

Expatriation of Terrorists in the United Kingdom, United States, and France: Right or Wrong?

Michael Goldstein*

I. INTRODUCTION	260
II. EXPATRIATION AND TERRORISM UNDER INTERNATIONAL LAW—AN OVERVIEW	263
III. THE UNITED KINGDOM AND EXPATRIATION OF TERRORISTS.....	267
IV. THE UNITED STATES AND EXPATRIATION OF TERRORISTS.....	274
V. FRANCE AND EXPATRIATION OF TERRORISTS	280
VI. EXPATRIATION OF TERRORISTS: RIGHT OR WRONG?.....	286
VII. CONCLUSION	289

[The] use of denationalization as a punishment is barred by the Eighth Amendment. There may be involved no physical mistreatment, no primitive torture. There is instead the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development. . . . In short, the expatriate has lost the right to have rights.

—Former Chief Justice Earl Warren¹

Because we are at war, we must unite. This is a great day for the Republic, for unity, for France and for the fight against terrorism.

—French Prime Minister Manuel Valls in the wake of the passage of “Projet de Loi Constitutionnelle de protection de la Nation” in the Assemblée nationale on February 10, 2016²

* © 2016 Michael R. Goldstein. J.D. candidate 2017, Tulane University Law School; Student Attorney for Civil Litigation Clinic, Honor Board Justice; B.A. 2012, UC Santa Cruz. I would like to thank the members of the *Tulane Journal of International and Comparative Law* for their support. In addition, I would like to dedicate my Comment to my late father, who first inspired me to go to law school and pursue a career in public interest law.

1. *Trop v. Dulles*, 356 U.S. 86, 101-02 (1958).

2. Sylvie Corbet, *French Lawmakers Approve Divisive Citizenship Bill*, ASSOCIATED PRESS (Feb. 10, 2016, 5:23 PM), <http://bigstory.ap.org/article/abc6de83e7da4561aa671fe359497044/french-lawmakers-vote-divisive-citizenship-bill>.

I. INTRODUCTION

Countries all over the world have been dealing with a relatively new phenomenon in the last couple of decades: Islamic terrorism. Various international terrorist organizations have sprung up all over the map in recent years, with bases in North Africa and the Middle East, in particular, and include groups such as al-Qaeda and ISIS, who thrive on fear and violence to achieve their political and religious goals.³ These groups have been responsible for deadly attacks such as those in New York City on September 11, 2001, London on July 7, 2005, Paris on November 13, 2015, and San Bernardino on December 2, 2015, which have rattled the people of those countries and the rest of the world to their core. These devastating occurrences have made the nations of the world answer some especially difficult questions about what it means to be a citizen, and, ultimately, whether those who are involved with terrorism can be stripped of their citizenship.

Governments and citizens alike are split on what should be done moving forward to address these types of issues: do we shore up our national security by cracking down on people with ties to terrorism, even if it means restricting citizens' rights? Or do we make sure we do not lose sight of what makes our country a democracy and protect their rights at all costs? Does someone have to be directly involved with a terrorist group to be denaturalized, or could they be acting on their own? Is there a difference if someone merely funds a terrorist group, or if they send donations to a charitable group that has been known to aid terrorist groups in some way? The list of questions goes on, and numerous governments have been struggling with what the right path is to guide their citizens forward.

In recent years, some countries have put various proposals on the table in their legislatures with bold stances against individuals who are convicted of terrorism-related crimes. Countries, such as Australia, have recently passed laws taking away citizenship from those who are dual nationals who have been involved in or convicted of terrorism.⁴ Israel passed a similar law a few years ago, which allowed its Supreme Court to take away the citizenship and state funding of an Israeli dual citizen,

3. See Graeme Wood, *What ISIS Really Wants*, ATLANTIC (Mar. 2015), <http://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/>.

4. *Australia Passes Anti-Terrorism Law To Strip Citizenship*, YAHOO NEWS (Dec. 3, 2015), <http://news.yahoo.com/australia-passes-law-strip-militants-citizenship-031802419.html>.

under similar circumstances.⁵ In 2015, Canada's Conservative party also approved a law targeting dual nationals found guilty of crimes concerning terrorism.⁶ This bill was launched partly in response to the increasing numbers of Canadians traveling abroad and joining ISIS, but is now under threat by the new Liberal government, which is moving to invalidate the legislation.⁷

This last example highlights the debate that people are having in their respective countries about what to do with citizens who have been convicted of terrorism. One big concern these days among pundits, politicians, and laypeople alike—as illustrated by Canada's motive in passing its denaturalization of terrorists bill—is that citizens from their countries have gone abroad to fight alongside deadly groups, including ISIS, and then returned home to use what they learned to wreak havoc.⁸ On one side of the argument, there are those who say that by fighting on behalf of a terrorist group, a citizen has essentially abandoned their citizenship to their home country by pledging allegiance to that group.⁹ As a result of their new allegiance, they should no longer be able to return to their home country, because they eliminated that right when they left to go fight alongside a terrorist organization.¹⁰ The people on the other side of this debate contend, *inter alia*, that laws allowing for the expatriation of citizens for committing terrorism would create “unequal categories of citizenship,” effectually communicating to dual citizens that they are not equal to those who are natural citizens of one country under their respective constitutions.¹¹

Common sense might tell you that party lines dictate the fight over what rights terrorist citizens have, but that is not necessarily the case. In

5. Jonathan Lis, *Knesset Passes Law To Strip Terrorists of Israeli Citizenship*, HAARETZ (Mar. 28, 2011, 10:50 PM), <http://www.haaretz.com/israel-news/knesset-passes-law-to-strip-terrorists-of-israeli-citizenship-1.352412>.

6. Michel Comte, *Canada Moves To Repeal Law That Revokes Citizenship in Terror Cases*, YAHOO NEWS (Feb. 25, 2016), <https://www.yahoo.com/news/canada-moves-repeal-law-revokes-citizenship-terror-cases-162123737.html?ref=gs>.

7. *Id.*

8. Andy J. Semotiuk, *Immigration Law: Is Revoking the Citizenship of Terror Suspects Right or Wrong?*, FORBES ASIA (Oct. 1, 2014, 11:51 AM), <http://www.forbes.com/sites/andyjsemotiuk/2014/10/01/immigration-law-is-revoking-the-citizenship-of-terror-suspects-right-or-wrong/#51a36ab858f6>.

9. Press Release, Steve King, Member, U.S. House of Representatives, King, Cruz Introduce Expatriate Terrorist Act (Jan. 23, 2015), <https://steveking.house.gov/media-center/press-releases/king-cruz-introduce-expatriate-terrorist-act>.

10. *Id.*

11. R.J.E., *Hollande's Call To Revoke the Citizenship of Convicted Terrorists*, ECONOMIST: ECONOMIST EXPLAINS (Jan. 13, 2016), <http://www.economist.com/blogs/economist-explains/2016/01/economist-explains-8>.

France, one of the countries that will be the focus of this Comment, the recent charge to expatriate dual citizens convicted of terrorism was led by President François Hollande and his Socialist party-led government.¹² What was interesting about the situation that developed there is that Hollande is the head of the traditionally left-wing party, but because he sided with the more conservative French people by trying to pass this new law, he angered his supporters and the more liberal of his countrymen.¹³ His real motives for this law were unclear,¹⁴ but the important thing to consider is that, at least according to one poll taken in France during the bill's consideration, 75% of those polled agreed with Hollande's proposal.¹⁵

While this is just one example, it demonstrates how people react in the face of fear. It is no accident that the President of France chose to bring forward a proposal to strip particular people of their citizenship during this time, as the November 2015 terrorist attacks in Paris were still fresh in their minds.¹⁶ In attempting to pass this law, Hollande was not worried about its effects on certain French citizens, rather, he was likely concerned with one thing: retribution. By enacting this law, dual citizens convicted of terrorism would have been expelled from the country, never to return, as a warning to all who seek to do the country harm. But does that make it okay?

While France's most current attempt at an expatriation bill for terrorists was unsuccessful,¹⁷ the United States has had some debates pop up in the last six years over whether they should propose a similar law. The American version of the law France was trying to pass, called the "Expatriate Terrorist Act," was brought to the floor of the Senate and the House of Representatives in January 2015.¹⁸ However, the bill has since been referred to a committee and subcommittee for further consideration,

12. *Id.*

13. *Id.*

14. Heather Horn, *What's Wrong with Stripping Terrorists of Citizenship?*, ATLANTIC (Jan. 29, 2016), <http://www.theatlantic.com/international/archive/2016/01/taubira-france-citizenship-terrorism/433965/>.

15. R.J.E., *supra* note 11.

16. *See* Horn, *supra* note 14.

17. Adam Nossiter, *François Hollande Cancels Plan To Strip French Citizenship in Terrorism Cases*, N.Y. TIMES (Mar. 30, 2016), <http://www.nytimes.com/2016/03/31/world/europe/francois-hollande-france-citizenship-terrorism.html>.

18. *All Bill Information (Except Text) for S.247—Expatriate Terrorist Act*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/247/all-info> (last visited Nov. 4, 2016) [hereinafter *Info for S. 247*]; *All Bill Information (Except Text) for H.R. 503—Expatriate Terrorist Act*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/503/all-info> (last visited Nov. 4, 2016) [hereinafter *Info for H.R. 503*].

respectively.¹⁹ Unlike the two superpowers of France and the United States, Britain was able to pass an expatriation bill that was proposed a couple of years ago.²⁰ As a result, we will be able to examine how an expatriation law for citizens linked to terrorism has been put to use, as well as the consequences of taking such a drastic action.

In discussing the United Kingdom's, the United States', and France's successes, attempts, or failures at implementing this type of legislation, respectively, this Comment will first examine whether there is a statutory or judicial basis for enacting a denaturalization law for terrorism. The first country to be investigated will be the United Kingdom, and in particular, its laws governing deprivation of citizenship and the cases surrounding expatriation of terrorists in the last few years. Then, this Comment will look at the United States and show the long legal history that would prevent a similar bill to be signed into law, as well as the debate over the latest attempt. Lastly, by inspecting the French law that was recently being debated, this Comment will discuss how this law came about and the intense debate that ensued over whether the legislation should be passed. After going through the stages that each of these countries are in with their denaturalization laws for terrorism offenses, this Comment will analyze whether this type of law is an appropriate tool in the fight against terrorism. First, however, it must be determined whether there is even a basis for expatriation of terrorist acts under international law.

II. EXPATRIATION AND TERRORISM UNDER INTERNATIONAL LAW— AN OVERVIEW

By international standards, laws that propose to expatriate terrorists may be drastically less constitutional if they allow a country to expatriate an individual who is merely the citizen of the country they are being denaturalized from, like in the United Kingdom, versus someone who is a dual national.²¹ Partly addressing that concern, one of the most profound documents of international law is the Universal Declaration of Human Rights of 1948 (UDHR).²² The UDHR was approved by the U.N. General Assembly on December 18, 1948, including the United Kingdom, the United States, and France, and was created in response to

19. *Info for S. 247, supra* note 18; *Info for H.R. 503, supra* note 18.

20. *See* Immigration Act 2014, c. 22, § 66 (U.K.).

21. *See* Katrin Bennhold, *Britain Increasingly Invokes Power To Disown Its Citizens*, N.Y. TIMES (Apr. 9, 2014), http://www.nytimes.com/2014/04/10/world/europe/britains-power-to-disown-its-citizens-raises-questions.html?_r=0.

22. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

the lessons learned as a result of World War II.²³ The U.N. General Assembly was trying to make sure that this Declaration would ensure that the terrible and devastating events that occurred during World War II would never occur again.²⁴ Consequently, this profound document is explicit about rights to which every person is entitled, with Article 15 being the most relevant section for denaturalization purposes.²⁵ That article mandates that all people have “the right to a nationality,” and that “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”²⁶ As a whole, many believe the Declaration started what has become the exceedingly important field of international human rights law,²⁷ and can, therefore, be used as a good source for determining what kinds of constitutional rights all citizens should be entitled to.

Article 15 of the UDHR was a prelude to what became a greater concern of the United Nations in the 1950s and early 1960s, which was the idea of “statelessness” of refugees.²⁸ The concern that the international body felt for refugees culminated in what became known as the 1954 Convention Relating to the Status of Stateless Persons (CRSSP). This convention sought to foster international cooperation to protect those who have become citizens without a state, and is mostly famous for defining what a stateless person actually means.²⁹ It defines a “stateless person” as one “who is not considered as a national by any State under the operation of its law.”³⁰ At the same time, it does offer restrictions on who can be given fundamental rights as a stateless person, by suggesting that those without a state who have perpetrated terrible acts against others in the world will not be given the protection that the Convention was designed to provide.³¹ For those who do fall within its scope, the CRSSP makes clear that they should be entitled to basic human rights, such as to not be discriminated against on the basis of race or religion.³²

23. *History of the Document*, UNITED NATIONS, <http://www.un.org/en/sections/universal-declaration/history-document/index.html> (last visited Nov. 4, 2016).

24. *Id.*

25. Universal Declaration of Human Rights, *supra* note 22, art. 15.

26. *Id.*

27. *The Foundation of International Human Rights Law*, UNITED NATIONS, <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> (last visited Nov. 4, 2016).

28. See Convention Relating to the Status of Stateless Persons art. 1, Sept. 28, 1954, 360 U.N.T.S. 117 [hereinafter CRSSP].

29. *Id.* at Introductory Note.

30. *Id.* art. 1(1).

31. See *id.* art. 1, ¶ 2(iii)(a-c).

32. *Id.* art. 3.

The United Kingdom and France were both signatories of the Convention, while the United States was not.³³

Not long after the CRSSP was entered into force, the U.N. High Commissioner for Refugees (UNHCR) adopted a new convention that addressed the international effort to lessen the amount of statelessness in the world.³⁴ This Convention on the Reduction of Statelessness (CRS) was created to expand on the prior foundation of the 1954 Convention and to establish the legal structure for addressing statelessness.³⁵ More specifically, it was intended to prevent people from being robbed of citizenship and to be the embodiment of the UDHR's Article 15, which, as mentioned above, states that everyone should be able to be a citizen of a country.³⁶ The CRS was signed by the United Kingdom, but not by France or the United States.³⁷ Overall, the underlying principle of the CRS is to acknowledge each nation's sovereignty regarding citizenry.³⁸ It also suggests that countries should consider international law when making laws regarding nationalization, which means embracing the idea that their decisions should not allow someone to be without a nationality.³⁹ Because the CRS aimed to discourage countries from depriving individuals of a nation, the security blanket it gives to those threatened with expatriation only arises in situations where there is an actual danger of the individual becoming stateless.⁴⁰

One of the safeguards that the CRS has in place for those who may be left without a state due to the action by a particular government, is to prohibit a government to denaturalize one of their citizens unless that person is a dual citizen, or who could at least gain acceptance into another nation.⁴¹ Article 7 of the CRS also makes clear that a country cannot strip citizenship from someone who would be without a country as a result of their expatriation, while that person left said country temporarily, lived in another country permanently, etc.⁴² The next article of the CRS, however, allows for a country to deprive an individual of

33. *Id.* at 118.

34. Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175 [hereinafter CRS].

35. *Id.*

36. *Id.*

37. *States Party to the Statelessness Conventions*, U.N. HIGH COMMISSIONER FOR REFUGEES [UNHCR] (June 1, 2016), <http://www.refworld.org/docid/54576a754.html>.

38. CRS, *supra* note 34.

39. *Id.*

40. *Id.* art. 7.

41. CRS, *supra* note 34, art. 7, ¶ 1.

42. *Id.* art. 7, ¶ 3.

citizenship under certain circumstances.⁴³ One of these circumstances is if a person acquired their citizenship by using misrepresentation or fraud.⁴⁴ Another is if a state had made a condition as part of their signature, ratification, or accession of the CRS, to include the provision that a person can be deprived of citizenship if they acted in a way that was “seriously prejudicial to the vital interests of the State.”⁴⁵ The Convention qualifies the confiscation of citizenship partially by stating that a nation cannot go through this process of denaturalization or prevent naturalization of one who would become stateless without a “fair hearing.”⁴⁶

Statelessness is relevant to the expatriation of terrorists because some of the expatriation laws that are in place, or are being considered, allow for governments to make those convicted of terrorism live without a nationality.⁴⁷ Additionally, there are international law sources that focus on addressing the problem of terrorism and are not as concerned with the problem of statelessness. In the wake of the September 11th terrorist attacks in the United States, the U.N. Security Council passed a resolution partly to address growing concerns over terrorist organizations and attacks.⁴⁸ This resolution, among other things, reaffirmed the United Nations’ acknowledgment that countries must attempt to counteract the effects caused by terrorist groups by working together and prevent the commission of more violent acts upon innocent people.⁴⁹ Additionally, the Security Council wanted to make clear that nations have to keep out individuals who perpetuate terrorism, whether that is through violence or by providing them with funding.⁵⁰ This resolution also demonstrates support for the idea that any individual found to be linked to terrorism should be punished by the laws of the country that tries them,⁵¹ and that terrorism as a whole goes against the core of what the United Nations stands for.⁵²

43. *Id.* art. 8.

44. *Id.* art. 8, ¶ 2(b).

45. *Id.* art. 8, ¶ 3(a)(ii).

46. *Id.* art. 8, ¶ 4.

47. The United Kingdom is one of the countries whose current expatriation law allows for citizens of the United Kingdom who have no other nationality to be stripped of their citizenship under certain circumstances. See Helena Wray, *The New Powers of Deprivation of Citizenship in the U.K.*, EUR. UNION DEMOCRACY OBSERVATORY ON CITIZENSHIP (June 28, 2014), <http://eudo-citizenship.eu/news/citizenship-news/1160-the-new-powers-of-deprivation-of-citizenship-in-the-uk>.

48. S.C. RES. 1373, ¶ 1 (Sept. 28, 2001).

49. *Id.* at pmb1.

50. *Id.*

51. *Id.* ¶ 1(e).

52. *Id.* ¶ 5.

While not explicitly mentioning terrorism within its articles, and, rather, focusing on the status of refugees, the European Union Council Directive 2004/83 of 2004 imitates similar ideas to those found in the above resolution.⁵³ The Directive excludes people (including those who have no nationality) from becoming refugees if they “committed a crime against peace, a war crime, or a crime against humanity . . . , committed a serious non-political crime outside the country of refuge prior to . . . [their] admission as a refugee . . . ,” or if they have “been guilty of acts contrary to the purposes and principles of the United Nations[.]”⁵⁴ Once a nation within the European Union accepts someone as a refugee, according to the Directive, it may strip away that status—even if that person would become stateless—if it reasonably believes that the person in question would be dangerous to their country, or if that person was convicted of a particularly severe offense.⁵⁵

III. THE UNITED KINGDOM AND EXPATRIATION OF TERRORISTS

Before the United Kingdom had laws regarding the denaturalization of individuals convicted of terrorism, their citizenship laws focused on determining the status of those whom they had previously colonized.⁵⁶ The British Nationality Act of 1948 (1948 Act) granted automatic citizenship to anyone who could prove that they were born in a current or former British territory and allowed that person to relocate to the United Kingdom with their family.⁵⁷ This policy resulted in mass migration, which in turn caused some British citizens to resent these new inhabitants, resulting in a stricter immigration policy in 1971 that limited the right for immigrants to move into Great Britain.⁵⁸ Ten years later, Parliament created the British Nationality Act of 1981 (1981 Act)⁵⁹ to completely dispose of the 1948 Act’s definition of citizenship, and split it into three separate categories, only the first of which gives the holder the right to settle in the country: “British citizenship, citizenship of British dependent territories, and British overseas citizenship.”⁶⁰ While those definitions of citizens from the 1981 Act have stayed fairly constant over the last thirty-five years, many of the

53. Council Directive 2004/83, 2004 O.J. (L 304) (EC).

54. *Id.* art. 12, ¶ 2.

55. *Id.* art. 14, ¶ 4.

56. *Citizenship 1906-2003*, NAT’L ARCHIVES, http://www.nationalarchives.gov.uk/pathways/citizenship/brave_new_world/citizenship4.htm (last visited Nov. 4, 2016).

57. *Id.*

58. *Id.*

59. British Nationality Act 1981, c. 61 (Eng.).

60. *Citizenship 1906-2003*, *supra* note 56.

laws that the British government passed during that time relating to the deprivation of citizenship have changed the way the 1981 Act defined that concept.⁶¹

The ability to remove the nationality of British citizens has been expanded in the several decades since the passage of the 1981 Act, which originally limited the Secretary of State's power to denaturalize people.⁶² At first, the 1981 Act only applied to naturalized citizens, and hence, those who were born on British soil were not allowed to have their citizenship stripped from them.⁶³ In addition, the Act indicated that Parliament was not actively requiring the Secretary to go out and strip individuals of their citizenship, but instead instructed him not to do so "unless he is satisfied that it is not conducive to the public good that that person should continue to be a British citizen," and only if doing so would not make that person stateless.⁶⁴ The only people who Parliament thought should be expatriated were those who were naturalized as a result of fraudulent means.⁶⁵ The Secretary of State also had to find that the person to be denaturalized was "disloyal or disaffected towards Her Majesty," acting against the Crown with one of its enemies it was engaged in war with, or had committed a crime in another country that resulted in incarceration for at least a year.⁶⁶

Around twenty years later, the British government began changing the tone of their expatriation of citizens' laws by almost encouraging the Secretary of State to denaturalize people.⁶⁷ The Nationality, Immigration and Asylum Act 2002 (2002 Act) changes the language from the government "shall not" revoke citizenship, to that they "may" do so if someone "has done anything seriously prejudicial to the vital interests of . . ." the United Kingdom or one of its territories.⁶⁸ The country ramped up its powers to strip citizenship from its nationals even more in 2006 when it broadened the Secretary of State's power.⁶⁹ Further, in the Immigration, Asylum and Nationality Act 2006 (2006 Act), the Secretary

61. See, e.g., Immigration Act 2014, c. 22, § 66 (U.K.); Immigration, Asylum and Nationality Act 2006, c. 13, § 56(1) (Eng.); Nationality, Immigration and Asylum Act 2002, c. 41, § 4(1) (Eng.).

62. British Nationality Act 1981, c. 61, § 40 (U.K.).

63. See *id.* § 40(1).

64. *Id.* § 40(5).

65. *Id.* § 40(1).

66. *Id.* § 40(3).

67. Nationality, Immigration and Asylum Act 2002, c. 41, § 4 (Eng.).

68. *Id.*

69. Immigration, Asylum and Nationality Act 2006, c. 13, § 56(1) (Eng.).

of State could take away citizenship if he or she was “satisfied that deprivation [was] conducive to the public good.”⁷⁰

The new augmentation of expatriation powers came after July 7, 2005, when terrorists attacked parts of London’s transportation structure, killing fifty-two civilians. It was also likely created in response to the failed attempts at expatriating Abu Hamza al-Masri.⁷¹ Al-Masri is a British-Egyptian cleric who the government had been attempting to denaturalize since 2003, but could not because Egypt had done so already, and therefore the government prohibited from expatriating him since it would have rendered him stateless.⁷² Al-Masri was responsible for orchestrating at least one terrorist attack and terrorist training site, while influencing many others to carry out attacks, which is why the British government was so keen on expatriating him.⁷³ Eventually the government locked him up for some of his crimes while trying to simultaneously strip him of his citizenship.⁷⁴ Upon serving his sentence in the United Kingdom, al-Masri was extradited to the United States to face charges for similar crimes.⁷⁵ In May 2014, al-Masri was found guilty in the U.S. District Court in New York City for terrorism-linked offenses and was sentenced to life in prison in January of 2015.⁷⁶

Prior to 2010, the U.K. government did not use the 2006 Act to strip away citizenship for the most part, but from 2010 until the middle of 2014, it used it over thirty times, even in cases involving natural British citizens.⁷⁷ However, like in al-Masri’s case, the statelessness safeguard, still provided for in the 2006 Act, continued to limit the ability of the U.K. government to strip citizenship for those with ties to terrorism a few years later, as exemplified by their denaturalization proceedings against Hilal al-Jedda.⁷⁸ Al-Jedda was born in 1957 in Iraq and eventually moved to the United Kingdom with his wife hoping for asylum.⁷⁹ In 2000, al-Jedda and his family were granted citizenship by the government, which

70. *Id.*

71. Bennhold, *supra* note 21.

72. *Id.*

73. Daniel Bates & Jennifer Newton, ‘*Evil*’ and ‘*Barbaric*’ Hate Preacher Abu Hamza To Die in Prison After He Is Sentenced to Life for Almost a Dozen Terror Charges, DAILY MAIL (Jan. 9, 2015), <http://www.dailymail.co.uk/news/article-2903753/Radical-imam-Abu-Hamza-sentenced-life-prison.html>.

74. *Id.*

75. *Id.*

76. *Id.*

77. Wray, *supra* note 47.

78. Bennhold, *supra* note 21.

79. Sec’y of State for the Home Dep’t v. Al-Jedda [2013] UKSC 62, [4] (appeal taken from [2012] EWCA Civ 358) (U.K.).

automatically resulted in the deprivation of his Iraqi citizenship under Iraqi law.⁸⁰ Four years later, al-Jedda traveled to Iraq, where he caught the eye of American forces for allegedly being a member of a terrorist group, and he was subsequently taken into custody by U.K. forces and detained until December 30, 2007.⁸¹ To make matters worse for al-Jedda, a couple of weeks before he was to be released from custody, the Secretary of State brought an action under Section 40(2) of the 1981 Act to deprive him of his citizenship.⁸²

On January 11, 2008, al-Jedda filed a notice of appeal with the Special Immigration Appeals Commission (SIAC), arguing in part that if the Secretary's order was upheld, it would result in him being nationless.⁸³ The Commission rejected his appeal based on the Law of Administration for the State of Iraq for the Transitional Period (the TAL), which they found would allow him to get his Iraqi citizenship back, and hence, the British government would not be depriving him of a nation entirely by revoking his British citizenship.⁸⁴ However, the Court of Appeals reversed the Commission's decision of denial and remanded the case, only to have the Commission come to the same conclusion under similar reasoning⁸⁵—leading the Court of Appeal to reverse again.⁸⁶ The British government then appealed that decision to the Supreme Court of the United Kingdom in 2013, arguing that al-Jedda had the ability to seek Iraqi citizenship on the day the Secretary filed the order depriving him of his nationality, meaning he would not become stateless and that he could receive this status easily and quickly.⁸⁷ The Court did not agree and, instead, ruled that the section of the 1981 Act which deals with statelessness, 40(4), only requires the question of “whether the person holds another nationality at the date of the order”—as opposed to considering all of the hoops that the government assumed al-Jedda would

80. *Id.*

81. *Id.* at para. 6. Al-Jedda brought several actions against the British government protesting his detainment as unconstitutional via the European Convention on Human Rights, one of which was successful. *See Al-Jedda v. United Kingdom*, App. No. 27021/08 Eur. Ct. H. R. para. 9-10, HUDOC (July 7, 2011), <http://hudoc.echr.coe.int/eng?i=001-105612>.

82. Sec'y of State for the Home Dep't v. Al-Jedda [2013] UKSC 62 at [3], [8].

83. *Id.* at para. 9.

84. *Id.*

85. The Commission again justified their denial of al-Jedda's appeal via the TAL, but this time alternatively argued that it could revoke his citizenship because the follow up law to the TAL (the Iraqi Law of Nationality 2006) would also allow him to gain his Iraqi citizenship back. *Id.* at para. 10.

86. *Id.*

87. *Id.* at para. 23.

be able to jump through in order to regain his Iraqi citizenship.⁸⁸ For the Court, the answer to the inquiry was no.⁸⁹

After the denial of the Secretary of State's deprivation order, the government again made the order to strip al-Jedda of his British citizenship a few weeks later.⁹⁰ This time, they had a new justification for doing so.⁹¹ At the same time, Secretary of State Theresa May and the Home Office proposed a new amendment to the 1981 Act.⁹² This change was created as part of the Immigration Act 2014 (2014 Act) to amend the section on expatriation of citizens to allow the government to do so in some cases where the person would be left without a nationality entirely.⁹³ As it stands today, for someone's citizenship to be stripped under the 2014 Act, they must be a naturalized citizen, the Secretary must find that doing so would be for the "public good" because that person acted in a way that is "seriously prejudicial to the vital interests of the United Kingdom," and the Secretary must reasonably determine that the person can obtain new citizenship in another country at some point.⁹⁴ However, this Act was not passed until after al-Jedda's second expatriation order,⁹⁵ which means he may potentially win his appeal again, and then have an uphill battle against the authority of the 2014 Act, allowing the Secretary to denaturalize him even though it will make him stateless.⁹⁶

While the 2014 Act was being debated, there were many politicians who disputed whether it was constitutional—or at least whether it was a

88. *Id.* at para. 32.

89. *Id.*

90. Alice K. Ross & Olivia Rudgard, *Al Jedda: The Man Mentioned 11 Times by Home Office as It Tried To Change Immigration Bill*, BUREAU INVESTIGATIVE JOURNALISM (July 11, 2014), <https://www.thebureauinvestigates.com/2014/07/11/al-jedda-the-man-mentioned-11-times-by-home-office-as-it-tried-to-change-immigration-bill/>.

91. The Home Office told the Supreme Court after his case was decided that they found new evidence that Al-Jedda's Iraqi passport was actually real (not fake as he had told investigators), and that the Iraqi government had his name in their citizens' database. The Court denied the admission of this new evidence, but that didn't stop Secretary May from filing a new order against Al-Jedda. *Id.*

92. Bennhold, *supra* note 21.

93. Wray, *supra* note 47.

94. Immigration Act 2014, c. 22, § 66 (U.K.).

95. The 2014 Act was given Royal Assent on May 14, 2014, about 5 months after Secretary May's second order. *See* Wray, *supra* note 47.

96. *See* Alice K. Ross, *Judge Raises 'Appalling Prospect' of Man Losing Citizenship for Third Time*, BUREAU INVESTIGATIVE JOURNALISM (Feb. 10, 2014), <https://www.thebureauinvestigates.com/2014/02/10/judge-raises-appalling-prospect-of-man-losing-citizenship-for-third-time/> (speculating before act was passed, but still relevant post-enactment).

violation of human rights.⁹⁷ The Home Office of the British government justified the law, in part, on the ground that they should have the power to expatriate people who place the United Kingdom in danger, and on the idea that “[c]itizenship is a privilege, not a right”⁹⁸ There were many critics of what the Home Office was proposing, though, even among different parties, with some members of Parliament worried that statelessness was not going to be used as a safeguard anymore.⁹⁹ In reaction to that part of the new bill, Liberal Democrat Sarah Teather stressed that denaturalizing those who would be left without a nation was “simply wrong and [that] the government should be seeking to reduce the number of stateless individuals in the world, rather than add to it.”¹⁰⁰ Independent party member Lord Pannick QC argued that by allowing the government to expatriate people and make them nationless, it would mean that they are no better than tyrants of other countries who use this as a tool to threaten adversaries and that they would be condoning that practice by allowing this provision.¹⁰¹

Another big concern, ahead of the debate by the House of Lords when the law was first sent to them, was the Home Office’s current practice of expatriating citizens while they were out of the country.¹⁰² One scholar has contended that expatriating individuals while they are abroad could result in a type of backlash; that is, other countries might stop meeting their diplomatic duties to the United Kingdom after they have allowed British nationals into their countries because they had British passports.¹⁰³ In other words, these countries may simply send these British citizens back to the United Kingdom due to the fact that they do not want to provide asylum for these now stateless people who may have ties to terrorism.¹⁰⁴ Conservative MP Robert Buckland expressed a similar sentiment when he claimed that this could put the United Kingdom in a “tit-for-tat situation: if we start doing it, then other

97. See Alice K. Ross & Patrick Galey, *Making People Stateless Is ‘Simply Wrong,’ Says MPs Ahead of Lords Debate*, BUREAU INVESTIGATIVE JOURNALIST (Mar. 17, 2014), <https://www.thebureauinvestigates.com/2014/03/17/making-people-stateless-is-simply-wrong-says-mps-ahead-of-lords-debate/> [hereinafter Ross & Galey, ‘*Simply Wrong*’].

98. *Id.*

99. *Id.*

100. *Id.*

101. Patrick Galey & Alice K. Ross, *Lords Deal Blow to Home Office Plans To Make Terror Suspects Stateless*, BUREAU INVESTIGATIVE JOURNALISM (Apr. 8, 2014), <https://www.thebureauinvestigates.com/2014/04/08/lords-deal-blow-to-home-office-plans-to-make-terror-suspects-stateless/>.

102. *Id.*

103. Ross & Galey, ‘*Simply Wrong*,’ *supra* note 97.

104. *Id.*

states can start doing it to us.”¹⁰⁵ Others have reported on the sinister effects of giving orders to deprive people suspected of terrorism while they are out of the country, particularly when motivated by the intent to prevent them from coming back to the United Kingdom and appealing to SIAC.¹⁰⁶

This concern was warranted given the cases of Bilal al-Berjawi and Mohamed Sakr, who were naturalized and British-born citizens, respectively, and who both held other nationalities.¹⁰⁷ The men went to Somalia in 2009, allegedly to join the terrorist group al-Shabbab, and by the next year, Secretary May had ordered them both expatriated.¹⁰⁸ This unfortunately was not the only bad news for al-Berjawi and Sakr, as both quickly fell under the United States’ radar as suspected terrorists, and were consequently targeted and killed by drone strikes.¹⁰⁹ In another instance, the Court of Appeal (Civil Division) turned a blind eye to the Home Office’s practice of stripping citizenship of individuals while they were out of the United Kingdom in the case of *L1 v. Secretary of State for the Home Department* in 2015—at least under the circumstances presented.¹¹⁰

In that case, a Sudanese-British citizen who was suspected of terrorism went on vacation with his family to his original home country of Sudan, and, while there, Secretary May ordered him expatriated.¹¹¹ The practical effect of his denaturalization was to have his whole family thrown out of the United Kingdom, because his wife had no residential status, even though most of their kids were born there.¹¹² SIAC acknowledged the hardship the order would impose on his children in not being able to enjoy their rights as British citizens, but deferred to the judgment of Secretary May in issuing the order in the first place.¹¹³ On appeal, the Court of Appeal upheld SIAC’s decision, dismissing the appeal of L1, and holding that expatriating him was done under “national security considerations,” not to gain a “tactical advantage in the appeal

105. *Id.*

106. *See* Wray, *supra* note 47.

107. *See, e.g.,* Alice K. Ross et al., *British Terror Suspects Quietly Stripped of Citizenship . . . Then Killed by Drones*, INDEPENDENT (Feb. 27, 2013), <http://www.independent.co.uk/news/uk/crime/british-terror-suspects-quietly-stripped-of-citizenship-then-killed-by-drones-8513858.html> [hereinafter Ross et al., *British Terror Suspects*].

108. *Id.*

109. *Id.*

110. *See* *L1 v. Sec’y of State for the Home Dep’t* [2015] EWCA Civ 1410, 2015 WL 9701551, 5 (Eng.).

111. Ross et al., *British Terror Suspects*, *supra* note 107.

112. *Id.*

113. *Id.*

process.”¹¹⁴ In addition, the Supreme Court narrowly construed the 1981 Act to not require the British government to give the person they are depriving of citizenship the right to appeal the order from inside the United Kingdom.¹¹⁵

Just prior to that case, and similar to al-Berjawi and Sakr’s cases’ outcomes, the Supreme Court of the United Kingdom ruled in favor of the government after they moved to expatriate a naturalized citizen.¹¹⁶ The appellant’s citizenship was stripped because the government alleged al-Qaeda trained him while he was living in Yemen, but the United Kingdom allowed for him to be extradited to the United States for crimes he allegedly committed against that country.¹¹⁷ In his U.K. case, the Court upheld the Court of Appeal’s decision that Secretary May’s use of Section 40(2) of the 1981 Act to deprive the appellant of his citizenship would not make him stateless because he could still likely regain his Vietnamese citizenship, even if it was against the Vietnamese government’s wishes to have him among its citizenry.¹¹⁸ In coming to that conclusion, the Court ruled that the Vietnamese government did not treat the appellant as a non-citizen “by operation of its law,” that they “‘expressly accepted that the appellant is . . . a Vietnamese citizen,’ and that its omission to do so was ‘deliberate’”—not that he could never become a citizen.¹¹⁹

IV. THE UNITED STATES AND EXPATRIATION OF TERRORISTS

The U.S. laws governing the denaturalization of citizens have stayed fairly consistent over the last sixty years.¹²⁰ The most recent version of the Immigration and Nationality Act (2012 Act) still only allows for depriving an American of their citizenship in a handful of circumstances, such as when a person voluntarily abandons their citizenship, has their citizenship taken away because they chose to fight for an enemy of the United States, or because they committed treason.¹²¹ Most cases after World War II concerning citizenship and nationality involved the question of whether the individual, who was about to have his or her

114. *LI*, [2015] EWCA 1410, 21, 29.

115. *Id.* at paras. 22, 25.

116. *Pham v. Sec’y of State for the Home Dep’t* [2015] UKSC 19, para. 63 (on appeal from [2013] EWCA Civ 616) (U.K.).

117. *Id.* at paras. 2, 4.

118. *Id.* at para. 63.

119. *Id.* at paras. 35, 38.

120. *Compare* Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 349, 66 Stat. 163 (codified as amended in scattered sections of 8 U.S.C.) with 8 U.S.C. § 1481 (2012).

121. 8 U.S.C. § 1481.

citizenship stripped, voluntarily renounced his or her citizenship by doing some act.¹²² For example, in the case of *Trop v. Dulles*, the issue was whether Trop gave up his American nationality by briefly deserting the Army during World War II, receiving a conviction and dishonorable discharge as a result.¹²³

The authority that was used to deprive him of his citizenship and restrict him from receiving a passport—the immediate question in his case—was based on a provision of the 1940 Nationality Act, allowing the U.S. government to deprive people of their citizenship if they were convicted of desertion in wartime.¹²⁴ The Court discussed how Congress—in granting the military the power to be “the arbiter of citizenship” (due to the fact that it could decide who was convicted of the crime of desertion), and therefore potentially decide who would lose their citizenship and be left without a nationality—was beyond its powers, and consequently reversed the lower court’s decision to deny Trop a passport on the basis that he never lost his citizenship originally.¹²⁵ Due to the fact that desertion of the Army was a common crime, the Court was concerned with the idea that Americans could lose their citizenship so frequently and easily, and instead wanted to leave this serious penalty to those who actively wanted to lose citizenship.¹²⁶ In acknowledging the seriousness of the crime of desertion, Chief Justice Warren proclaimed:

[T]he deprivation of citizenship is not a weapon that the Government may use to express its displeasure at a citizen’s conduct, however reprehensible that conduct may be. As long as a person does not voluntarily renounce or abandon his citizenship, and this petitioner has done neither, I believe his fundamental right of citizenship is secure.¹²⁷

In a related case that was decided the same day, the Court ruled that there was no intentional relinquishing of citizenship for Mitsugi Nishikawa even though he had served in the Japanese Army during the War.¹²⁸ Nishikawa was a dual citizen because he was born in the United States and because his parents were from Japan.¹²⁹ In 1939, he moved to Japan with the desire to work and travel there for several years, but because he was on his family’s register (among other reasons), when

122. See *Trop v. Dulles*, 356 U.S. 86, 101-02 (1958); see *Nishikawa v. Dulles*, 356 U.S. 129, 138 (1958).

123. *Trop*, 356 U.S. at 101-02.

124. *Id.* at 88.

125. *Id.* at 90-91, 104.

126. *Id.* at 90-91, 93.

127. *Id.* at 92-93.

128. *Nishikawa v. Dulles*, 356 U.S. 129, 138 (1958).

129. *Id.* at 131.

World War II started, he was required to join the Japanese Army, and did not protest since he was afraid of what would happen to him if he did.¹³⁰ He was not familiar with the Japanese language, so he did not know that war was imminent, and he did not fight against the United States by shedding any blood—working only as a mechanic during the war.¹³¹ The Court stressed that because voluntariness of repudiating citizenship was at issue, the government had to demonstrate that this condition was met by a standard of proof of “clear, convincing and unequivocal evidence.”¹³² Ruling for *Nishikawa*, the Court held that the government failed to prove that he had voluntarily fought for the Japanese military, which, if proven, would have resulted in the loss of his citizenship.¹³³

In 1967, the Court in *Afroyim v. Rusk* overruled another 1958 case, *Perez v. Brownell*, which allowed Congress to utilize the Immigration and Nationality Act of 1940 to deny an American-born citizen from re-joining the United States as a citizen after he had lived in Mexico for a substantial period of time, stayed there during World War II to evade the draft, and (most importantly for the purposes of satisfying the 1940 Act) voted in Mexican elections.¹³⁴ Revisiting its old decision, the Court in *Rusk* focused on whether Congress could strip away citizenship from someone who did not actively approve of them doing so, just because he or she had voted in foreign elections.¹³⁵ Using the legislative history of the Fourteenth Amendment to support most of its argument, the Court ruled that Congress did not have the power to strip citizenship away from someone without their assent.¹³⁶ This decision did not have the effect of limiting the government from denaturalizing its citizens over the next couple of decades.¹³⁷

In 1990, the U.S. State Department affirmatively put an end to the government’s liberal use of expatriation, at least as far as the diplomatic field was concerned.¹³⁸ With new standards for denaturalizing citizens, the Department made clear that Section 349 of the Immigration and Nationality Act (INA), as amended, only allowed for deprivation if an individual executed one of the acts listed in that section of the statute of

130. *Id.* at 131-32.

131. *Id.* at 132.

132. *Id.* at 136.

133. *Id.* at 137.

134. *Afroyim v. Rusk*, 387 U.S. 253, 268 (1967); *Perez v. Brownell*, 356 U.S. 44, 46, 62 (1958).

135. *Rusk*, 387 U.S. at 256.

136. *Id.* at 268.

137. Peter J. Spiro, *Expatriating Terrorists*, 82 *FORDHAM L. REV.* 2169, 2173 (2014).

138. *S. 3327—Expatriate Terrorist Act*, CONGRESS.GOV, <https://www.congress.gov/bills/111/congress/senate-bill/3327/actions> (last visited Nov. 4, 2016).

his or her own volition, and with the aim of renouncing themselves of their citizenship.¹³⁹ The Department also gave citizens at issue a presumption that they did not act with the intent to renounce their nationality, even if they gained another one or consistently maintained their loyalty to that other nation.¹⁴⁰ To make this process easy for its officials who worked in embassies worldwide, the Department pointed out that they should only assume that a person was going to or already had given up their American citizenship if they made that clear in the forms they had to fill out to get back to the United States, or other relevant documents.¹⁴¹ Today, it is considered unfathomable that someone can lose their citizenship against their will.¹⁴²

Politicians who thought that terrorists should fall under an exception challenged this approach in 2010.¹⁴³ Soon after the botched terrorist attack on Times Square in the Spring of 2010 by Faisal Shahzad, Senator Joseph Lieberman led a bipartisan charge in the House and Senate to pass legislation that would have given Congress expansive authority in expatriating citizens for even attenuated links to terrorism.¹⁴⁴ This bill was known as the Terrorist Expatriation Act, and it was designed to amend the INA of 1940 to allow citizens to be denaturalized if they “provid[ed] material support or resources to a foreign terrorist organization,” fought or “materially support[ed]” a group that was fighting against the United States, or fought or “materially support[ed]” a group that was fighting against a nation or “armed force” that was an ally of the United States.¹⁴⁵ The bill had support from all over the political spectrum, with Independent Senator Lieberman describing it as merely a necessary “update[]” to the 1940 law, and with Republican Senator Scott Brown saying that the proposed law demonstrated the “changing nature of war and recent events,” adding that “[w]ar has moved into a new direction.”¹⁴⁶ But many politicians were wary of its consequences, and legal experts criticized the proposed law as being contrary to the Constitution and overbroad to the point where a non-threatening act

139. *Id.* at 1092-93.

140. *Id.* at 1093.

141. *Id.* at 1094.

142. Spiro, *supra* note 137.

143. Ed Hornick, *Bill Aims To Strip Certain Americans of Their Citizenship*, CNN (May 7, 2010, 5:36 PM), <http://www.cnn.com/2010/POLITICS/05/06/terrorism.act.change/>.

144. *Id.*

145. Terrorist Expatriation Act, S. 3327, 111th Cong. § 2 (2010).

146. Hornick, *supra* note 143.

could result in harmless individuals being stripped of their citizenship.¹⁴⁷ In the end, the bill was never enacted.¹⁴⁸

When the bill was proposed, those who created the idea behind it likely did so with a focus solely on al-Qaeda. However, when Republican Senator Ted Cruz proposed his new version of the 2010 bill, which is still being considered by the Senate,¹⁴⁹ he had a different foreign terrorist organization in mind.¹⁵⁰ The new bill is called the Expatriate Terrorist Act (ETA or S. 247),¹⁵¹ and he first introduced it in September of 2014, while Republican Congressman Steve King submitted a duplicate version to the House of Representatives in early 2015.¹⁵² The ETA makes a few changes to the INA as it currently stands, including: the addition of “foreign terrorist organization” to the subsection within Section 349(a) that deals with pledging loyalty to another nation, adding it again in the next section that deals with fighting on behalf of another nation that is adverse to the United States, and the addition of a whole new section that involves joining or giving “training or material assistance to, any foreign terrorist organization.”¹⁵³ In effect, the proposed law would allow the government to expatriate citizens who either fight alongside terrorist organizations or give them “material” assistance,¹⁵⁴ because, according to Senator Cruz, it would make those acts “an affirmative renunciation of American citizenship.”¹⁵⁵ The Senator also described the need for S. 247 with a series of theoretical examples to emphasize its importance:

The question is very simple: would any reasonable person want an American who is right now in Iraq, who is right now training with ISIS, who is right now taking up arms, . . . who is right now beheading children, . . . who is right now standing arm-in-arm with virulent terrorists who have pledged to take jihad to America—would anyone of good conscience in either party want that person to be able to come back and land in

147. *Id.*

148. S. 3327.

149. Expatriate Terrorist Act, S. 247, 114th Cong. § 1 (2015).

150. See David Sherfinski, *Dems Block Cruz Bill To Strip U.S. Citizenship from Islamic State Defectors*, WASHINGTON TIMES (Sept. 18, 2014), <http://www.washingtontimes.com/news/2014/sep/18/dems-block-cruz-strip-citizenship-isis-defectors/>.

151. S. 247 § 2.

152. Aviva Stahl, *The Expatriate Terrorist Act: An American Culture of Fear*, FUSION (Apr. 6, 2015, 12:00 PM), <http://fusion.net/story/112900/the-expatriate-terrorist-act-an-american-culture-of-fear/>.

153. S. 247 § 2(a)(2)-(4).

154. See Stahl, *supra* note 152.

155. Sherfinski, *supra* note 150.

LaGuardia airport with a U.S. passport and walk unmolested onto our streets?¹⁵⁶

There has been serious opposition to Senator Cruz's proposed law; however, it was referred to the Senate Judiciary Committee based on an objection by Democratic Senator Mazie Hirono who thought it should be considered more in depth before it could be enacted.¹⁵⁷ Senator Hirono also argued for waiting to vote on the law because, if it passed, basic constitutional rights would be at stake.¹⁵⁸ Many scholars and commentators have delved further into the problems with the law. David Cole of the Constitution Project argued at the time Senator Cruz first introduced the law that if the ETA passed, it would not actually result in the denaturalization of terrorists, nor would it protect Americans.¹⁵⁹ Rather, it would create constitutional quandaries and merely serve to pump up Senator Cruz's public relations campaign.¹⁶⁰

Another commentator discussed her views of the ETA, arguing that it is a rough reminder about how people of the United States respond when they are scared.¹⁶¹ She described the fact that an act such as this could even be argued about in the United States in this day and age as "mark[ing] our deep entrenchment in a racialized culture of fear," and that the law itself should be "a reminder of our willingness to sacrifice the humanity of others when we believe our security is at stake."¹⁶² The American Civil Liberties Union (ACLU) has also come out against the ETA, as it is concerned with the fact that it would allow citizens to be expatriated without even requiring a conviction.¹⁶³ Also concerning for the ACLU is the fact that this process could initiate simply by the word of a non-disclosed government official on the basis of "secret evidence."¹⁶⁴ Thus, the ACLU contends that S. 247 would flip "the whole notion of due process on its head."¹⁶⁵ According to at least one website, the ETA

156. *Id.*

157. *Id.*

158. *Id.*

159. David Cole, *No, You Can't Strip Americans of Their Citizenship, Senator Cruz: The Folly of the Expatriate Terrorist Act*, JUST SECURITY (Sept. 17, 2014, 1:40 PM), <https://www.justsecurity.org/15147/no-cant-strip-americans-citizenship-senator-cruz-foolly-expatriate-terrorists-act/>.

160. *Id.*

161. Stahl, *supra* note 152.

162. *Id.*

163. Letter from Karin Johanson, Director, ACLU, to the U.S. Senate (Nov. 18, 2015), <https://www.aclu.org/letter/aclu-letter-urging-opposition-s-247-expatriate-terrorists-act-11-18>.

164. *Id.*

165. *Id.*

has only a 1% chance of being passed,¹⁶⁶ which should make its critics happy.

V. FRANCE AND EXPATRIATION OF TERRORISTS

The history of expatriation law in France has been decidedly dark, especially leading up to, and during, World War II.¹⁶⁷ This was due, at least in part, to the fact that in the early part of the 20th century, the French government made it relatively easy to have a person's citizenship stripped.¹⁶⁸ The government passed a series of laws from 1915 to 1938 that allowed the government to expatriate citizens merely for "disloyalty, fraud, and unworthiness."¹⁶⁹ At the start of World War II, the 3,000,000 noncitizens residing in France were naturalized quickly so that they could be utilized.¹⁷⁰ However, the Vichy takeover of the country resulted in an evaluation of citizenship status for those who had been naturalized over the previous ten or so years—with the intention of targeting Jews—and ended with a total expatriation of over 15,000 French citizens.¹⁷¹ By the end of the War, however, the Vichy policies were abandoned, and most of those who were expatriated were allowed to return.¹⁷²

Fast forward to 1998, when the French government changed their deprivation law¹⁷³ to allow its use solely in cases where the person was a naturalized French citizen, and if their citizenship was revoked, they would not be left without a nation.¹⁷⁴ Expatriating acts include being found guilty of committing crimes against the "fundamental interests of the Nation," committing terrorism-related offenses, and performing acts that are harmful to France on behalf of another country.¹⁷⁵ As of 2003, the government has been able to use the past

166. *S. 247: Expatriate Terrorist Act*, GOVTRACK.US, <http://www.govtrack.us/congress/bills/114/s247> (last visited Oct. 3, 2016).

167. Sandra Mantu, *Deprivation of Citizenship in France* (ENACT Enacting European Citizenship, Working Paper No. 4, 2010), www.enacting-citizenship.eu/index.php/global/download/deliverables/WP4D3.pdf [hereinafter Mantu, *Deprivation*].

168. *Id.* at 11.

169. *Id.* at 10.

170. *Id.*

171. *Id.*

172. *Id.* at 11.

173. Loi 97-170 du 16 mars 1998 relative à la nationalité [Law 97-170 of Mar. 16, 1998 relating to Nationality] JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 17, 1998, p. 3935.

174. Mantu, *Deprivation*, *supra* note 167, at 13.

175. CODE CIVIL [C. CIV.] [CIVIL CODE] art. 25 (Fr.) (George Rouhette, trans.).

history of naturalized citizens to expatriate them.¹⁷⁶ However, for deprivation under Article 25 of the Civil Code to come into play (besides requiring the person to be a naturalized citizen), if the government wants to expatriate someone, the conduct that they are using as a predicate has to have happened prior to the person obtaining citizenship, or within ten years after their naturalization.¹⁷⁷ This was tweaked partially via a 2006 law,¹⁷⁸ which established that if the government is seeking to denaturalize someone as a result of their terrorist conduct, or due to acts that he or she performed that are contrary to the “fundamental interests” of France, can strip that person’s citizenship only for acts which occurred within fifteen years after he or she acquired citizenship.¹⁷⁹

As to who decides whether to submit an order revoking an individual’s citizenship, this is for the executive branch of the government to determine.¹⁸⁰ Once this determination is made, Decree 93-1362¹⁸¹ orders the executive branch to inform the person of the order to allow them sufficient time to appeal the decision.¹⁸² In the order, the official must put the legal and factual reasoning for why they have chosen to deprive the citizen of his nationality.¹⁸³ Upon completion of those requirements, the Council of State, an extension of the government responsible for serving as a legal consultant to the executive branch for resolving questions revolving around legislation, as well as the highest court of the country for adjudicating administrative matters, then has to approve of the executive’s decision for the deprivation to proceed.¹⁸⁴ This power has rarely been carried out, though, because as of March 2016, there have only been thirteen orders for expatriating

176. Mantu, *Deprivation*, *supra* note 167, at 13 (citing to Law 2003-1119 of Nov. 26, 2003).

177. CODE CIVIL [C. CIV.] [CIVIL CODE] art. 25 (Fr.) (Georges Rouhette, trans.).

178. Loi 2006-64 du 23 janvier 2006 relative à la lutte contre le terrorisme [Law 2006-64 of Jan. 23, 2006 on the Fight Against Terrorism] JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Jan. 24, 2006.

179. Mantu, *Deprivation*, *supra* note 167, at 13.

180. Sandra Mantu, *Citizenship Deprivation in France: Between Nation and the Republic*, JURIST (Mar. 16, 2016), <http://jurist.org/forum/2016/03/sandra-mantu-french-citizenship.php> [hereinafter Mantu, *Citizenship Deprivation*].

181. Décret 93-1362 du 30 décembre 1993 aux déclarations de nationalité [Decree 93-1362 of Dec. 30, 1993 concerning the Declaration of Citizenship], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Dec. 31, 1993, p. 18559.

182. Mantu, *Citizenship Deprivation*, *supra* note 180.

183. Decree 93-1362 of December 30, 1993 (Fr.).

184. Mantu, *Citizenship Deprivation*, *supra* note 180.

individuals who had either been part of terrorist attacks or had done something that went against the fundamental interest of France.¹⁸⁵

Once France strips citizenship from someone, it is not allowed to automatically extradite him or her to the nation to which they were born.¹⁸⁶ The case involving Adel Tebourski is a prime example of this restriction.¹⁸⁷ Tebourski is a Tunisian citizen, who married a French national in 1995 and subsequently became a naturalized French citizen in 2000.¹⁸⁸ In November of 2001, he was suddenly arrested for being a part of the conspiracy¹⁸⁹ that led to the assassination of the head of Afghanistan's Northern Alliance Army.¹⁹⁰ He was not tried until 2005, and soon after, he was convicted for being part of a terrorist operation.¹⁹¹ Right before he was to be released early for good behavior in July of 2006, French authorities revoked his citizenship and also ordered him to be sent back to Tunisia on the ground that he was a danger to the public.¹⁹² After he launched a series of appeals to the Paris Administrative Court in response to the denial of his request for asylum in France, which were all rejected, he was deported in August of that year.¹⁹³

Upon his deportation, Tebourski filed another appeal with the Refugee Appeals Board (RAB), which, while recognizing that there would be some danger for him to return to his home country—in that they would possibly re-arrest him for his prior conviction of being involved with a terrorist operation—still denied his request.¹⁹⁴ However, prior to his deportation, Tebourski cited Article 3 of the U.N. Convention against Torture (1984) in a claim he filed with the Committee Against Torture (CAT).¹⁹⁵ He alleged, similar to what the RAB conceded but did not follow up on, that by returning to Tunisia, he

185. *Id.*

186. Nora El Qadim, *The January 2015 Attacks and the Debate on Deprivation of Citizenship in France*, REVS. & CRITICAL COMMENT. (Aug. 10, 2015), http://councilforeuropeanstudies.org/critcom/the-january-2015-attacks-and-the-debate-on-deprivation-of-citizenship-in-france/#_ftnref24.

187. *See* Adel Tebourski v. France, Judgments U.N. Committee Against Torture, Comm. No. 300/2006, U.N. Doc. CAT/C/38/D/300/2006 (2007).

188. *Id.* at para. 2.2.

189. He was arrested (and eventually convicted) for his role in the sending over of volunteers to join a terrorist organization in Pakistan and Afghanistan, which he participated in by producing fake visas and passports for the new recruits. *Id.* at para. 2.1.

190. *Id.*

191. *Id.* at paras. 2.1-2.

192. *Id.*

193. *Id.* at paras. 2.3-4.

194. *Id.* at para. 2.5.

195. *Id.* at para. 3.1.

would be tried, convicted, and sentenced again for crimes for which he already served time, and provided examples where convicted people who had been sent back had been tortured and imprisoned in terrible conditions.¹⁹⁶ CAT subsequently found in favor of Tebourski by ruling that France “failed to meet its obligations under Articles 3 and 22 of the Convention,” when they deported him to Tunisia.¹⁹⁷

The year 2015 was a profound year in France as far as terrorism and public safety are concerned, starting with the terror attacks involving Charlie Hebdo and a kosher market in January.¹⁹⁸ While the nation dealt with the fallout, the highest court in France decided that one of its citizens was no longer entitled to his citizenship, leading the liberal government to think that expatriation could be utilized as a counter-terrorism measure.¹⁹⁹ The person at issue was Ahmed Sahnouni, a Moroccan by birth who was also a naturalized Frenchman as of 2003.²⁰⁰ He was convicted in 2013 for “association with criminals in relation to a terrorist plot,” and while serving time for the crime, he was deprived of his citizenship by the government.²⁰¹ His lawyer’s defense was that depriving him of his citizenship was unjust, because by being allowed to do so, the government was treating those who were born into French citizenship differently from those who became citizens later.²⁰² The Constitutional Council rejected this argument and affirmed the revocation order.²⁰³

In November 2015, tragedy struck France again as ISIS coordinated a series of strikes at Parisian public venues resulting in over one hundred dead, and over one hundred injured.²⁰⁴ President Hollande responded to this by getting tough on terrorism, announcing a proposal for implementing state of emergencies without needing Senate approval initially, in addition to a more controversial proposal: a constitutional amendment that would allow the government to strip citizenship from all dual nationals convicted of participating in an act of terrorism or in an act

196. *Id.* at paras. 3.1-.2.

197. *Id.* at paras. 8.7, 8.9.

198. El Qadim, *supra* note 186.

199. *Id.*

200. Kim Willsher, *Moroccan-Born Man Jailed on Terror Charges To Lose French Nationality*, GUARDIAN (Jan. 23, 2015), <http://www.theguardian.com/world/2015/jan/23/moroccan-born-man-jailed-terror-lose-french-nationality-sahnouni>.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Paris Attacks: What Happened on the Night*, BBC NEWS (Dec. 9, 2015), <http://www.bbc.com/news/world-europe-34818994>.

contrary to France's interests.²⁰⁵ However, after some outcry from liberal critics, the bill that contained this provision²⁰⁶ was expanded to apply to all French citizens.²⁰⁷ The idea of a more expansive deprivation of citizenship amendment was received with vast support by the French Republic, according to some national polls.²⁰⁸ Among those who supported the leftist government's proposition were the highly conservative segments of society, including groups such as the National Front—as exemplified by their Vice President and former French Conservative President Nicolas Sarkozy's statement that “[t]errorists don't deserve French citizenship, because French citizenship is an honor.”²⁰⁹

There was enough backing for what has become known as the “Déchéance de la Nationalité” (DN), that by the time the Assemblée nationale (one part of the French Parliament) voted on it on February 10, they were able to pass it by a comfortable margin (317 to 199 in favor).²¹⁰ As far as what the bill set out to do, first, it would have applied to anyone who had French citizenship whether they were born with it or were naturalized at some point.²¹¹ As to whom it would have affected in particular, the person whose citizenship is at stake would have had it taken away if he or she committed a crime contrary to French identity, but the law did not define what that meant exactly.²¹² Prime Minister Valls suggested that this would have included only the worst offenses, such as the direct contribution of money to a terrorist group, or committing acts of terrorism in a group, or by oneself.²¹³ Lastly, the DN allowed for expatriation for terrorists, or the stripping of rights associated with citizenship, which would likely have applied in cases where

205. Don Melvin & Noisette Martel, *French National Assembly Oks Bill To Strip Terrorists of Citizenship*, CNN (Dec. 10, 2016, 4:29 PM), <http://www.cnn.com/2016/02/10/europe/france-constitutional-change/>.

206. Loi 678 du 10 février 2016 de Projet De Loi Constitutionnelle de protection de la Nation [Law 678 of Feb. 10, 2016 on the Project of Constitutional Law for the Protection of the Nation].

207. Melvin & Martel, *supra* note 205.

208. Raphaël Hadas-Lebel, *France's Citizenship Test*, PROJECT SYNDICATE (Mar. 10, 2016), <https://www.project-syndicate.org/commentary/debate-french-citizenship-for-terrorists-by-raphael-hadas-lebel-2016-03>.

209. *French Debate Terrorism, Dual Citizenship*, JAPAN TIMES (Jan. 3, 2016), <http://www.japantimes.co.jp/news/2016/01/03/world/french-debate-terrorism-dual-citizenship/#.VvAIJQrI1J>.

210. James McAuley, *Why a New Citizenship Law in France Has Outraged the French Left*, WASHINGTON POST (Feb. 11, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/02/11/why-a-new-citizenship-law-in-france-has-outraged-the-french-left/> [hereinafter McAuley, *New Citizenship*].

211. Mantu, *Citizenship Deprivation*, *supra* note 180.

212. *Id.*

213. *Id.*

someone is solely a French citizen and would probably have resulted in the deprivation of their voting rights, for example.²¹⁴

However, there was a ferocious resistance to the passage of this law that Hollande and his government proposed, led by constituents and politicians in Hollande's own Socialist party, accompanied by others on the left.²¹⁵ Leftists argued, *inter alia*, that they doubted whether the DN could actually prevent terror attacks from happening, because all it would do is revoke citizenship, which would likely have no effect on those who were going to carry out a future attack.²¹⁶ They also contended that the DN would lead to the dissolution of the fundamental structure of French society, a structure built on ideas such as equality among citizens.²¹⁷ One of the more telling examples of the Socialist party refusing to support their party member was when President Hollande's Justice Minister, Christiane Taubira, resigned from her post, partly in protest of the anticipated increase in the government's expatriation power.²¹⁸ Her departure sent a message to the President that liberals were not going to support this harsh new law.²¹⁹

Another argument that arose was that this call for expanding the revocation of French nationality is only a continuous of the prior debate within French society about the assimilation of Muslims, and the idea that Muslim French citizens do not fit into what other French people consider to be true "French" citizens.²²⁰ This idea is based on the history of expatriations in the country related to terrorism-related offenses, which were almost entirely cases involving North African men.²²¹ One scholar considered the effects of allowing the DN to pass, and he thought that by creating inequality among different types of French nationals, Hollande was "creating a tsunami," in the fallout from the DN's passage.²²² Ultimately, the French Senate, which needed to pass the law before it could become a Constitutional amendment, approved a different version of the DN, which significantly hurt its chances of passing.²²³ On

214. *Id.*

215. Hadas-Lebel, *supra* note 208.

216. McAuley, *New Citizenship*, *supra* note 210.

217. *Id.*

218. Horn, *supra* note 14.

219. *Id.*

220. El Qadim, *supra* note 186.

221. *Id.*

222. McAuley, *New Citizenship*, *supra* note 210.

223. James McAuley, *French Senate Effectively Kills Controversial Nationality Law*, WASHINGTON POST (Mar. 18, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/03/18/french-senate-effectively-kills-controversial-nationality-law/>.

March 30, 2016, President Hollande finally conceded to opponents of the bill and withdrew it from consideration.²²⁴

VI. EXPATRIATION OF TERRORISTS: RIGHT OR WRONG?

What seems abundantly obvious when examining the way each of the countries discussed above has handled its expatriation policies towards terrorism, is that the United Kingdom's policies are the most draconian based on its laws and case law. The passage of the 2014 Act was the epitome of this approach, in that it allows the government to denaturalize someone even if it would make the person stateless.²²⁵ The only restraint on this power is that the Secretary must have some indication that the person could gain another nationality at some point, but it is undefined as to how soon that has to occur, and could be problematic if the citizenship may take years to achieve.²²⁶ Compared to the United Kingdom's approach, the United States' policies are relatively tame. The *Rusk* decision, along with other U.S. Supreme Court cases, makes clear that the government never has the authority to revoke a person's nationality, no matter what someone has done, without the person volunteering to do so.²²⁷ In addition, the recent attempts at legislation to make an exception for those convicted of terrorism-related offenses have not been widely accepted and have shown no real sign that they will be accepted.²²⁸ France's approach towards expatriation, however, falls somewhere in between. While the DN was eventually rejected, the fact that many people supported the concept of it, along with the French government's previous expatriations for conduct that fell under terrorism (or at least that which fell under the vague description of being contrary to French culture),²²⁹ demonstrates that a large portion of the country is legitimately in support of denaturalizing its citizens for terrorism.

Given that the three countries have or tried to incorporate various standards for expatriation of their citizens, the issue arises as to whether countries should really be allowed to do so in the first place. International law sources, especially the most foundational of them all—the UDHR—indicate that nations should not be allowed to perform this practice, particularly if it would result in an individual not having any

224. Nossiter, *supra* note 17.

225. See Immigration Act 2014, c. 22, § 66 (U.K.).

226. See, e.g., *Pham v. Sec'y of State for the Home Dep't* [2015] UKSC 19, [2], [4] (on appeal from [2013] EWCA Civ 616) (U.K.).

227. See *Afroyim v. Rusk*, 387 U.S. 253 (1967); see also, *Trop v. Dulles*, 356 U.S. 86 (1958).

228. *S. 247: Expatriate Terrorist Act*, GOVTRACK.US, *supra* note 166.

229. See, e.g., Willsher, *supra* note 200.

nation to call home.²³⁰ But this, at least for some, is directly at odds with how terrorism can be countered. Those in favor of having the ability to denaturalize citizens who are terrorists, or those suspected of terrorism, do not care that it would make them stateless. They are only concerned with what they feel is the protection of their homeland from those they view as not worthy of being a part of it anymore. However, if terrorism is seen as such a heinous act against a country, where do we stop if we go down the road of stripping citizenship away? In the United States, for example, we never consider someone who has gone on a shooting rampage at a school to be eligible to lose his or her citizenship. We try the individual in court, convict for the crime, and usually sentence the individual to a prison term that can last the rest of his or her life (if the death penalty is not used instead). Why should we not do the same with those convicted of terrorism?

The reason for this dichotomy may be explained by the idea that the groups and people responsible for terrorism tend to be Islamic for the countries discussed here. One reason why advocates of expatriation for terrorists think Muslim terrorists can be treated differently is because advocates see the terrorists as foreign due to the fact that they do not fall into Judeo-Christian norms.²³¹ This reasoning is a slippery slope, though. If we treat some citizens differently from others, then laws such as the Fourteenth Amendment of the U.S. Constitution, or French societal values involving equality for all,²³² do not mean much. It would make more sense to try citizen-terrorists as if they were any other citizens. In essence, they should be given the right to a fair trial, and sentenced by the laws of the specific country.

In addition, in considering whether laws allowing for the stripping of citizenship of terrorists comply with basic rights for all people, it does not seem particularly fair the way France and the United Kingdom have handled their deprivations thus far. The fact that Britain has taken away citizenship when people are out of the country,²³³ and that their courts have upheld such a practice,²³⁴ is shocking, especially given the fact that it definitively makes it harder on these people when they go to appeal their decisions. This practice is disturbing given the fact that it appears there is some link between people that the United Kingdom has expatriated for

230. CRS, *supra* note 34.

231. See Stahl, *supra* note 152; see also El Qadim, *supra* note 186.

232. See McAuley, *New Citizenship*, *supra* note 210.

233. See Bennhold, *supra* note 21.

234. See Ross et al., *British Terror Suspects*, *supra* note 107.

terrorism and those who are killed in U.S. drone strikes.²³⁵ France is not much better, as exemplified by their expatriation and deportation of one of their citizens. Even though they returned him to his home country, there was evidence to suggest that Tebourski would be tortured and possibly re-incarcerated for crimes that he already been found guilty of and imprisoned for while in France.²³⁶ The latter situation was at least ruled in contravention of a treaty against torture to which France was a signatory,²³⁷ but the fact that it was willing to deport him in the middle of an appeal to gain asylum is telling of the government's mindset. On a similar level, the United States' ETA would allow for analogous deviations of due process rights by allowing clandestine evidence to be used in expatriating terrorists,²³⁸ which is particularly frightening in its own right.

Furthermore, for at least two of these countries' proposed or completed legislation allowing for denaturalization of terrorists, there is a real lack of oversight and accountability that accompanies the decision of who to deprive. France, to its credit, has requirements in place that allow for more transparency when a deprivation order is filed against someone because that person has to be notified about it and given sufficient time to create a defense on appeal of the decision.²³⁹ The ETA and 2014 Act in the United States and United Kingdom, respectively, do not, at least facially, provide for the same kind of supervision. This is inherently unjust, as there is not, or would not be, much in the way of preventing arbitrary enforcement of those respective policies, meaning that that they would be unfair on a fundamental level. To add more fuel to the flames, the language of all three of these laws would allow governments to capriciously implement them. The 2014 Act allows for expatriation if doing so would be in the public good and if the person's conduct has been "seriously prejudicial to the vital interests of the U.K.," as long as the Home Secretary thinks that the person can attain another citizenship in a reasonable period of time.²⁴⁰ The ETA allows for expatriation if a person provided "material assistance to" a terrorist organization.²⁴¹ And the DN allowed for it in cases where a person conducted himself or

235. *See id.*

236. *See* Adel Tebourski v. France, Judgment, U.N. Committee Against Torture, Comm. No. 300/2006, U.N. Doc. CAT/C/38/D/300/2006 (2007).

237. *See id.*

238. *See* Letter from Karin Johanson of the ACLU to the U.S. Senate, *supra* note 163.

239. *See* Mantu, *Citizenship Deprivation*, *supra* note 180.

240. *See* Immigration Act 2014, c. 22, § 66 (U.K.).

241. *See* Expatriate Terrorist Act, S. 247, 114th Cong. § 2 (2014).

herself in a way that goes against France.²⁴² All three of these laws can give the country who wields them tremendous power to strip citizenship based on ambiguous provisions. This simply is unacceptable, especially given that people convicted of any other crime in these countries are subject to the safeguards of due process.

VII. CONCLUSION

The United Kingdom has the most developed policy structure in place for denaturalizing terrorists and can therefore serve as a guidepost for examining the benefits and drawbacks to allowing a government to have this controversial policy. While all three countries examined in this Comment have created similar laws or proposals for laws in the wake of terrorist attacks, there is no evidence to suggest they will or already have served as a kind of deterrence policy for future terrorists who want to wreak havoc in the country that they are in. Based on who has supported laws that condone denaturalization for terrorists, it would seem to align with the general idea that people act on their gut responses in the aftermath of tragedy. Hence, when countries enact such policies, it appears, at first, to be conducive to stopping or preventing terrorism. However, if one takes a more methodical approach and actually thinks about whether such laws can do more harm than good, it is clear that depriving people of due process to meet national goals is not the appropriate way to go about countering terrorism. Therefore, it is fair to say that countries should not expatriate terrorists or those suspected of terrorism, because international and common law does not favor such a procedure, and because the negative consequences of that kind of law outweigh the benefits.

242. See Loi 678 du 10 février 2016 de Projet De Loi Constitutionnelle de protection de la Nation, art. 2 [Law 678 of Feb. 10, 2016 on the Project of Constitutional Law for the Protection of the Nation].