. *Id.*

36. See Wright, *supra* note 16.

37. See *id.*

38. See Bethan McKernan, *At Least 750 ISIS Affiliates Escape Syria Camp After Turkish Shelling*, GUARDIAN (Oct. 13, 2019, 7:53 AM), <https://www.theguardian.com/world/2019/oct/13/kurds-say-785-isis-affiliates-have-escaped-camp-after-turkish-shelling> [https://perma.cc/5NUD-98Y2].

39. INT’L CRISIS GROUP, *STEADYING THE NEW STATUS QUO IN SYRIA’S NORTH EAST 1* (2019), <https://d2071andvip0wj.cloudfront.net/b072-steadying-the-new-status-quo.pdf> [https://perma.cc/SK2A-ZATH].

40. McKernan, *supra* note 38.

Turkish shelling near the camp precipitated a riot, scaring away the Kurdish guards and thus allowing the women and children to escape.<sup>41</sup>

As the Syrian Democratic Forces find themselves in geopolitical limbo, long-term solutions to this humanitarian and security crisis are acutely needed. In this Note, I argue that the legal and policy approaches that Europe and the United States have taken are inadequate to address the security and humanitarian crisis resulting from the prolonged detention of their female citizens in Syria. Conventional law and policy responses do not take into consideration the complex roles of women in the Islamic State. Part II of this Note will provide an overview of the approaches used by the United States and European countries with respect to their citizens detained in Syria and Iraq. Part III will analyze the viability of these approaches and synthesize how countries' positions and policies have evolved. Part IV will propose a repatriation framework that takes into account the unique circumstances of the foreign women who traveled to join the Islamic State.

## II. CURRENT LAW AND POLICY

The United States and Europe have used three main strategies to address the issue of nationals who joined the Islamic State. The first is repatriation of Islamic State members to their respective countries of citizenship where they are subject to prosecution.<sup>42</sup> The second is to leave them in Syria or Iraq for prosecution by the Syrian Democratic Forces or Iraqi government.<sup>43</sup> The third approach is to use citizenship and immigration laws to revoke citizenship or block an individual's ability to return to his or her country of citizenship.<sup>44</sup>

### A. Repatriation

One possible approach to addressing the detainee crisis in Syria is to repatriate foreign national women who traveled from their country of citizenship to join the Islamic State or a similar terrorist group. This Part discusses the kinds of repatriation strategies countries have implemented.

#### 1. Europe

European countries have resisted repatriating citizens who traveled to join the Islamic State.<sup>45</sup> Following the withdrawal of U.S. troops from Kurdish held northern Syria and the subsequent Turkish offensive, however, this stance is beginning to shift.<sup>46</sup> The shift was brought on by developments in domestic law as well as by threats from Turkish authorities to deport those with Islamic State

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41. *Id.*

42. See discussion *infra* Section II.A.

43. See discussion *infra* Section II.B.

44. See discussion *infra* Section II.C.

45. Morris & Mekhennet, *supra* note 28.

46. *Id.*

affiliations in Turkey's custody to their respective countries of citizenship.<sup>47</sup> In mid-November 2019, Turkey's Interior Minister, Süleyman Soylu, stated in an interview that Turkey was holding 2,280 Islamic State members from thirty countries.<sup>48</sup> He further stated, "all of them will be deported" and emphasized that Turkey is "not a hotel or a guest house for terrorists from any country."<sup>49</sup>

a. Germany

In November 2019, a German court of appeals ruled that the government must repatriate a woman and her three children who were being held at the al-Hawl camp.<sup>50</sup> The government argued against the mother's repatriation as a security risk, but the court ultimately found that conditions at the camp were "life-threatening" and that "the children had a right to remain with their mother."<sup>51</sup> This ruling paved the way for the first adult with suspected Islamic State involvement to be repatriated to Germany—a thirty-year-old woman identified as Laura H. by *Der Spiegel*.<sup>52</sup> Upon her repatriation, she was also under investigation for suspected membership in a terrorist organization and child neglect.<sup>53</sup> Her repatriation marks a major policy shift. Subsequently, Germany has cooperated with the Turkish government in repatriating several other German nationals.<sup>54</sup> Although Germany has announced that it will repatriate "jihadi brides" on a case-by-case basis, it seems likely that Germany will continue to repatriate nationals being held in Iraq, Syria, and Turkey on suspicion of involvement with the Islamic State.<sup>55</sup>

Germany had previously prosecuted individuals who returned on their own or whom other countries extradited or deported.<sup>56</sup> Notably, in April 2019, German authorities prosecuted a woman on multiple charges, including the murder of a five-year-old Yazidi girl whom she and her husband had enslaved, war crimes, membership in a foreign terrorist organization, and weapons violations.<sup>57</sup>

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47. *Id.*

48. Carlotta Gall, *ISIS Suspect Trapped at Turkish Greek Border Is to Be Deported to U.S.*, N.Y. TIMES (Nov. 14, 2019), <https://www.nytimes.com/2019/11/14/world/middleeast/american-isis-turkey-greece.html> [<https://perma.cc/XQ2M-PK7U>].

49. *Id.*

50. Morris & Mekhennet, *supra* note 28.

51. *Id.*

52. *Germany Takes Back 'Islamic State' Mother and Her Three Children from Syria*, DEUTSCHE WELLE (Nov. 23, 2019), <https://www.dw.com/en/germany-takes-back-islamic-state-mother-and-her-three-children-from-syria/a-51378413> [<https://perma.cc/XP3B-PGQJ>].

53. *Id.*

54. Philip Oltermann, *Women Married to Isis Fighters Due to Land in Germany from Turkey*, GUARDIAN (Nov. 15, 2019), <https://www.theguardian.com/world/2019/nov/15/women-married-to-isis-fighters-due-to-land-in-germany-from-turkey> [<https://perma.cc/T9LH-BY7D>].

55. *Germany Takes Back 'Islamic State' Mother and Her Three Children from Syria*, *supra* note 52.

56. See, e.g., Melissa Eddy, *German Woman Goes on Trial in Death of 5-Year-Old Girl Held as ISIS Slave*, N.Y. TIMES (Apr. 9, 2019), <https://www.nytimes.com/2019/04/09/world/europe/germany-isis-trial.html> [<https://perma.cc/FNJ8-2UXF>].

57. See *id.*

The woman had been deported to Germany after visiting the German Embassy in Ankara, Turkey.<sup>58</sup>

Prior to December 2017, prosecutors were less inclined to open criminal investigations of female returnees than male.<sup>59</sup> In practice, prosecutors usually looked for evidence of involvement in the Islamic State beyond traveling to join it before opening investigations of female returnees.<sup>60</sup> Laura H. is representative of an evolving understanding of women's roles within the Islamic State and evidence of the adoption of a uniform approach to investigating returnees.<sup>61</sup> In working with Turkey to repatriate German citizens, German authorities have stressed the importance of receiving information from Turkey "that would stand in a court of law to detain someone and bring them to justice."<sup>62</sup>

#### b. France

More individuals from France traveled to join the Islamic State than from any other country in Western Europe.<sup>63</sup> Although France has generally resisted repatriating its nationals who joined the Islamic State, it has begun repatriating children of its nationals on a case-by-case basis.<sup>64</sup> France has stepped up the pace of repatriating children within the last year.<sup>65</sup> A French judge who has handled about fifty repatriations estimated that over eighty-four children have been repatriated.<sup>66</sup> Some of the children being repatriated are orphans, but many who are not have been repatriated without their mothers.<sup>67</sup> Despite urging from human rights organizations and the United States to take back adults as well as children, the French government has resisted doing so.<sup>68</sup> France maintains that the men and women who joined the Islamic State must be prosecuted where they perpetrated their crimes.<sup>69</sup>

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58. *Id.*

59. Daniel H. Heinke & Jan Raudszus, *Germany's Returning Foreign Fighters and What To Do About Them*, in RETURNES: WHO ARE THEY, WHY ARE THEY (NOT) COMING BACK AND HOW SHOULD WE DEAL WITH THEM? 41, 50 (Thomas Renard & Rik Coolsaet eds., 2018).

60. *Id.*

61. *See id.*

62. Oltermann, *supra* note 54.

63. Jacob Schulz, *France Makes a Play to Try Foreign Fighters in Iraq*, LAWFARE (Nov. 4, 2019, 3:37 PM), <https://www.lawfareblog.com/france-makes-play-try-foreign-fighters-iraq> [<https://perma.cc/D6LM-US6F>].

64. Agence France-Presse, *Orphans of French Isis Fighters Fly Home From Syria*, GUARDIAN (June 10, 2019, 9:02 AM), <https://www.theguardian.com/world/2019/jun/10/syria-kurds-children-orphans-french-isis-islamic-state-fighters-handed-over-france> [<https://perma.cc/A75N-BXUU>]; Keerthana Annamaneni, *For ISIS Children, Returning Home to Europe Meets Resistance*, N.Y. TIMES (Aug. 15, 2019), <https://www.nytimes.com/2019/08/15/world/europe/isis-children-belgium.html> [<https://perma.cc/U3QT-L6TV>].

65. Annamaneni, *supra* note 64.

66. Elian Peltier, *France Repatriates Several Orphan Children Who Were Stranded in Syria*, N.Y. TIMES (Mar. 15, 2019), <https://www.nytimes.com/2019/03/15/world/europe/france-isis-repatriates-children.html> [<https://perma.cc/V477-4SKC>].

67. *See id.*

68. *See id.*

69. Norimitsu Onishi & Elian Peltier, *Turkey's Deportations Force Europe to Face Its ISIS Militants*, N.Y. TIMES (Nov. 17, 2019), <https://www.nytimes.com/2019/11/17/world/europe/turkey-isis-fighters-europe.html> [<https://perma.cc/TS56-TKEB>].



Although France remains opposed to repatriation as an acceptable strategy to dealing with adult nationals who joined the Islamic State, it prosecuted twenty-four of its nationals *in absentia* in Paris in January 2020.<sup>70</sup> Some of these individuals are presumed dead.<sup>71</sup> The director of a French counterterrorism research organization observed that both the courts and the prisons are prepared to handle repatriated nationals who joined the Islamic State and that the government's opposition was politically motivated.<sup>72</sup> Indeed, France is known for having "some of the most expansive counterterrorism legislation in Europe."<sup>73</sup> Any link to jihadist activities provides grounds for prosecution.<sup>74</sup> France may soon have to reckon with its refusal to repatriate its nationals as Turkey continues to deport foreign fighters in its custody.<sup>75</sup>

## 2. *United States*

The "official" policy of the United States Department of Justice is to repatriate citizens who traveled abroad to join the Islamic State or participate in jihad.<sup>76</sup> Decisions to repatriate, however, are being made on a case-by-case basis.<sup>77</sup> Additionally, no policy has been adopted regarding how to handle such individuals once they are repatriated.<sup>78</sup>

### a. Prosecution upon Repatriation

Some women have faced prosecution upon their repatriation, as in the case of Samantha Elhassani.<sup>79</sup> Elhassani traveled to Syria in 2015 along with her husband and children.<sup>80</sup> After the fall of the Islamic State, she and her four children—two of whom were born in Syria—were captured by U.S.-backed forces.<sup>81</sup> At her request, she and her children were repatriated.<sup>82</sup> Confronting charges of conspiracy to provide material support to the Islamic State, as well as aiding and abetting two others in providing material support, she pled guilty to concealing

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70. Constant Méheut, *France Judges Dead Jihadists but Refuses to Repatriate the Living*, N.Y. TIMES (Jan. 26, 2020), <https://www.nytimes.com/2020/01/26/world/europe/france-ghost-trials-isis.html> [<https://perma.cc/D723-ABWX>].

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. Onishi & Peltier, *supra* note 69.

76. Robin Wright, *Despite Trump's Guantánamo Threats, Americans Who Joined ISIS Are Quietly Returning Home*, NEW YORKER (June 11, 2019), <https://www.newyorker.com/news/news-desk/americas-isis-members-are-coming-home> [<https://perma.cc/562K-Q74X>] ("The United States is committed to taking responsibility for its citizens who attempt to travel or did travel to support ISIS," Marc Raimondi, the Justice Department spokesman, [said] in an e-mail.").

77. *See id.*

78. *See id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

terrorism financing.<sup>83</sup> Her children were placed in the custody of social services.<sup>84</sup>

Despite being able to prosecute returning members of the Islamic State, access to and availability of evidence remains an obstacle to bringing charges and obtaining convictions.<sup>85</sup> That the Islamic State no longer exists as a physical state presents a major challenge to discerning what crimes an individual may have committed.<sup>86</sup> Witness availability and evidence admissibility are also impediments.<sup>87</sup> Repatriating an individual suspected of terrorism without having enough evidence to go to trial creates the risk of having to release that individual on American soil.<sup>88</sup> If there is insufficient evidence to make a conviction highly probable, the United States has not been inclined to repatriate citizens suspected of participating in the Islamic State.<sup>89</sup>

The case of Abdulrahman Ahmad Alsheikh illustrates that U.S. repatriation of Islamic State members, although the official policy, often depends upon whether the government believes it can mount a successful prosecution.<sup>90</sup> Mr. Alsheikh, a dual U.S.-Saudi national, was held by the United States in Iraq for thirteen months without being charged with a crime.<sup>91</sup> After legal challenges from the American Civil Liberties Union to Mr. Alsheikh's prolonged detention, the United States negotiated his release to Bahrain.<sup>92</sup> As a result of Mr. Alsheikh's case, the Pentagon has been hesitant to take custody of citizens it cannot successfully prosecute.<sup>93</sup> Because of the potential difficulty of finding a country willing to accept a wartime detainee suspected of Islamic State membership, this strategy cannot be relied upon as an alternative to repatriation. The government's refusal to repatriate citizens whom it believes pose a continued threat is a major constraint on U.S. repatriation policy. The option of releasing a citizen such as Mr. Alsheikh to a third-party country may not always be available.

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83. Press Release, Department of Justice, Former Indiana Resident Pleads Guilty to Concealing Terrorism Financing (Nov. 26, 2019), <https://www.justice.gov/opa/pr/former-indiana-resident-pleads-guilty-concealing-terrorism-financing> [<https://perma.cc/E82G-XM33>]; Sarah Childress, *American Mom Pleads Guilty to Concealing Terrorism Financing*, FRONTLINE (Nov. 27, 2019), <https://www.pbs.org/wgbh/frontline/article/american-mom-elhssani-pleads-guilty-to-terrorism-financing-isis/> [<https://perma.cc/Q7SY-62WP>].

84. See Wright, *supra* note 76.

85. Charlie Savage et al., *American ISIS Suspect Is Freed After Being Held More Than a Year*, N.Y. TIMES (Oct. 29, 2018), <https://www.nytimes.com/2018/10/29/us/politics/isis-john-doe-released-abdulrahman-alsheikh.html> [<https://perma.cc/USK5-J8R8>].

86. Wright, *supra* note 76.

87. *Id.*; Savage et al., *supra* note 85.

88. See Wright, *supra* note 76.

89. See *id.*

90. See Savage et al., *supra* note 85.

91. *Id.*

92. *Id.*

93. *Id.*

b. Alternatives to Prosecution

While some returnees have been channeled into the criminal justice system, others have been resettled within the United States.<sup>94</sup> In June 2019, the United States repatriated and resettled two women and six minors who had been captured after the fall of the Islamic State and were being held at the al-Hawl detention camp.<sup>95</sup> Their identities have not been disclosed, so the specifics of their circumstances are unknown.<sup>96</sup> The resettlement of these women and children demonstrates that prosecution is only one piece of the U.S. repatriation approach.

B. Prosecutions in Iraq and Syria

Some European countries see prosecuting their nationals *in situ* as an attractive alternative to repatriation. France has led negotiations with Iraq that would result in Iraq taking custody of and prosecuting all foreign nationals affiliated with the Islamic State currently held in Syria.<sup>97</sup>

1. Iraq

In Iraq, members of the Islamic State have been prosecuted under the Anti-Terrorism Law no. 13 of 2005.<sup>98</sup> Under the Anti-Terrorism Law, terrorism is defined broadly as

[e]very criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals.<sup>99</sup>

The law includes a list of specific criminal acts such as inciting fear, vandalism, killing, and kidnapping.<sup>100</sup> These acts are punishable by death or life in prison.<sup>101</sup>

The International Centre for Counter-Terrorism observed that the law does not distinguish “between a taxi driver working for [the Islamic State] or an [Islamic State] fighter involved in executions; both face—if convicted—the same punishment.”<sup>102</sup> The same is true in the application of the law.<sup>103</sup> It has been

94. See Wright, *supra* note 76.

95. *Id.*

96. *Id.*

97. See Schulz, *supra* note 63.

98. Tanya Mehra, *Bringing (Foreign) Terrorist Fighters to Justice in a Post-ISIS Landscape Part I: Prosecution by Iraqi and Syrian Courts*, INT’L CTR. FOR COUNTER-TERRORISM (Dec. 22, 2017), <https://icct.nl/publication/bringing-foreign-terrorist-fighters-to-justice-in-a-post-isis-landscape-part-i-prosecution-by-iraqi-and-syrian-courts/> [<https://perma.cc/YY8V-F5ZM>].

99. Anti-Terrorism Law No. 13 of 2005, art. 1 (Iraq).

100. *Id.* at art. 2.

101. *Id.* at art. 4.

102. Mehra, *supra* note 98.

103. See *id.*

applied to people who had only a tenuous connection to or marginal involvement in any sort of terrorist activity or group, and has resulted in the meting out of heavy sentences.<sup>104</sup> Indeed, in one case, the death penalty was recommended for an individual who had served as a cook for the Islamic State.<sup>105</sup>

Prosecutions in Iraqi counterterrorism courts rely primarily on confessions and written witness testimony.<sup>106</sup> Because establishing membership in the Islamic State is sufficient for conviction under the terrorism statute, there is no need to gather evidence of specific crimes.<sup>107</sup> This results in short trials that may last for as few as ten minutes.<sup>108</sup>

Foreign women have been convicted and sentenced to life in prison or death without evidence of specific actions.<sup>109</sup> The act of marrying an Islamic State member has been sufficient evidence for conviction.<sup>110</sup> Foreign children who were either brought by parents traveling to join the Islamic State or born after their arrival have also been prosecuted and sentenced in Iraq.<sup>111</sup> Iraq allows for the criminal prosecution of children as young as nine.<sup>112</sup> Many prosecutions of juveniles are only for illegal entry, but a juvenile who participated in violence can receive a sentence for five to fifteen years.<sup>113</sup>

Because the Iraqi government has not released information on the number of foreign fighters it has tried, it is difficult to estimate how many female foreign fighters have been prosecuted.<sup>114</sup> But in January 2019, eleven French citizens—all men—were tried on terrorism charges and sentenced to death by Iraqi courts.<sup>115</sup>

## 2. *Syria (Syrian Democratic Forces)*

Although lacking any internationally recognized legal authority,<sup>116</sup> the Syrian Kurds have established their own courts for trying members of the Islamic

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104. *Id.*

105. HUM. RTS. WATCH, *FLAWED JUSTICE: ACCOUNTABILITY FOR ISIS CRIMES IN IRAQ* 30 (2017), [https://www.hrw.org/sites/default/files/report\\_pdf/iraq1217web.pdf](https://www.hrw.org/sites/default/files/report_pdf/iraq1217web.pdf) [<https://perma.cc/496N-7YGS>].

106. *Iraq: Change Approach to Foreign Women, Children in ISIS-Linked Trials*, HUM. RTS. WATCH (June 21, 2018, 12:01 AM), <https://www.hrw.org/news/2018/06/21/iraq-change-approach-foreign-women-children-isis-linked-trials#> [<https://perma.cc/JLJ9-SH4W>].

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*; HUM. RTS. WATCH, *supra* note 105, at 43.

112. *Iraq: Change Approach to Foreign Women, Children in ISIS-Linked Trials*, *supra* note 105.

113. *Id.*

114. *Id.*

115. Alissa J. Rubin, *French ISIS Supporters on Death Row in Iraq Ask for Mercy*, N.Y. TIMES (June 3, 2019), <https://www.nytimes.com/2019/06/03/world/middleeast/iraq-islamic-state-syria-france.html> [<https://perma.cc/V882-8RV9>]; Schulz, *supra* note 63.

116. Jenna Consigli, *Prosecuting the Islamic State Fighters Left Behind*, LAWFARE (Aug. 1, 2018, 11:34 AM), <https://www.lawfareblog.com/prosecuting-islamic-state-fighters-left-behind> [<https://perma.cc/35CD-YJ7S>]; Liz Sly, *Captured ISIS Fighters Get Short Sentences and Art Therapy in Syria*, WASH. POST (Aug. 14, 2019), <https://www.washingtonpost.com/world/2019/08/14/captured-isis-fighters-get-short-sentences-art-therapy-syria/?arc404=true> [<https://perma.cc/KNS3-C2PM>].

State.<sup>117</sup> Their criminal proceedings depart markedly from that of Iraqi courts.<sup>118</sup> Kurdish officials have expressed a goal to “rehabilitate and reintegrate many of the Islamic State fighters in their custody, in hopes of deterring a revival of the militant movement.”<sup>119</sup> Except for individuals convicted of serious crimes involving planting bombs or killing people, members of the Islamic State generally receive lenient sentences.<sup>120</sup> As of August 2019, Kurdish terrorism courts had tried about 1,500 Syrian fighters.<sup>121</sup> The Kurdish administration, however, has not prosecuted any foreign fighters and does not plan to do so.<sup>122</sup>

### C. Denationalization

Denationalization—also known as expatriation—refers to the stripping of an individual’s citizenship.<sup>123</sup> Several countries, citing national security concerns, have used this measure to prevent citizens suspected of involvement in terrorist organizations from returning.<sup>124</sup>

#### 1. United Kingdom

The United Kingdom passed the Immigration Act of 2014, amending the Nationality Act of 1981.<sup>125</sup> A provision of this act gives the Secretary of State the power to revoke citizenship acquired through naturalization if the Secretary believes “the deprivation is conducive to the public good” because, while a citizen, that person acted against the “vital interests of the United Kingdom” and the Secretary “has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory.”<sup>126</sup> The provision applies to naturalized British dual nationals and naturalized British nationals who have no other citizenship.<sup>127</sup> This type of legislation has the power to render an individual stateless, as happened to Shamima Begum, a British woman who left to marry an Islamic State

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117. Sly, *supra* note 116.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. Jonathan Shaub, *Hoda Muthana and Shamima Begum: Citizenship and Expatriation in the U.S. and U.K.*, LAWFARE (Feb. 25, 2019, 9:00 AM), <https://www.lawfareblog.com/hoda-muthana-and-shamima-begum-citizenship-and-expatriation-us-and-uk> [<https://perma.cc/76AB-RXBM>].

124. See Immigration Act of 2014, c. 22 (Eng.), [http://www.legislation.gov.uk/ukpga/2014/22/pdfs/ukpga\\_20140022\\_en.pdf](http://www.legislation.gov.uk/ukpga/2014/22/pdfs/ukpga_20140022_en.pdf) [<https://perma.cc/4BP6-4YJ8>].

125. *Id.*

126. *Id.*

127. See *id.*

fighter at age 15.<sup>128</sup> The United Kingdom's position is that she can claim Bangladeshi citizenship because it was the birthplace of her parents.<sup>129</sup> The Bangladeshi government, however, asserts that she is not a citizen and will not be permitted to enter the country.<sup>130</sup> As of December 2020, she was living in the al-Roj detention camp in northeast Syria.<sup>131</sup>

## 2. *Other European Countries*

Although Britain is the only European country with denationalization laws that have effectively left individuals stateless,<sup>132</sup> other countries, including France, have passed or contemplated similar legislation with respect to dual nationals.<sup>133</sup> Article 25 of the French Code Civil allows the Conseil d'État to strip naturalized citizens of their nationality for acts of terrorism, so long as it does not result in statelessness.<sup>134</sup> After the November 13, 2015 attacks in Paris, President François Hollande introduced a constitutional reform to allow for the revocation of a dual national's citizenship regardless of whether his or her French nationality was acquired by birth or through naturalization.<sup>135</sup> Thus, the proposed reform would have expanded the number of people to whom the law applies.<sup>136</sup> President Hollande, however, abandoned the reform after several months of controversy and the resignation of the Minister of Justice.<sup>137</sup>

A similar Danish denationalization law, which applies to any dual national who fought with a militant group abroad, was recently amended to grant the immigration and integration minister the power, without a court ruling, to strip a

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128. Kevin Rawlinson & Vikram Dodd, *Shamima Begum: ISIS Briton Faces Move to Revoke Citizenship*, GUARDIAN (Feb. 19, 2019, 3:55 PM), <https://www.theguardian.com/world/2019/feb/19/isis-briton-shamima-begum-to-have-uk-citizenship-revoked> [https://perma.cc/95Y7-4GP3].

129. Karla Adam, *Shamima Begum, Teenager Who Joined ISIS, to Lose UK Citizenship*, WASH. POST (Feb. 20, 2019, 4:29 PM), [https://www.washingtonpost.com/world/europe/shamima-begum-teenager-who-joined-isis-to-lose-uk-citizenship/2019/02/20/3b02fec-3511-11e9-8375-e3dcf6b68558\\_story.html](https://www.washingtonpost.com/world/europe/shamima-begum-teenager-who-joined-isis-to-lose-uk-citizenship/2019/02/20/3b02fec-3511-11e9-8375-e3dcf6b68558_story.html) [https://perma.cc/G4ML-8YX4].

130. *Id.*

131. Elian Peltier, *U.K. Woman Who Joined ISIS in Syria Asks High Court to Let Her Return Home*, N.Y. TIMES (Dec. 1, 2020), <https://www.nytimes.com/2020/11/24/world/europe/uk-isis-shamima-begum.html> [https://perma.cc/JAX6-CFNW].

132. See Michael Goldstein, *Expatriation of Terrorists in the United Kingdom, United States, and France: Right or Wrong?*, 25 TUL. J. INT'L & COMP. L. 259, 263, 268–69 (2016).

133. See Lucie Soullier, *Déchéance de Nationalité : Qui Serait Concerné par le Projet de Loi Constitutionnelle?*, LE MONDE (Jan. 6, 2016, 2:23 PM), [https://www.lemonde.fr/societe/article/2016/01/04/decheance-de-nationalite-qui-serait-concerne-par-le-projet-de-loi-constitutionnelle\\_4841434\\_3224.html](https://www.lemonde.fr/societe/article/2016/01/04/decheance-de-nationalite-qui-serait-concerne-par-le-projet-de-loi-constitutionnelle_4841434_3224.html) [https://perma.cc/SHY6-22HS]; Goldstein, *supra* note 132, at 280.

134. Code Civil [C. civ.] [Civil Code] art. 25 (Fr.).

135. See Soullier, *supra* note 133.

136. *Id.*

137. *Id.*; see Service France, *Démission de Taubira: mais que s'est-il Passé?*, LIBÉRATION (Jan. 27, 2016, 2:45 PM), [https://www.liberation.fr/france/2016/01/27/demission-de-taubira-mais-que-s-est-il-passe\\_1429292](https://www.liberation.fr/france/2016/01/27/demission-de-taubira-mais-que-s-est-il-passe_1429292) [https://perma.cc/6CTW-EX4J]; James McAuley, *Why a New Citizenship Law in France Has Outraged the French Left*, WASH. POST (Feb. 11, 2016 12:05 PM), <https://www.washingtonpost.com/news/worldviews/wp/2016/02/11/why-a-new-citizenship-law-in-france-has-outraged-the-french-left/> [https://perma.cc/93NB-DGYF].

dual national of citizenship while that person is still abroad.<sup>138</sup> Those stripped of their citizenship are notified electronically and given four weeks to appeal the decision.<sup>139</sup> Additionally, the new law provides that children born abroad to Islamic State fighters are not Danish citizens.<sup>140</sup>

### 3. *United States*

Unlike the immigration and citizenship laws of many European countries, U.S. law does not expressly provide for revocation of citizenship for acts of terrorism.<sup>141</sup> Calls for this type of legislation continue to emanate from conservative circles, but have thus far failed to gain popular support.<sup>142</sup> In the absence of European-type denationalization laws, existing citizenship and immigration laws have been used to prevent those who joined the Islamic State from returning home. The case of Hoda Muthana illustrates how the U.S. government is using existing citizenship and immigration laws to deny reentry to American citizens who traveled to join the Islamic State.<sup>143</sup>

The government argued that Ms. Muthana, who was born in New Jersey, was not a citizen and had never been a citizen due to her father's diplomatic status at the time of her birth.<sup>144</sup> Birthright citizenship does not apply to children born to parents with diplomatic immunity.<sup>145</sup> Ms. Muthana's father was fired from his position as First Secretary with the Yemeni Mission to the United Nations before her birth.<sup>146</sup> The U.S. government claimed, however, that it was not notified of his change in diplomatic status until after her birth, and thus he still enjoyed diplomatic status.<sup>147</sup> On November 14, 2019, the Federal District Court for the District of Columbia ruled in the government's favor, holding that Ms. Muthana is not an American citizen.<sup>148</sup>

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138. *Denmark to Strip Foreign Fighters of Danish Citizenship*, REUTERS (Oct. 14, 2019, 8:51 AM), <https://www.reuters.com/article/us-syria-security-denmark/denmark-to-strip-foreign-fighters-of-danish-citizenship-idUSKBN1WT1RN> [<https://perma.cc/2GQT-93V5>].

139. *Denmark Passes Legislation to Strip ISIL Fighters of Citizenship*, AL JAZEERA (Oct. 24, 2019), <https://www.aljazeera.com/news/2019/10/24/denmark-passes-legislation-to-strip-isil-fighters-of-citizenship> [<https://perma.cc/B9MB-GYCC>].

140. *Id.*

141. *See* Shaub, *supra* note 123.

142. *See* Peter Beinart, *The Denationalization of American Muslims*, ATL. (Mar. 19, 2017), <https://www.theatlantic.com/politics/archive/2017/03/frank-gaffney-donald-trump-and-the-denationalization-of-american-muslims/519954/> [<https://perma.cc/N9VE-D8XK>].

143. *See* Shaub, *supra* note 123.

144. *Id.*

145. Charlie Savage, *American-Born Woman Who Joined ISIS Is Not a Citizen, Judge Rules*, N.Y. TIMES (Nov. 14, 2019), <https://www.nytimes.com/2019/11/14/us/hoda-muthana-isis-citizenship.html> [<https://perma.cc/GNJ2-Q887>].

146. *Id.*

147. *Id.*

148. Ellie Hall, *A Judge Has Ruled That a Woman Who Left the U.S. for ISIS Is Not an American Citizen*, BUZZFEED NEWS (Nov. 14, 2019, 5:07 PM), <https://www.buzzfeednews.com/article/ellievhall/hoda-muthana-isis-not-american-citizen> [<https://perma.cc/9E4Y-2DLC>].

Previously, the court in *Raya v. Clinton* had found that Ms. Raya was not a citizen due to her father's diplomatic status at the time of her birth.<sup>149</sup> In *Raya*, the government refused to issue Ms. Raya a passport,<sup>150</sup> whereas in Ms. Muthana's case, the government had previously issued her two passports—a *de facto* recognition of citizenship.<sup>151</sup> Her citizenship was only called into question when she sought to return from Syria.<sup>152</sup> Ms. Muthana's case reveals that the United States is willing to use technicalities to essentially strip an individual's citizenship and prevent her from returning from the Islamic State.<sup>153</sup>

### III. REPATRIATION IS THE BEST LONG-TERM SOLUTION

Any approach to the crisis unfolding in Syrian detention camps must take into account security, political, and legal considerations. Although repatriation is not a perfect solution, it is in many respects preferable to negotiating the prosecution of foreign fighters in Iraq or stripping such individuals of their citizenship. Transferring custody of those held in Syria for prosecution in Iraq likely violates International and European law,<sup>154</sup> and, at a minimum, is contrary to the policy underpinning those bodies of law.<sup>155</sup> Denationalization presents similar legal and policy issues.

#### A. Repatriation Minimizes Security Risks

The danger posed by individuals returning from the Islamic State is exemplified by both the November 2015 Paris attack and March 2016 Brussels attack.<sup>156</sup> These terrorist plots were organized and carried out by returnees and the external operations unit of the Islamic State.<sup>157</sup> Such tragedies have highlighted the risk of future attacks by returnees, fueling the argument against repatriation.<sup>158</sup> Although, as of the writing of this Note, women who returned from the Islamic State have not been involved in terrorist attacks or plots on Western soil, women affiliated with the Islamic State through domestic terrorist cells have carried out terrorist plots in Western countries, such as the failed attack near Notre-

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149. *Raya v. Clinton*, 703 F. Supp. 2d 569, 578 (W.D. Va. 2010).

150. *Id.* at 571.

151. Krishnadev Calamur, *This ISIS Citizenship Case Could Set a Terrifying Precedent*, ATL. (Feb. 28, 2019, 4:20 AM), <https://www.theatlantic.com/international/archive/2019/02/hoda-muthana-isis-american-citizenship/583645/> [<https://perma.cc/G78L-ZZLX>].

152. *Id.*

153. *See id.*

154. Emma Broches, *Accountability for Islamic State Fighters: What Are the Options?*, LAWFARE (Oct. 11, 2019, 2:58 pm), <https://www.lawfareblog.com/accountability-islamic-state-fighters-what-are-options> [<https://perma.cc/JVK8-8SG7>].

155. Belkis Wille, *ISIS Suspect Transfers to Iraq Replete with Risks*, HUM. RTS. WATCH (Nov. 1, 2019, 12:00 AM), <https://www.hrw.org/news/2019/11/01/isis-suspect-transfers-iraq-replete-risks> [<https://perma.cc/6GAU-HJLF>].

156. Hans van Miert, *The Right Target in Sight? Returnees and the Current Jihadist Threat in SEC. & GLOB. AFFS.* 30, 31 (Michael Kowalski ed., 2017).

157. *Id.*

158. *See* Thomas Renard & Rik Coolsaet, *Losing Control Over Returnees?*, LAWFARE (Oct. 13, 2019, 10:00 AM), <https://www.lawfareblog.com/losing-control-over-returnees> [<https://perma.cc/9Y7M-ARJR>].



Dame Cathedral in 2016<sup>159</sup> and the 2015 San Bernardino, California attack in which fourteen people were killed.<sup>160</sup> Foreign national women still in detention camps occupied a variety of roles within the Islamic State—including roles in combat, security and intelligence, and recruiting—that involved active participation in violence and terrorist activity.<sup>161</sup>

It has often been assumed that women serve in supporting roles to male Islamic terrorists rather than in active roles, initiating, organizing, and carrying out attacks.<sup>162</sup> Such assumptions are reflected in research designs that have excluded women from risk assessments,<sup>163</sup> as well as media portrayals of women as “jihadi brides.” As stated in the United Nations Security Council report, *Gender Dimensions of the Response to Returning Foreign Terrorist Fighters*,

[i]n some situations, women who at first were victims become perpetrators, whether to improve their situation, through personal relationships, or as a result of indoctrination to radical ideas. It is therefore essential to bear in mind that there is no simple binary between victim and perpetrator and that women engage in extremist violence in complex ways.<sup>164</sup>

A greater understanding of the breadth of women’s roles and the complexity of their existence within the Islamic State reveal the need for further research into the risks posed by women who return to their countries of citizenship—either on their own or as part of a repatriation policy.<sup>165</sup>

American and European women who traveled to join terrorist groups in Iraq or Syria present a security threat whether or not they are repatriated or remain in detention camps.<sup>166</sup> Even the most effective strategy for managing such individuals will minimize, but not totally eliminate, the security risk.<sup>167</sup> Broadly, the argument against repatriation is that once repatriated, those who left to join terrorist groups “will face short prison sentences (if any) and pose a huge security threat in prison and afterward.”<sup>168</sup> European governments have made this and similar arguments to resist calls from the United States to repatriate European

159. Elian Peltier, *Failed Notre-Dame Plot Leads to Shame, Regret and Heavy Sentences*, N.Y. TIMES (Oct. 14, 2019), <https://www.nytimes.com/2019/10/14/world/europe/paris-gas-canisters-isis-women.html> [https://perma.cc/A952-768Y].

160. Lydia Khalil, *Behind the Veil: Women in Jihad After the Caliphate*, LOWY INST. INT’L POL’Y 11–12 (2019), <http://www.jstor.com/stable/resrep19786> [https://perma.cc/9VQT-XQG4].

161. U.N. SEC. COUNCIL COUNTER-TERRORISM COMM. EXEC. DIRECTORATE, GENDER DIMENSIONS OF THE RESPONSE TO RETURNING FOREIGN TERRORIST FIGHTERS: RESEARCH PERSPECTIVES 16 (2019), [https://www.un.org/sc/ctc/wp-content/uploads/2019/02/Feb\\_2019\\_CTED\\_Trends\\_Report.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2019/02/Feb_2019_CTED_Trends_Report.pdf) [https://perma.cc/88DA-KR5F].

162. *Id.*; see also Thomas Hegghammer, *Should I Stay or Should I Go? Explaining Variation in Western Jihadists’ Choice Between Domestic and Foreign Fighting*, 107 AM. POL. SCI. REV. 1, 3 n.7 (2013).

163. See, e.g., Hegghammer, *supra* note 162, at 10.

164. U.N. SEC. COUNCIL COUNTER-TERRORISM COMM. EXEC. DIRECTORATE, *supra* note 161, at 16 (footnote omitted).

165. *Id.* at 16, 18.

166. See Daniel Byman & Jeremy Shapiro, *Be Afraid. Be A Little Afraid: The Threat of Terrorism from Western Foreign Fighters in Syria and Iraq* in 34 FOREIGN POL’Y AT BROOKINGS 1–4 (Nov. 2014).

167. *Id.* at 1.

168. Renard & Coolsaet, *supra* note 158.

nationals irrespective of gender.<sup>169</sup> Those who advocate for repatriation, however, argue that nationals who joined terrorist groups will pose less of a security risk if prosecuted in their respective countries of citizenship because leaving them in Iraq or Syria will only magnify the threat they pose domestically.<sup>170</sup> Active repatriation eliminates—or at least reduces—the possibility that those who joined the Islamic State will escape from detention camps and make their way home—unbeknownst to intelligence and security agencies—to carry out attacks.

To justify their opposition to repatriation, European governments cite studies that have attempted to quantify the risk posed by returnees.<sup>171</sup> The study most referenced by European governments is a 2013 study by Thomas Hegghammer, which estimated that about “one in nine foreign fighters returned to perpetrate attacks in the West.”<sup>172</sup> Other counterterrorism researchers described this finding as “a high percentage, but still only a minority.”<sup>173</sup> Hegghammer arrived at this figure by comparing the supply of foreign fighters from the West (*i.e.*, nationals of Western countries who traveled abroad to join or receive training from terrorist organizations) and the number of these individuals who returned to the West and were implicated in a terrorist attack or plot.<sup>174</sup> Additionally, his data suggest that attacks involving returned fighters tend to be more lethal.<sup>175</sup> As Hegghammer admits, however, the data supporting these figures are only a rough estimate derived from anecdotal information on the flow of individuals going abroad.<sup>176</sup>

Moreover, the usefulness of his estimates is also diminished by the fact that the period from which his data set was derived—1990 to 2010—predates the establishment of the Islamic State and does not include women.<sup>177</sup> Despite the flaws in this study and a follow-up study that yielded different results, Hegghammer’s 2013 article has discernibly influenced European policy on repatriation. The most recent scholarship on returnees reveals that such individuals do not “represent the large-scale threat to Europe that was envisioned.”<sup>178</sup> The follow-up study authored by Hegghammer in 2015 shows that the proportion of those who return from fighting abroad “to plot attacks against their home country or

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169. *Id.*; see also Anthony Dworkin, *In Legal Limbo: EU Returnees in the Post-ISIS Era*, EUR. COUNCIL ON FOREIGN RELS. (Feb. 26, 2019), [https://www.ecfr.eu/article/commentary\\_in\\_legal\\_limbo\\_eu\\_returnees\\_in\\_the\\_post\\_isis\\_era](https://www.ecfr.eu/article/commentary_in_legal_limbo_eu_returnees_in_the_post_isis_era) [<https://perma.cc/FUB7-L78L>].

170. Renard & Coolsaet, *supra* note 158.

171. David Malet, *The European Experience with Foreign Fighters and Returnees*, in RETURNES: WHO ARE THEY, WHY ARE THEY (NOT) COMING BACK AND HOW SHOULD WE DEAL WITH THEM?: ASSESSING POLICIES ON RETURNING FOREIGN TERRORIST FIGHTERS IN BELGIUM, GERMANY AND THE NETHERLANDS 6, 14 (Thomas Renard & Rik Coolsaet eds., 2018).

172. *Id.*; Hegghammer, *supra* note 162, at 10.

173. Byman & Shapiro, *supra* note 166, at 17.

174. Hegghammer, *supra* note 162, at 3–4.

175. *Id.* at 11 (“The JPW data suggest that the presence of foreign fighter returnees increases the effectiveness of attacks in the West . . . . Whereas only 26% of all plotters are known to have foreign fighter experience, around 46% of all plots (49 of 106) included at least one veteran. For executed attacks, the rate is 58% (14 of 24), and for executed attacks with fatalities, it is 67% (8 of 12). Twenty-nine percent of plots with veterans reached execution and 16% caused fatalities. For plots without veterans the corresponding rates are 18% and 7%.”).

176. *See id.* at 3–4, 11.

177. *See id.* at 2–3.

178. Malet, *supra* note 171, at 15.

region” is about one out of every 360 returnees—indicating a much lower risk than was previously estimated.<sup>179</sup>

It is also important to note that the research does not distinguish between returnees who have been actively repatriated by their home countries and those who returned on their own.<sup>180</sup> This is material because a finding that an overwhelming majority of those who plotted attacks were not actively repatriated would be compelling support for repatriation.

### B. *Overcoming Public Opinion in Opposition to Repatriation*

Although public opinion about repatriation is not a metric of the security risk posed by returnees, it has nonetheless been a powerful factor in assessing repatriation as a strategy. The pressure exerted by public sentiment has made it difficult for governments to adopt reasonable repatriation strategies.<sup>181</sup> Because repatriation has not occupied the American public consciousness as it has in Europe and there exists no widespread American opposition to repatriation,<sup>182</sup> public opinion has not been an obstacle to repatriating American nationals who joined the Islamic State. Conversely, in Europe, public opposition to repatriation is staggering—even as it relates to children.<sup>183</sup> Consequently, the viability of repatriation as a solution in Europe is constrained because governments have thus far been unwilling to implement such a deeply unpopular strategy.<sup>184</sup>

Across European nations, public opinion has overwhelmingly opposed repatriating nationals who joined the caliphate.<sup>185</sup> Based on a poll conducted by Odoxa in 2019 for franceinfo and *Le Figaro*, 89% of French people are worried about jihadists returning to France, with 53% saying they are very worried.<sup>186</sup> Additionally, 82% of French approve of letting Iraqi courts try French jihadists, meaning that many would face the death penalty without diplomatic intervention.<sup>187</sup> Similarly, a 2019 poll by German pollster Civey revealed that the majority of Germans do not want imprisoned German Islamic State fighters brought

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179. Thomas Hegghammer & Petter Nesser, *Assessing the Islamic State's Commitment to Attacking the West*, 9 PERSPS. ON TERRORISM 14, 20 (2015).

180. *See, e.g., id.*

181. H.J. Mai, *Why European Countries Are Reluctant to Repatriate Citizens Who Are ISIS Fighters*, NPR (Dec. 10, 2019, 4:58 PM), <https://www.npr.org/2019/12/10/783369673/europe-remains-reluctant-to-repatriate-its-isis-fighters-here-s-why> [<https://perma.cc/9C4G-Z527>].

182. *See id.*

183. *See id.*

184. *See id.*

185. *See id.*

186. *Les Français Approuvent Massivement le Jugement des Djihadistes par l'Irak et ne Veulent pas Voir Leurs Enfants Revenir*, ODOXA (Feb. 28, 2019), <http://www.odoxa.fr/sondage/djihadistes-francais-approuvent-massivement-jugement-lirak-ne-veulent-voir-leurs-enfants-revenir/> [<https://perma.cc/265R-PLM5>].

187. *Id.*

back to Germany to stand trial.<sup>188</sup> Only 31.5% of respondents believed that such individuals should be tried in German courts.<sup>189</sup>

The fear of Islamic State members returning, however, appears to extend beyond those who joined the Islamic State of their own accord. According to the aforementioned Odoxa poll, 67% of French people believe that the French children of jihadists should be left in Iraq or Syria.<sup>190</sup> Public opinion regarding the repatriation of children is almost identical in the Netherlands where 60% of Dutch citizens believe that children of Islamic State members under the age of six should not be repatriated.<sup>191</sup> The hostility of the public towards repatriating children reflects evolving views on women and children who were part of the Islamic State, and demonstrates that repatriation is not a politically popular solution.

European public opposition to repatriating nationals is rooted in the fear that returnees will carry out attacks. The 2014 attack by Medhi Nemmouche, in which he shot and killed four people in a Jewish museum in Brussels, was the first attack perpetrated by a European citizen who returned from the Islamic State in Syria.<sup>192</sup> After being sentenced to life in prison on March 12, 2019 for the 2014 attack, Nemmouche now awaits trial for his alleged participation, as a member of the Islamic State, in holding several French journalists hostage.<sup>193</sup>

Despite opposition to repatriation, some European government officials have acknowledged the benefits of repatriation.<sup>194</sup> In January 2019, French Minister of Justice, Nicole Belloubet, noted that repatriation was a preferable strategy because it afforded control over the situation and that France has an interest in knowing the status of its citizens being held by the Syrian Kurds in case they are released or expelled.<sup>195</sup> Although French President Macron denied the existence of any repatriation plan, in April 2019, the newspaper *Libération* reported the details of a plan drawn up by the *renseignement intérieur*<sup>196</sup> in cooperation with

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188. Austin Davis & Natalia Smolentceva, *Deportation of Suspected IS Fighters Forces Germany to Take Action*, DEUTSCHE WELLE (Nov. 11, 2019), <https://www.dw.com/en/islamic-state-fighters-families-repatriation-conflict/a-51202522> [<https://perma.cc/7KA6-NRB2>].

189. *Id.*

190. *Les Français Approuvent Massivement le Jugement des Djihadistes par l'Irak et ne Veulent pas Voir Leurs Enfants Revenir*, *supra* note 186.

191. Louisa Loveluck et al., *After the Caliphate: Castaway from the Islamic State*, WASH. POST (Dec. 23, 2019), <https://www.washingtonpost.com/world/2019/12/23/how-isis-women-their-children-are-being-left-stranded-desert/?arc404=true> [<https://perma.cc/SYS5-SUD8>].

192. Agence France-Presse in Brussels, *Jewish Museum Killer Sentenced to Life in Prison*, GUARDIAN (Mar. 12, 2019, 5:53 AM), <https://www.theguardian.com/world/2019/mar/12/jewish-museum-killer-mehdi-nemmouche-sentenced-to-life-in-prison> [<https://perma.cc/B6GE-Q8ZC>].

193. *Id.*

194. Luc Mathieu et al., *Etat Islamique: Un Rapatriement Programmé, Préparé, mais Gelé*, LIBÉRATION (Apr. 4, 2019, 9:26 PM), [https://www.liberation.fr/france/2019/04/04/etat-islamique-un-rapatriement-programme-prepare-mais-gele\\_1719480](https://www.liberation.fr/france/2019/04/04/etat-islamique-un-rapatriement-programme-prepare-mais-gele_1719480) [<https://perma.cc/C7G9-WWYN>].

195. *Id.* (“Si les Français qui sont détenus par les Kurdes devaient être remis en liberté, expulsés, nous avons, je crois, collectivement plutôt intérêt à nous assurer de ce qu’ils deviennent,” déclare ainsi la ministre de la Justice, Nicole Belloubet, le 21 janvier, exprimant ‘un choix qui est celui de la préférence du contrôle et donc du rapatriement’ en France.”).

196. The *renseignement intérieur* is the French security and counter-terrorism agency.

the American Army.<sup>197</sup> Although from a security and legal standpoint it may be the solution with the fewest security risks, the consequences of defying the “public will” poses a political risk that leaders may be loath to accept.<sup>198</sup>

In contrast to Europe, as of the writing of this Note, there have been no successful attacks perpetrated on American soil by American nationals returning from the post-2011 conflict in Iraq and Syria.<sup>199</sup> Of the twenty-two jihadist attacks carried out on American soil since 2011, none involved returnees.<sup>200</sup> Only one American returnee, Abdirahman Sheik Mohamud, is known to have planned a terrorist attack upon return.<sup>201</sup> Mohamud traveled to Syria in April 2014 to fight with the al-Nusra Front terrorist organization and returned in June of 2014 to begin planning an attack.<sup>202</sup> That attack never occurred, and Mohamud is currently serving a twenty-two-year prison sentence for terrorism related offenses, including material support.<sup>203</sup>

While Americans are fearful of future Islamic terrorist attacks, public opinion appears to reflect a general fear of terrorist attacks rather than a specific fear of those returning from the Islamic State.<sup>204</sup> Public opinion polling in the United States has not focused specifically on the threat of returnees but rather the general threat of radical Islamic terrorism.<sup>205</sup> In a July 2019 poll conducted by the Pew Research Center, 53% of respondents thought the Islamic State posed a major threat to the “well-being” of the United States while 35% thought the Islamic State posed a minor threat.<sup>206</sup> When asked how worried they were about another major terrorist attack in the United States, 27% of respondents to an NBC News/*Wall Street Journal* poll said they were very worried, 23% said they were fairly worried, and 49% of respondents stated that they were only slightly worried or not really worried at all.<sup>207</sup> Of course, Americans’ more general concerns

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197. Mathieu et al., *supra* note 194.

198. *Id.*

199. ALEXANDER MELEAGROU-HITCHENS ET AL., PROGRAM ON EXTREMISM, THE TRAVELERS: AMERICAN JIHADISTS IN SYRIA AND IRAQ 2 (2018).

200. *Id.* at 71.

201. *Id.*

202. Press Release, Dep’t of Just., Ohio Man Pleads Guilty to Providing Material Support to Terrorists (June 29, 2017), <https://www.justice.gov/opa/pr/ohio-man-pleads-guilty-providing-material-support-terrorists> [<https://perma.cc/E47R-PQK3>]; Matt Zaptosky, *Ohio Man Who Trained with Terrorists Overseas and Plotted to Kill U.S. Troops Sentenced to 22 Years*, WASH. POST (Jan. 22, 2018, 11:50 AM), [https://www.washingtonpost.com/world/national-security/ohio-man-who-trained-with-terrorists-overseas-and-plotted-to-kill-us-troops-sentenced-to-22-years/2018/01/22/2d18ff42-ff8f-11e7-9d31-d72cf78dbee\\_story.html](https://www.washingtonpost.com/world/national-security/ohio-man-who-trained-with-terrorists-overseas-and-plotted-to-kill-us-troops-sentenced-to-22-years/2018/01/22/2d18ff42-ff8f-11e7-9d31-d72cf78dbee_story.html) [<https://perma.cc/2WSA-7HSA>].

203. Zaptosky, *supra* note 202.

204. PEW RSCH. CTR., CLIMATE CHANGE AND RUSSIA ARE PARTISAN FLASHPOINTS IN PUBLIC’S VIEWS OF GLOBAL THREATS 5 (2019).

205. See, e.g., HART RSCH. ASSOCS./PUB. OP. STRATEGIES, NBC NEWS/WALL STREET JOURNAL SURVEY 9 (2019), <https://assets.documentcloud.org/documents/6297116/NBCWSJ-August-2019-Poll.pdf> [<https://perma.cc/2LKP-FWVW>].

206. PEW RSCH. CTR., *supra* note 204, at 5.

207. HART RSCH. ASSOCS./PUB. OP. STRATEGIES, *supra* note 205, at 9.

about terrorism could be attributable to a lack of polling data narrowly focused on the subject of returnees.<sup>208</sup>

*C. Prosecution in Iraq Is Not a Viable Alternative to Repatriation*

*1. Jurisdiction*

In October 2018, Human Rights Watch reported that senior members of the Iraqi High Judicial Council had expressed that “Iraq’s penal code and Anti-Terrorism Law, when read together, do not grant extraterritorial jurisdiction unless the defendant is an Iraqi national.”<sup>209</sup> This reading of the law is consistent with the Iraqi government’s reluctance to take custody of and prosecute foreign Islamic State members in an arrangement proposed by France in October 2019.<sup>210</sup> Whether an individual has ever been in Iraq is important because Iraq may not have jurisdiction to prosecute foreign nationals captured in Syria who never crossed into Iraq.<sup>211</sup> The French government has been in negotiations with the Iraqi government to transfer custody of all foreign Islamic State members to Iraq for prosecution in Iraqi courts.<sup>212</sup> Iraq, however, has not been amenable to taking custody of foreign nationals whose involvement with the Islamic State was outside of Iraq.<sup>213</sup>

Nevertheless, Iraqi courts have prosecuted and sentenced foreign national Islamic State members who were captured in Syria and likely never set foot in Iraq.<sup>214</sup> Independent observers reported that, at the trial of French national Lahcen Ammar Gueboudj, judges ignored testimony that he had been captured in Syria and had never entered Iraq.<sup>215</sup> Gueboudj’s confession stated that he was captured in Mosul, Iraq.<sup>216</sup> The judge presiding over Gueboudj’s trial claimed that two individuals witnessed his capture in Mosul, but Human Rights Watch was unable to confirm this information.<sup>217</sup> The Iraqi government’s unwillingness to take on additional prosecutions of foreign fighters being held in Syria may be explained in part by the realization that such prosecutions would further burden a justice and penal system that is already overstretched.<sup>218</sup>

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208. This is based on the results of querying The Roper Center for Public Opinion Research iPoll database. Boolean search queries using variations and combinations of the following words did not return any polls regarding repatriating/returning Americans who joined the Islamic State or foreign terrorist fighters: return, brought/bring back, repatriate, stay, left/leave, ISIS, Islamic State, terrorist, attack.

209. *U.S.: Detainees Transferred from Syria to Iraq*, HUM. RTS. WATCH (Oct. 31, 2018, 12:00 AM), <https://www.hrw.org/news/2018/10/31/us-detainees-transferred-syria-iraq> [<https://perma.cc/H46T-G997>].

210. See Schulz, *supra* note 63.

211. *US: Detainees Transferred from Syria to Iraq*, *supra* note 209.

212. Schulz, *supra* note 63.

213. *Id.*

214. See *US: Detainees Transferred from Syria to Iraq*, *supra* note 209.

215. *Id.*

216. *Id.*

217. *Id.*

218. Schulz, *supra* note 63.

## 2. *International Law*

Arranging a transfer of individuals captured in Syria to Iraqi authorities likely violates international law.<sup>219</sup> Under Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “no State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”<sup>220</sup> A state’s “consistent pattern of gross, flagrant or mass violations of human rights” would be grounds for believing that an individual would be in danger of being subjected to torture if transferred to that country.<sup>221</sup> All European Union member states and the United States are bound by the Convention Against Torture.<sup>222</sup>

Although Iraq is also bound by the Convention Against Torture<sup>223</sup> and its constitution prohibits “[a]ll forms of psychological and physical torture and inhumane treatment,” there is reason to believe that its routine practices do not comply with the standards set out in these legal documents.<sup>224</sup> Indeed, during the trials of suspected Islamic State members, defendants routinely allege that their confessions were extracted through torture.<sup>225</sup> During 2018, defendants in sixteen of the eighteen trials of suspected Islamic State members monitored by Human Rights Watch “alleged that they had been tortured, including to extract confessions.”<sup>226</sup> Human Rights Watch also reported that “in no instance did the judge take action base[d] on the claim, although in some instances the judge asked the defendant in the courtroom to reveal any marks of torture.”<sup>227</sup> Reports by other lawyers corroborated the finding that judges regularly fail to address defendants’ allegations of torture.<sup>228</sup>

Because there is reliable evidence that suspected Islamic State members in Iraqi custody are being tortured, countries that facilitate the turnover of their nationals (and non-nationals for that matter) to Iraq by Syrian Democratic Forces are violating the Convention Against Torture.<sup>229</sup> For countries concerned about their reputation for protecting human rights, turning over their citizens to Iraqi courts amounts to willful indifference to practices that are common knowledge.

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219. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85.

220. *Id.*

221. *See id.*

222. *See id.* at 155–97.

223. *See id.* at 173.

224. *Iraq: Judges Disregard Torture Allegations*, HUMAN RIGHTS WATCH (July 31, 2018, 12:00 AM), <https://www.hrw.org/news/2018/07/31/iraq-judges-disregard-torture-allegations> [https://perma.cc/LYW4-ALL6].

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *US: Detainees Transferred from Syria to Iraq*, *supra* note 209.

### 3. *European Law*

Reinforcing the protections of international law, Article 19 of the Charter of Fundamental Rights of the European Union states that “[no] one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.”<sup>230</sup>

Additionally, Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms prohibits torture.<sup>231</sup> Specifically, Article 3 states “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”<sup>232</sup> Protocol No. 6 and No. 13 to the Convention for the Protection of Human Rights prohibit the death penalty.<sup>233</sup> Protocol No. 6, which entered into force in 1985, prohibited the death penalty in peacetime and was signed and ratified by all members of the Council of Europe except Russia.<sup>234</sup> Protocol No. 13, however, abolished the death penalty without exception and affirmed that “everyone’s right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings.”<sup>235</sup> Article 1 of Protocol No. 13 states that “[t]he death penalty shall be abolished. No one shall be condemned to such penalty or executed.”<sup>236</sup> Except for Armenia, Azerbaijan, and Russia, all members of the Council of Europe have signed and ratified Protocol No. 13, which entered into force in 2003.<sup>237</sup>

Although the Convention for the Protection of Human Rights does not specifically address the possibility of a member state arranging deportation or transfer of custody to a country where a member-state citizen may face inhumane treatment or the death penalty, cases like *Al-Saadoon and Mufdhi v. the United Kingdom* have established that deportation or transfer under such circumstances violates the Convention for the Protection of Human Rights.<sup>238</sup> In *Al-Saadoon and Mufdhi*, the applicants to the European Court of Human Rights were accused

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230. Charter of Fundamental Rights of the European Union art. 19 ¶ 2, Mar. 30, 2010, 2010 O.J. (C 83) 389.

231. Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Nov. 4, 1950, E.T.S. 5.

232. *Id.*

233. Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty art. 1, Apr. 28, 1983, E.T.S. 114; Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning the Abolition of the Death Penalty in All Circumstances, May 5, 2002, E.T.S. 187.

234. Protocol No. 6, *supra* note 233; *Chart of Signatures and Ratifications of Treaty 114*, COUNCIL EUR. (Mar. 3, 2020), [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/114/signatures?p\\_auth=gimM7bOv](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/114/signatures?p_auth=gimM7bOv) [<https://perma.cc/88QS-TWHJ>].

235. Protocol No. 13, *supra* note 233.

236. *Id.* at art. 1.

237. *Chart of Signatures and Ratifications of Treaty 187*, COUNCIL EUR. (Mar. 3, 2020), [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/187/signatures?p\\_auth=gimM7bOv](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/187/signatures?p_auth=gimM7bOv) [<https://perma.cc/3MKZ-KQLY>].

238. *See Al-Saadoon and Mufdhi v. the United Kingdom*, 2010 Eur. Ct. H.R. 143; *see also Bader and Kanbor v. Sweden*, 2005-XI Eur. Ct. H.R. 48.



of the murder of two British soldiers following the invasion of Iraq.<sup>239</sup> The applicants were arrested and detained by British forces who subsequently referred the case to the Iraqi criminal courts.<sup>240</sup> Because the Convention protects the right to life, the court required the British government to ensure that the applicants would not be subject to the death penalty in Iraq.<sup>241</sup>

Arranging for Iraq to take custody of detained European nationals from the Syrian Democratic Forces is not the same as directly transferring custody of an individual to a country where the individual may be tortured or face the death penalty as in *Al-Saadoon*.<sup>242</sup> Nevertheless, an arrangement to have Syrian Democratic Forces turn over foreign nationals to Iraq for prosecution, as France has proposed,<sup>243</sup> would violate the principles of European founding documents and established extradition and deportation case law.<sup>244</sup> In a sense, the Syrian Democratic Forces can be considered a surrogate for European countries. As a consequence, any European country that facilitates the transfer of European nationals to stand trial in Iraq would be in violation of European law.<sup>245</sup>

Although the domestic law of European countries may not expressly prohibit the transfer of custody of an individual to a country where he or she may face the death penalty, such a transfer contravenes the very principles of most domestic European law.<sup>246</sup> In France, for example, forty-five lawyers penned a letter denouncing the French government's inaction in the prosecutions of French nationals sentenced to death by Iraqi courts.<sup>247</sup> They accused the government of doing everything it could to keep French nationals who joined the Islamic State from coming back and leaving them to be prosecuted in Iraq.<sup>248</sup> Because Article 66-1 of the French Constitution prohibits the death penalty, the lawyers characterized France's inaction as "*résignation coupable*" (culpable resignation) that undermined the foundational principles of French law.<sup>249</sup>

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239. *Al-Saadoon*, 2010 Eur. Ct. H.R. 39–43.

240. *Id.* at 41–45.

241. Press Release, Registrar of the Eur. Ct. Hum. Rts., Chamber Judgment *Al-Saadoon & Mufdhi v. the United Kingdom: Transferring Two Iraqi Nationals from the United Kingdom Detention Facilities to the Iraqi Authorities Breached the Convention* (Mar. 2, 2010), <http://hudoc.echr.coe.int/eng-press?i=003-3044411-3369175> [<https://perma.cc/6Y3K-WJCX>].

242. See *Al-Saadoon*, 2010 Eur. Ct. H.R. 5.

243. See Schulz, *supra* note 63.

244. *Id.*; see cases cited *supra* note 238.

245. See cases cited *supra* note 238.

246. See, e.g., "*Ce Serait un Immense Déshonneur pour Notre Pays*": *l'Appel de 45 Avocats Contre les Condamnations à Mort de Neuf Français en Irak*, FRANCEINFO (June 3, 2019, 6:00 AM), [https://www.franceinfo.fr/monde/proche-orient/francais-condamnes-a-mort-en-irak/tribune-ce-serait-un-immense-deshonneur-pour-notre-pays-l-appel-de-44-avocats-contre-les-condamnations-a-mort-de-neuf-francais-en-irak\\_3469333.html](https://www.franceinfo.fr/monde/proche-orient/francais-condamnes-a-mort-en-irak/tribune-ce-serait-un-immense-deshonneur-pour-notre-pays-l-appel-de-44-avocats-contre-les-condamnations-a-mort-de-neuf-francais-en-irak_3469333.html) [<https://perma.cc/QY5D-2MLB>].

247. *Id.*

248. *Id.* ("La France a été prise au piège d'un discours martelé depuis presque deux ans. Notre pays fera non seulement tout pour éviter que nos ressortissants reviennent en France mais fera tout pour qu'ils soient jugés sur place.")

249. *Id.*

*D. Denationalization Is Not a Viable Alternative to Repatriation*

Determining circumstances in which international law permits countries to revoke an individual's citizenship has already been the subject of legal scholarship and debate.<sup>250</sup> Although international law prohibits states from arbitrarily revoking an individual's citizenship, no jurisprudence suggests that revocation of citizenship is proscribed under all circumstances.<sup>251</sup> When revoking an individual's citizenship would result in their becoming stateless, however, such an action is prohibited under the Convention on the Reduction of Statelessness.<sup>252</sup> As previously discussed, the British government's application of the Immigration Act of 2014 stripped Shamima Begum of her citizenship and left her stateless.<sup>253</sup> In that case, the government's application of its domestic immigration statutes violated international law.<sup>254</sup> Although the application of such a statute to a dual national would not necessarily violate international law,<sup>255</sup> it is nevertheless a poor approach to dealing with foreign nationals who joined the Islamic State. Indeed, stripping foreign national Islamic State members of their citizenship is perhaps the most polemical of the policies countries have proposed or adopted.<sup>256</sup>

Proponents of denationalization cite the security threat posed by repatriating foreign fighters to justify such measures.<sup>257</sup> They see denationalization as a strategy to keep those who joined the Islamic State and received terrorist training abroad from returning home and carrying out attacks.<sup>258</sup> Many of the perpetrators involved in terrorist attacks on European soil spent time in Syria prior to committing such attacks.<sup>259</sup> Using immigration and denationalization law to keep Islamic State members from returning home is an alternative to the politically unpopular solution of repatriating individuals to face prosecution or to participate in a reintegration program.<sup>260</sup>

The use of immigration and denationalization law addresses the short-term security risk of Islamic State members being released into society but does not

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250. See generally Shiva Jayaraman, Comment, *International Terrorism and Statelessness: Revoking the Citizenship of ISIL Foreign Fighters*, 17 CHI. J. INT'L L. 178 (2016).

251. *Id.* at 200–01.

252. Convention on the Reduction of Statelessness, art. 8 ¶ 1, *opened for signature* Dec. 4, 1954, 989 U.N.T.S. 175 (entered into force Dec. 13, 1975); Jayaraman, *supra* note 250, at 204–05.

253. See *supra* Section II.C.1.

254. See *supra* Section II.C.1.

255. See Convention on the Reduction of Statelessness, *supra* note 252.

256. Rawlinson & Dodd, *supra* note 128; *François Hollande Renonce à la Déchéance de Nationalité et au Congrès*, LE MONDE (Mar. 30, 2016, 1:51 PM), [https://www.lemonde.fr/attaques-a-paris/article/2016/03/30/francois-hollande-renonce-a-la-decheance-de-nationalite-et-au-congres\\_4892426\\_4809495.html](https://www.lemonde.fr/attaques-a-paris/article/2016/03/30/francois-hollande-renonce-a-la-decheance-de-nationalite-et-au-congres_4892426_4809495.html) [<https://perma.cc/BA6Y-RSLJ>].

257. See Jayaraman, *supra* note 250, at 180–81.

258. See *id.*

259. Michael Birnbaum, *Months After the Fall of ISIS, Europe Has Done Little to Take Back its Fighters*, WASH. POST (June 20, 2019, 6:00 AM), [https://www.washingtonpost.com/world/europe/after-caliphate-collapsed-europe-has-done-little-to-take-back-those-who-joined-isis/2019/06/20/4bab9cc2-8bc4-11e9-b6f4-033356502dce\\_story.html](https://www.washingtonpost.com/world/europe/after-caliphate-collapsed-europe-has-done-little-to-take-back-those-who-joined-isis/2019/06/20/4bab9cc2-8bc4-11e9-b6f4-033356502dce_story.html) [<https://perma.cc/J4BN-PU8J>].

260. *Id.*

address the long-term risks associated with leaving them in Iraq and Syria.<sup>261</sup> Such an approach merely shifts the responsibility of detaining foreign Islamic State members and the subsequent burden of bringing them to justice.<sup>262</sup> Because both Syrian Democratic Forces and the Iraqi government have expressed an unwillingness to try foreign Islamic State members detained in Syria,<sup>263</sup> denationalization may result in such individuals never being brought to justice. Individuals have already escaped from detention camps in Syria and pose a security threat to the region and beyond.<sup>264</sup> Simply revoking an individual's citizenship does not prevent her from plotting an attack in the West. As detention camp conditions continue to deteriorate,<sup>265</sup> the Syrian Democratic Forces are at the mercy of other countries to assume responsibility for their citizens. Denationalization is a band-aid solution to a far more complex problem.

Having shown that prosecution in Iraq and denationalization are not viable solutions, this Note returns to repatriation. While not a perfect solution, it is the optimum solution that both respects international law and minimizes the security risk posed by foreign nationals who joined the Islamic State.

#### IV. IMPLEMENTING A COMPREHENSIVE REPATRIATION STRATEGY

The United States and European countries should actively repatriate citizens who joined the Islamic State. By leaving women in Iraq and Syria, countries are avoiding responsibility and contributing to a humanitarian disaster. Alternative solutions, while politically expedient, are simply not viable. This Part begins by addressing several potential strategies to establish an effective repatriation policy. Based on these strategies, this Part then identifies and discusses two models that could be incorporated into a comprehensive repatriation policy.

##### A. *The Importance of Active Repatriation*

The urgency of implementing a repatriation strategy from both a security and humanitarian standpoint cannot be overstated. Regional instability—including the risk posed by the Assad regime or a regrouping of the Islamic State and other militant groups—combined with an acute lack of resources and personnel, make the ongoing detention of foreign nationals in camps untenable.<sup>266</sup> The global Covid-19 pandemic has made this dire situation even more precarious.<sup>267</sup> Complicating matters, Turkey's policy of deporting foreign nationals from areas it controls in Syria<sup>268</sup> has resulted in countries scrambling to deal with suspected

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261. *See id.*

262. *See* Jayaraman, *supra* note 250, at 210–11.

263. *See U.S.: Detainees Transferred from Syria to Iraq*, *supra* note 209.

264. *See* Morris & Mekhennet, *supra* note 28.

265. *See id.*

266. *See id.*

267. *New IRC Analysis Reveals Risk that Coronavirus Transmission Rates in Moria, Al Hol and Cox's Bazar Refugee Camps Could Outpace Those Seen on the Diamond Princess Cruise Ship*, INT'L RESCUE CTR. (Apr. 1, 2020), <https://www.rescue.org/covid-19-threatens-refugee-camps> [https://perma.cc/4HLU-BJB3].

268. *See* Morris & Mekhennet, *supra* note 28.

Islamic State members. This conundrum illustrates the importance of a proactive repatriation strategy rather than one that is reactive.

Much of the repatriation debate has centered on the question of whether or not to bring individuals home,<sup>269</sup> rather than the more difficult question of how individuals will be dealt with upon their return. The repatriation process does not end when the individual steps off the plane; it requires time and the cooperation of the government as well as individual communities. Repatriation strategies must include a framework for working with individuals once they are returned to their respective countries of origin. The criminal justice system must be a part of any framework, but the problem of radicalization in prisons has demonstrated that it should not be the only part.<sup>270</sup> Any framework should also include rehabilitation and reintegration.

Evaluating the effectiveness of rehabilitative programs is very difficult<sup>271</sup>—particularly with respect to women. Among the challenges to evaluating rehabilitative programs is “a lack of data on baselines, outcomes, and counterfactuals, as well as a lack of consensus about how to measure success.”<sup>272</sup> Compounding these difficulties, deradicalization programs have mostly enrolled men<sup>273</sup> and been designed without much attention paid to the role of gender.<sup>274</sup> Therefore, even anecdotal evidence derived from existing programs may be of somewhat limited helpfulness in creating programs specially designed for women.

*B. Rehabilitation as a Necessary Component of Prosecution Strategies and Traditional Criminal Justice*

Prosecution is appropriate and necessary when an individual poses a security threat. Both the United States and Europe have the legal means to successfully prosecute women on terrorism related charges.<sup>275</sup> A repatriation strategy that relies solely on prosecution, however, is an incomplete solution for two important reasons.

First, in many cases, there may not be sufficient evidence to prosecute women who joined the Islamic State and pose a continuing threat.<sup>276</sup> For such women, rehabilitative solutions outside the penal system are critical to fostering safe communities and preventing those individuals from participating in the spread of ideologies that result in violence. Second, even for women who are

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269. See Vinopal, *supra* note 9.

270. Gabriel Rubin, *Breaking the Prison-Jihadism Pipeline: Prison and Religious Extremism in the War on Terror* 1 (Dep’t of Just. Studs. Fac. Scholarship & Creative Works, 2018), <https://digitalcommons.montclair.edu/justice-studies-facpubs/36> [<https://perma.cc/76XA-9B3R>].

271. Rebecca Turkington & Agathe Christien, *Women, Deradicalization, and Rehabilitation: Lessons from an Expert Workshop*, GEO. INST. FOR WOMEN, PEACE, & SEC. 2 (April 2018), <https://giwps.georgetown.edu/wp-content/uploads/2018/04/Policy-Brief-Women-Deradicalization-and-Rehabilitation.pdf> [<https://perma.cc/GGX5-MU5T>].

272. *Id.*

273. *Id.* at 3.

274. *Id.*

275. See, e.g., 18 U.S.C. §§ 2339A, 2339B (2018); Code pénal [C. pén.] [Penal Code] art. 421-2-1 (Fr.), [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000006418432](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006418432) [<https://perma.cc/YNR5-HR48>].

276. See Wright, *supra* note 76.

prosecuted and incarcerated, rehabilitation is necessary to ensure that they no longer pose a threat to society upon their release. This is especially true in Europe where even successful prosecutions result in sentences that are typically much shorter than in the United States.<sup>277</sup>

Additionally, women have often received more lenient sentencing due to perceptions of women who joined the Islamic State as victims and as lacking agency. These perceptions create “a dangerous security blind spot.”<sup>278</sup> Relying purely on legal tools does not fully address and mitigate the security risks posed by women. Rehabilitation should be a focus at every step of a radicalized individual’s interaction with the justice system, from pretrial to incarceration and/or probation. Implementing women-specific rehabilitation programs in prisons would address concerns about repatriation, such as short sentences and prison radicalization.<sup>279</sup>

One possible model for coupling prosecution with rehabilitation upon repatriation is the Minnesota Extremist Disengagement program (“MED program”) developed by the District of Minnesota’s Probation and Pretrial Services.<sup>280</sup> Among federal judicial districts, Minnesota has handled the highest number of jihadist terrorism-related cases.<sup>281</sup> This has forced it to confront the issue of whether prosecution and/or incarceration is an adequate solution to dealing with those convicted and suspected of terrorism related offenses.<sup>282</sup> To cope with this problem, United States District Judge Michael Davis tasked Minnesota’s chief probation officer, Kevin Lowry, with developing a deradicalization program.<sup>283</sup> The MED program, officially announced in 2016,<sup>284</sup> is the first of its kind in the United States.<sup>285</sup> Lowry and a defense attorney worked with Daniel Koehler, director of the German Institute on Radicalization and Deradicalization Studies, and traveled to research deradicalization programs in the United Kingdom and Germany.<sup>286</sup>

To rehabilitate individuals, Koehler advocates what he refers to as “repluralization.”<sup>287</sup> Often radicalized individuals see violence as the only solution to perceived problems.<sup>288</sup> The MED program utilizes “influencing experiences and counternarratives . . . as alternatives to extremist ideas and beliefs to initiate a

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277. See *supra* Section III.A.

278. Turkington & Christien, *supra* note 271, at 3.

279. See Mai, *supra* note 181.

280. Kevin D. Lowry, *Responding to the Challenges of Violent Extremism/Terrorism Cases for United States Probation and Pretrial Services*, 17 J. DERADICALIZATION 28, 37–46 (2018).

281. *Id.* at 37.

282. See *id.* at 58–59.

283. Brandon Stahl, *Launched After Minnesota Court Cases, First U.S. Deradicalization Program Shows Promise*, STAR TRIBUNE (Feb. 19, 2019, 9:40 PM), <http://www.startribune.com/country-s-first-deradicalization-program-shows-promise/506069262/?refresh=true> [https://perma.cc/XB6R-DRPV].

284. Brendan I. Koerner, *Can You Turn a Terrorist Back into a Citizen?*, WIRED (Jan. 24, 2017), <https://www.wired.com/2017/01/can-you-turn-terrorist-back-into-citizen/> [https://perma.cc/3XRA-7R6Q].

285. Stahl, *supra* note 283.

286. Koerner, *supra* note 284.

287. *Id.*

288. See *id.*

cognitive shift from violent extremism.”<sup>289</sup> The goal of the program is to ensure that “those being released or put on monitoring pending a trial [will not] reoffend.”<sup>290</sup> To this end, the program focuses on disengagement rather than “trying to change people’s viewpoints.”<sup>291</sup> According to Judge Davis, “[d]eradicalization is a misnomer.”<sup>292</sup> Disengagement focuses on “a behavioral withdrawal from contacts and activities related to extremism.”<sup>293</sup> After identifying “how the extremists were first radicalized and what they hoped to achieve,” the program pairs individuals with “[m]entors, counselors and treatment providers.”<sup>294</sup> The scope of the MED program does not include those who are incarcerated,<sup>295</sup> but its disengagement strategies could certainly be implemented in prison settings.

Although it is difficult to measure the success of the MED program, it has shown promise. As of February 2019, “40 percent of defendants who were involved with foreign terrorist organizations were deemed appropriate for release before their sentencing, [and] placed in the program.”<sup>296</sup> While the program has not been without setbacks, out of those placed in the program, “[n]early all of them successfully completed [it] and were not charged with any new crime or violating their probation.”<sup>297</sup> No women have participated in the MED program, but its holistic approach would allow it to be tailored to women.

### C. *Rehabilitation as an Alternative to Prosecution*

Prosecution may not be possible or warranted in every case. For example, a woman’s level and type of involvement, as well as the circumstances of such involvement, should be taken into account to decide whether prosecution will produce the best outcome for the community. As was discussed in Part I, women who traveled to join the Islamic State were often both victims and perpetrators,<sup>298</sup> and many women have since disavowed the Islamic State and expressed remorse

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289. Lowry, *supra* note 280, at 46.

290. Stahl, *supra* note 283.

291. *Id.*

292. *Id.*

293. Lowry, *supra* note 280, at 46.

294. Stahl, *supra* note 283. Community organizations, such as the nonprofit Heartland Democracy, have been instrumental in helping tailor the program to individuals. One participant’s rehabilitation included periodically meeting with a mentor from his Somali-American community. The participant had been arrested after attempting to travel to Syria. His mentor advised that he follow his case in the news to understand the effects of his actions on his community. Dina Temple-Raston, *Minnesota’s Radical Experiment in Jihadi Rehab*, *NEW YORKER* (May 15, 2015), <https://www.newyorker.com/news/news-desk/minnesotas-radical-experiment-in-jihadi-rehab> [<https://perma.cc/AP3W-9XV6>].

295. See Lowry, *supra* note 280, at 30.

296. Stahl, *supra* note 283.

297. *Id.* At its inception, a participant who failed to complete the program later became involved in radicalizing young people. *Id.* But changes implemented as a result of this setback have improved inter-agency communication and risk assessment. *Id.*

298. See *supra* Part I.

and regret over their decision to join.<sup>299</sup> If individuals have not committed serious crimes and pose a relatively low security risk, so-called “soft” approaches may be more appropriate.<sup>300</sup> One such approach is the “Aarhus Model.”<sup>301</sup>

The Aarhus model focuses both on preventing members of the community from turning to violent extremism and facilitating the reintegration of those who traveled to join terrorist groups abroad—the exit program.<sup>302</sup> It is aimed at individuals “who are genuinely motivated to successfully complete an exit process.”<sup>303</sup> Begun in 2013, the exit program was developed in response to an exodus of thirty-one people from the town of Aarhus, Denmark who left to join the Islamic State.<sup>304</sup> The theory guiding the exit program, Life Psychology, was developed at the local university and posits that all individuals “strive for a life embedded in a meaningful, safe and secure world for [their] loved ones and [themselves].”<sup>305</sup> When these needs are met, the theory posits, individuals are less likely to turn to violence.<sup>306</sup>

Guided by Life Psychology, the program “counter[s] radicalisation through . . . institutionalised cooperation.”<sup>307</sup> Collaboration between the Aarhus community and the government has been critical to its implementation.<sup>308</sup> Initially, it utilized networks of schools, social services, and police.<sup>309</sup> It has evolved to include mental health, medical, prison, and probation services.<sup>310</sup> Only those who have not perpetrated a criminal offense and who are deemed by the police and security services not to pose a security risk are eligible to participate in the exit

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299. See Martin Chulov & Bethan McKernan, *Hoda Muthana ‘Deeply Regrets’ Joining Isis and Wants to Return Home*, *GUARDIAN* (Feb. 17, 2019, 2:30 PM), <https://www.theguardian.com/world/2019/feb/17/us-woman-hoda-muthana-deeply-regrets-joining-isis-and-wants-return-home> [<https://perma.cc/4XF9-K4XJ>].

300. Alastair Reed & Johanna Pohl, *Tackling the Surge of Returning Foreign Fighters*, *NATO REVIEW* (July 14, 2017), <https://www.nato.int/docu/review/articles/2017/07/14/tackling-the-surge-of-returning-foreign-fighters/index.html> [<https://perma.cc/CC3R-M5H2>].

301. See generally PREBEN BERTELSEN, *DANISH PREVENTIVE MEASURES AND DE-RADICALIZATION STRATEGIES: THE AARHUS MODEL*, in *FROM THE DESERT TO WORLD CITIES: THE NEW TERRORISM* 241, 241 (2015).

302. *Id.*

303. *Id.* at 245.

304. Manfred Ertel & Ralf Hoppe, *A Danish Answer to Radical Jihad*, *SPIEGEL INT’L* (Feb. 23, 2015, 6:17 PM), <https://www.spiegel.de/international/europe/aarhus-program-for-returning-jihadists-from-syria-a-success-story-a-1019633.html> [<https://perma.cc/3QPC-EMK2>].

305. BERTELSEN, *supra* note 301, at 248.

306. *Id.* at 250.

307. Reed & Pohl, *supra* note 300.

308. *Id.*

309. *Id.*

310. *Id.*

program.<sup>311</sup> Similar to the MED program, the Aarhus model is rooted in disengagement.<sup>312</sup> Community support, including mentorships, and fostering inclusion are key elements of the program.<sup>313</sup> Returnees are offered help with regard to employment, education, housing, and medical care, including mental healthcare.<sup>314</sup>

The Aarhus program has been successful in discouraging individuals from traveling to join the Islamic State as well as reintegrating and engaging them with the community.<sup>315</sup> In 2014, only one member of the Aarhus community traveled to Syria and, in the following year, only three individuals left.<sup>316</sup> Interviews with participants in the exit program also illustrate the program's success. One interviewee who completed the program expressed gratitude for the second chance and a feeling of being more connected to his Danish identity.<sup>317</sup> The relationships participants have developed with mentors have proven instrumental in deepening their connections to the community and a critical component to being able to carve out a place in it.<sup>318</sup> Another participant took advantage of the program to attend college and appeared to have embarked upon a path towards creating a life in Denmark.<sup>319</sup>

Although evidence of the program's success is predominantly anecdotal, it should not be discounted.<sup>320</sup> Critics have characterized the program as too soft and as rewarding those who joined terrorist organizations.<sup>321</sup> They argue that prosecution is more appropriate.<sup>322</sup> When prosecution is unavailable, however, either due to lack of evidence or a statutory basis for prosecution, the alternative is to do nothing. Professor Preben Bertelsen, the pioneer of the Life Psychology theory, points out that failing to integrate the returnees would only make them

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311. BERTELSEN, *supra* note 301, at 245 (“[S]trong measures are taken to prevent the exit programme from being used as some sort of hiding place for people intending to commit terrorist acts.”).

312. Andrew Higgins, *For Jihadists, Denmark Tries Rehabilitation*, N.Y. TIMES (Dec. 13, 2014), <https://www.nytimes.com/2014/12/14/world/for-jihadists-denmark-tries-rehabilitation.html> [<https://perma.cc/6QZG-4R5Q>] (“Aarhus’s approach, [Bertelsen] said, aimed to prevent criminal acts by former fighters, not to purge their beliefs.”).

313. BERTELSEN, *supra* note 301, at 243–44.

314. *Id.* at 245.

315. Hanna Rosin, *How a Danish Town Helped Young Muslims Turn Away from ISIS*, NPR (July 15, 2016, 3:05 AM), <https://www.npr.org/sections/health-shots/2016/07/15/485900076/how-a-danish-town-helped-young-muslims-turn-away-from-isis> [<https://perma.cc/ZE3E-SQ3G>].

316. Camille Schyns & Andreas Müllerleile, *How to Prevent Violent Extremism and Radicalisation?*, EUR. INST. OF PEACE (Jan. 4, 2016), <https://www.eip.org/how-to-prevent-violent-extremism-and-radicalisation> [<https://perma.cc/B8NG-PWUH>].

317. *See* Rosin, *supra* note 315.

318. *Id.*

319. Higgins, *supra* note 312.

320. *See id.*

321. Mila Koumpilova, *How Denmark is Trying to Subvert the Call to Terror*, STAR TRIBUNE (July 31, 2016, 7:10 AM), <http://www.startribune.com/how-denmark-is-trying-to-subvert-the-call-to-terror/388563371/?refresh=true> [<https://perma.cc/BUY9-RULM>].

322. *Id.*



ticking time bombs.<sup>323</sup> Moreover, the police commissioner in charge of the program has emphasized that it is not a “get-out-of-jail-free card” and that those believed to have committed crimes will be investigated and prosecuted.<sup>324</sup>

The participants of the Aarhus exit program have mostly been male,<sup>325</sup> but its theoretical underpinnings are not gender specific and its support structure would be well suited to reintegrating and rehabilitating female returnees. Based on the accounts of men who participated in the exit program, a rehabilitation program modeled after it would help women who experienced significant trauma recover, feel supported, and hopefully lead to a greater sense of belonging in the community. The integration of social services and counseling would be especially critical to developing support systems for women, as women who joined the Islamic State were often victims of violence and many are mothers.<sup>326</sup> When mothers and their children are repatriated, the children may be placed with relatives or in foster care.<sup>327</sup> Mothers may be even more motivated to participate in a rehabilitation program in hopes of retaining or regaining custody of their children.

As were many of the men from Aarhus, many women were young when they left to join the Islamic State—some still minors.<sup>328</sup> Whether or not they are deserving of a second chance, rehabilitation and reintegration programs based on disengagement have shown promise in turning individuals away from violence.

## V. CONCLUSION

Allowing foreign courts to determine the fate of a country’s citizens is a precarious precedent and a shirking of a government’s commitment to its citizens. European governments, and to a lesser extent the United States, have demonstrated their reluctance to repatriate their citizens—a reluctance fostered by public opinion and the risk of returnees committing acts of terrorism.<sup>329</sup> The antidote to such reluctance is a repatriation process that, while recognizing that risks cannot be eliminated, provides a level of confidence based on experiential results that convinces governments that the risk is manageable. A hybrid approach that combines the Minnesota MED program and the Aarhus model’s exit program offers the best hope. Using such an approach is preferable to a muddled, case-by-case decision-making process influenced by public opinion. Governments must stand up to public resistance and find a path that allows for repatriation, and, at the same time, safeguards their citizens.

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323. Higgins, *supra* note 312.

324. Jon Henley, *How Do You Deradicalise Returning Isis Fighters?*, GUARDIAN (Nov. 12, 2014, 2:21 PM), <https://www.theguardian.com/world/2014/nov/12/deradicalise-isis-fighters-jihadists-denmark-syria> [<https://perma.cc/LXM6-5KFG>].

325. *See id.*

326. *See supra* Part I.

327. *See, e.g.*, Olterman, *supra* note 54.

328. *See supra* Part I.

329. *See* Mai, *supra* note 181.