

**CITIZENSHIP UNMOORED: EXPATRIATION AS A
COUNTER-TERRORISM TOOL**

LESLIE ESBROOK*

* J.D., Yale Law School '15. My deepest thanks go to Professors W. Michael Reisman and Muneer Ahmad for their encouragement and thoughtful edits, the Salzburg Global Seminar's Lloyd N. Cutler Fellows Program, and the editors at the University of Pennsylvania Journal of International Law for their diligent review.

1273

TABLE OF CONTENTS

1.	History of Citizenship and Nationality Laws in the U.S. and Beyond.....	1278
	1.1. <i>The U.S. Example</i>	1278
	1.2. <i>Other Western Nations</i>	1281
2.	Current Counter-Terrorism Laws on Citizenship.....	1284
	2.1. <i>Enacted Laws</i>	1285
	2.1.1. <i>The UK</i>	1285
	2.1.2. <i>Canada, Israel, and Australia</i>	1287
	2.1.3. <i>Non-Western Countries</i>	1289
	2.2. <i>Proposed Laws</i>	1291
	2.2.1. <i>The U.S.</i>	1291
	2.2.2. <i>Other Western Countries</i>	1293
3.	What Rights Does Expatriation Affect?	1295
4.	Merits of Citizenship-Stripping Provisions	1300
	4.1. <i>International Legal Limitations</i>	1300
	4.2. <i>International Policy Implications</i>	1305
	4.2.1. <i>Fractured International Cooperation</i>	1306
	4.2.2. <i>Use as a Political Tool</i>	1306
	4.2.3. <i>Rejection of Less Disruptive, More Effective Tools</i> ...1307	
	4.2.4. <i>Creation of Inconsistent Laws on Terrorism</i>1307	
	4.2.5. <i>Procedural Fairness Questioned</i>1309	
	4.2.6. <i>Lack of Transparency and Potential for Abuse of Discretion</i>	1310
5.	Alternative Proposals to Combat the Expansion of Terrorism.....	1312
	5.1. <i>Passport Suspension, Revocation, and Temporary Travel Documents</i>	1312
	5.2. <i>Secondary Alternatives: Rehabilitation Programs, Increased Border Security, and Civil Aviation Liability</i>	1323
6.	Conclusion: On the Prohibition of Expendable Identity	1328

On November 1, 2013, Hilal al Jedda received an order from the Home Secretary of the United Kingdom, a woman responsible for overseeing all internal affairs of England and Wales.¹ It informed him that he was no longer considered a citizen of the UK.² This no

¹ *Secretary of State for the Home Department*, CROWN GOV'T DIGITAL SERV., <https://www.gov.uk/government/ministers/secretary-of-state-for-the-home-department> [<https://perma.cc/P4U7-XB4T>] (last visited Dec. 15, 2015).

² Alice K. Ross, *Home Secretary Strips Man of UK Citizenship – For the Second*

doubt came as a shock to Mr. al Jedda, who had, in October 2013 – three weeks prior – won his appeal at the UK Supreme Court from an identical order revoking his citizenship a first time in 2007 on the grounds that the revocation would leave him effectively stateless.³ Identified by the Home Secretary as a terrorist threat for allegedly recruiting terrorists and facilitating travel of an identified terrorist explosives expert into Iraq,⁴ Mr. al Jedda had already experienced a fair amount of deprivation in the name of counterterrorism. He was detained by British forces in Iraq from 2004–2007, without charges,⁵ and tortured, which the European Court of Human Rights found constituted an unlawful deprivation of liberty and security under Article 5 of the European Convention on Human Rights.⁶ Since 2007, he has lived as an illegal resident of Turkey, making use of a fraudulent Iraqi passport to apply for work and spending his time engaged in prolonged court battles.⁷

Mr. al Jedda's saga may be the most dramatized public display of State citizenship-stripping or revocation laws, but it is not unique. Since 9/11, developed and developing countries alike have demonstrated a growing trend towards serious consideration and passage of citizenship revocation statutes.⁸ With the growth of the Islamic State in Iraq and Syria (ISIS), these trends have rapidly exacerbated. ISIS, uniformly designated as a terrorist group by the UN, U.S., and EU,⁹ has attracted increasing numbers of young

Time, THE BUREAU OF INVESTIGATIVE JOURNALISM (Dec. 2, 2013), <http://www.thebureauinvestigates.com/2013/12/02/home-secretary-strips-man-of-uk-citizenship-for-the-second-time> [<https://perma.cc/32P6-A7UQ>].

³ Secretary of State for the Home Department v. Al-Jedda, [2013] UKSC 62 (appeal taken from Eng.).

⁴ Case of Al-Jedda v. The United Kingdom, App. No. 27021/08, 2011 Eur. Ct. H.R. ¶ 11 (2011).

⁵ To date, Mr. al Jedda has never been charged with a crime under UK domestic law or international law. *Id.*

⁶ The Court found that the United Kingdom's actions constituted a grave enough breach that lasted for a "very long period of time" and unc customarily awarded monetary compensation in the sum of € 25,000. *Id.* ¶ 114.

⁷ Ross, *supra* note 2.

⁸ See *infra* Section 2 (describing current international anti-terrorism law).

⁹ See S.C. Res. 2170, ¶ 1, U.N. Doc. S/RES/2170 (Aug. 15, 2014) ("*The Security Council . . . [d]eplores and condemns in the strongest terms the terrorist acts of ISIL and its violent extremist ideology, and its continued gross, systematic and widespread abuses of human rights and violations of international humanitarian law*") (emphasis added); S.C. Res. 1267, ¶ 6, U.N. Doc. S/RES/1267 (Oct. 15, 1999) (establishing a Committee of the Security Council to oversee the three sanctions measures imposed by the Security Council and listing ISIL as an entity "associated with" Al-Qaida under the alias Al-Qaida in Iraq); *Foreign Terrorist Organiza-*

people to join their conquest to restore an Islamic caliphate in the Middle East.¹⁰ The group's message includes calls for attacks in the West, the promotion of which has been taken up by the young disciples now deemed foreign terrorist fighters (FTFs) who maintain citizenship in the U.S. or in European countries.¹¹ Faced with an increasingly dire situation and no modern-day precedent, Western leaders have turned to citizenship-stripping in an attempt to stem the tide of FTFs.¹²

The new rhetoric and promotion of citizenship-stripping as a counter-terror tool is extreme. While citizenship revocation has always been codified as States' last right to determine their composition, the use of the practice had reached near single digits following World War II. Used during the Nazi era and interwar years as

tions, U.S. DEP'T OF STATE, <http://www.state.gov/j/ct/rls/other/des/123085.htm> [<https://perma.cc/8QLE-CA34>] (last visited Dec. 15, 2015) (listing ISIS on the list of designated foreign terrorist organizations).

¹⁰ Alan Cowell & Maia de la Baume, *Briton and Frenchman Tentatively Identified in Islamic State Execution Video*, N.Y. TIMES (Nov. 17, 2014), <http://www.nytimes.com/2014/11/18/world/europe/british-and-french-militants-may-have-been-seen-in-isis-execution-video.html> [<https://perma.cc/5ZM5-NSX2>]; Suzanne Daley & Maia de la Baume, *A French Town Reels After Teenage Girl Vanishes Apparently to Join Jihadists*, N.Y. TIMES (Dec. 1, 2014), <http://www.nytimes.com/2014/12/02/world/europe/a-french-town-reels-after-teenage-girl-vanishes-apparently-to-join-jihadists.html> [<https://perma.cc/FQN2-HB8Z>].

¹¹ See, e.g., S.C. Res. 2249, ¶ 1, U.N. Doc. S/RES/2249 (Nov. 20, 2015) (condemning a list of recent attacks); Rukmini Callimachi, *ISIS Claims Responsibility, Calling Paris Attacks 'First of the Storm,'* N.Y. TIMES (Nov. 14, 2015), <http://www.nytimes.com/2015/11/15/world/europe/isis-claims-responsibility-for-paris-attacks-calling-them-miracles.html> [<https://perma.cc/ACD9-C6GZ>] (describing ISIS taking responsibility for terrorist attacks in Paris and their associated rhetoric); Kareem Fahim, *Militants Attack Hotel in Egypt's Sinai Peninsula, Killing at Least 7*, N.Y. TIMES (Nov. 24, 2015), <http://www.nytimes.com/2015/11/25/world/middleeast/egypt-north-sinai-car-bomb-hotel.html> [<https://perma.cc/CA7N-96V5>] (outlining a string of attacks carried out by ISIS in Egypt). For information related to recent attacks in America or arrests of ISIS-supporters and whether they were American-born or foreign, see generally LORENZO VIDINO & SEAMUS HUGHES, *ISIS IN AMERICA: FROM RETWEETS TO RAQA* (Dec. 2015); Sergio Pechanha & K.K. Rebecca Lai, *The Origins of Jihadist-Inspired Attackers in the U.S.*, N.Y. TIMES (Dec. 8, 2015), <http://www.nytimes.com/interactive/2015/11/25/us/us-muslim-extremists-terrorist-attacks.html> [<https://perma.cc/QK2Y-EMEX>].

¹² See *infra* Section 2 (detailing the current law). Some government officials would go even further and revoke the citizenship of terrorists' families. See *Jerusalem Mayor: Revoke Citizenship of Terrorists' Families*, HAARETZ, Nov. 21, 2014, <http://www.haaretz.com/news/national/1.627759> [<https://perma.cc/5G7B-V6HT>] (Isr.) (outlining Mayor Nir Barkat's belief in the measure's necessity in the fight "against evil people, to locate them and deal with them firmly").

a political tool to denaturalize large swaths of populations, States took a hard line against this practice at the latter half of the twentieth century, with the U.S. in particular adopting the most restrictive test for when a State could rescind citizenship. Now, as the world has grown more interconnected through use of regulatory and enforcement bodies like the UN and international legal mechanisms and threats have grown less connected to State practice and veered sharply towards non-state actors, the question of citizenship's value—to both the State and the individual—is paramount.

While the opening towards citizenship-stripping may not be surprising in the current wartime climate,¹³ it is a change that should not be accepted lightly. New laws take advantage of extreme power imbalances and evoke issues of fundamental fairness rarely considered in the course of daily legal practice. Though they affect a miniscule fraction of people worldwide, the extreme repercussions of revocation for the individual, the country that accepts such an outcome, and neighboring countries that perceive the deprivation as an acceptable tool make the issue highly problematic and worthy of international discussion on par with policies like the death penalty or extraordinary rendition. All are extreme forms of State power.

This article will address the fundamental problems with citizenship-stripping and argue that the newly-expanded laws in Western nations should be rescinded in favor of more traditional,

¹³ The U.S. continues to act under domestic authority given by the Authorization for the Use of Military Force signed on September 18, 2001 to conduct air strikes in Iraq and Syria. Authorization for Use of Military Force, S.J. Res. 23, 107th Cong. (2001). The UK voted to authorize airstrikes in Syria on Dec. 2, 2015, after having authorized airstrikes in Iraq in 2014. Steven Erlanger & Stephen Castle, *British Jets Hit ISIS in Syria After Parliament Authorizes Airstrikes*, N.Y. TIMES (Dec. 2, 2015), <http://www.nytimes.com/2015/12/03/world/europe/britain-parliament-syria-airstrikes-vote.html> [https://perma.cc/C7HA-CFJJ]. France acts under its emergency State powers, and in all cases the basis for current strikes against ISIS in Syria under international law—that Syria is unable or unwilling to address ISIS' threat to international security—has come under scrutiny for its legal weight. See Letter Dated 23 September 2014, from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary General, U.N. Doc. S/2014/695 (Sept. 23, 2014) (detailing the United States' justification for the use of self defense to be Syria's inability to take action against ISIL); Paul Farrell, *ISIS Attack on Paris May Be an 'Act of War' but Retaliation May Not Be Lawful*, GUARDIAN (Nov. 15, 2015), <http://www.theguardian.com/world/2015/nov/16/isis-attack-on-paris-may-be-an-act-of-war-but-retaliation-might-not-be-lawful> [https://perma.cc/URR7-KF9F] (recounting French airstrikes against ISIS in Raqqa and questioning the legality of airstrikes against ISIS since it is not a State).

temporary wartime measures to impede the spread of terrorism without severing the bonds of citizenship. Part I will explain the evolution of expatriation laws—particularly in the U.S.—to demonstrate the relative narrowing of the use of such laws since World War II. Part II will outline the current state of citizenship-stripping laws worldwide. Part III will then analyze the legal and policy implications of a world in which States regularly practice citizenship-stripping. I conclude that although the new laws may be legal under the weak citizenship protections of domestic and international law, they are unsound as matters of policy and should be categorically disfavored. Part IV will outline several alternative means of restricting alleged terrorists' rights, including passport suspension, rehabilitation, and increased data sharing with transportation carriers.¹⁴

1. HISTORY OF CITIZENSHIP AND NATIONALITY LAWS IN THE U.S. AND BEYOND

1.1. *The U.S. Example*

Notwithstanding a brief debate at the Constitutional Convention to strip dual citizenship from those with titles of nobility,¹⁵

¹⁴ The basic idea of using tools that are already legally available has been expressed in several op-eds from a variety of Western nations. See, e.g., Editorial, *Canada Should Not Strip People, Even Terrorists, of Citizenship*, GLOBE & MAIL (Feb. 6, 2013), <http://www.theglobeandmail.com/globe-debate/editorials/canada-should-not-strip-people-even-terrorists-of-citizenship/article8305275> [https://perma.cc/NR9T-9DE9] (Can.) (proposing the individuals be apprehended and tried for treason within the domestic court system); Ben Saul, Op-Ed, *Denying Dual Citizenship is a Double-Edged Sword*, AUSTRALIAN (June 24, 2014), <http://www.theaustralian.com.au/national-affairs/opinion/denying-dual-citizenship-is-a-doubleedged-sword/news-story/cd624c747e6467fcee8d7662b5204324> [https://perma.cc/QQU7-Q9YJ] (Austl.) (suggesting domestic prosecution on charges of terrorism, war crimes, crimes against humanity or foreign incursion); Clive Stafford Smith, Op-Ed, *Two Nations, Related by Fear*, N.Y. TIMES (Apr. 13, 2014), <http://www.nytimes.com/2014/04/14/opinion/two-nations-related-by-fear.html> [https://perma.cc/2TB7-FH2K] (condemning citizenship-stripping as a threat to “the right to life itself” and praising the alternative efforts as expressions of the developing human rights climate). This paper will endeavor to take these ideas, expand on them, and demonstrate their feasibility in a systematic manner.

¹⁵ Jol A. Silversmith, *The “Missing Thirteenth Amendment”: Constitutional Non-*

questions of citizenship revocation did not materialize in the early 1800s because the initial grant of citizenship was a dividing issue between state and federal powers. National and state citizenships existed, but “there was little attempt to eliminate the contradictions” because “any real clarification would have augmented the North-South schism.”¹⁶ A uniform policy of requirements to obtain citizenship would not be defined until the adoption of the Fourteenth Amendment, which assigned the determination to the national government once and for all.¹⁷ The “right to expatriation” was first granted in 1868.¹⁸

Throughout the late 1800s, the U.S. government used expatriation law to deny diplomatic protections to dual citizens who returned to their countries of origin.¹⁹ The Expatriation Act of 1907 codified these practices and provided for the loss of citizenship of individuals who swore allegiance to a foreign sovereign and of American women who married foreigners.²⁰ Public sentiment at the time distrusted dual nationals as inherent threats to the country, to the point where President Theodore Roosevelt labeled the theory of dual nationality “a self-evident absurdity.”²¹

The 1940 Immigration and Nationality Act further broad-

sense and Titles of Nobility, 9 S. CAL. INTERDISC. L.J. 577, 578–81 (1999).

¹⁶ J. ROCHE, *THE EARLY DEVELOPMENT OF UNITED STATES CITIZENSHIP* 26 (1949).

¹⁷ *Id.* See also *Afroyim v. Rusk*, 387 U.S. 253, 257 (1967) (noting that “on three occasions, in 1794, 1797, and 1818, Congress considered and rejected proposals to enact laws which would describe certain conduct as resulting in expatriation”).

¹⁸ Act of July 27, 1868, Title XXV, *Citizenship*, 18 Rev. Stat. §§ 1999–2001 (1874). The Supreme Court, in its 1967 ruling finding involuntary citizenship revocation a violation of the 14th Amendment, cited to the early U.S. government’s repeated unsuccessful attempts to legislate on the “right to expatriation” as evidence that Congress did not have power to revoke citizenship without citizens’ consent. See *Afroyim*, 387 U.S. at 257 (finding “there is nothing in the . . . Fourteenth Amendment to warrant drawing from it a restriction upon the power otherwise possessed by Congress to withdraw citizenship”).

¹⁹ Peter J. Spiro, *Expatriating Terrorists*, 82 *FORDHAM L. REV.* 2169, 2171 (2014).

²⁰ Act of Mar. 2, 1907, Pub. L. No. 59-193, §§ 2–3, 34 Stat. 1228, 1228–29 (1907).

²¹ Theodore Roosevelt, *True Americanism*, in *THEODORE ROOSEVELT: AN AMERICAN MIND: SELECTED WRITINGS* 165, 165 (Mario Di Nunzio ed., 1995) (calling dual citizens “hyphenated Americans”). For more information on the general distrust of dual citizens at the turn of the twentieth century, see *Embracing Dual Nationality*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Jan. 1, 1999), <http://carnegieendowment.org/1999/01/01/embracing-dual-nationality> [<https://perma.cc/8AH8-JS6Y>] (illustrating the perception of dual citizens as being somehow “antithetical to the traditional conception of the state and its relationship to individuals . . . [one] of indivisible allegiance, which leave[s] little room for multiple attachments”).

ened the scope of the government's powers to expatriate, providing for expatriation on the grounds of service in a foreign armed force and adding a presumption of denaturalization for residents living two years in their country of origin or five years in any foreign country any time after naturalization.²² The law did not discriminate between citizenship-stripping that would cause statelessness or that which would only cause loss of dual nationality.²³ As citizenship laws developed, the government increasingly came to use them to denaturalize political dissidents like Communists and Socialists and to marginalize groups like Asian Americans in World War II, Asian American sympathizers, and "radicals" during World War I who showed disloyal tendencies.²⁴

By the end of the two World Wars, the U.S. Supreme Court started reining in the government's sweeping use of citizenship-stripping in its national security plan. In 1958, the Supreme Court rejected punitive use of expatriation for army deserters in *Trop v. Dulles*.²⁵ In the 1967 decision *Afroyim v. Rusk*, the Court struck down foreign voting as a ground of expatriation for a dual national, concluding broadly that the Fourteenth Amendment did not give Congress the power to involuntarily take away citizenship.²⁶ The Court's language expressed an ideal of citizenship that rose above individual rights towards a higher conception of protec-

²² Nationality Act of 1940, Pub. L. No. 853, §§ 401–10, 54 Stat. 1137, 1170–71 (1940). See also PATRICK WEIL, *THE SOVEREIGN CITIZEN: DENATURALIZATION AND THE ORIGINS OF THE AMERICAN REPUBLIC* 56 (2012) (providing a fuller account of the development of the 1940 law).

²³ §§ 401–10, 54 Stat. 1137, 1170–71.

²⁴ Jeffrey Rogers Hummel, *Not Just Japanese Americans: The Untold Story of U.S. Repression During 'The Good War,'* 7 J. HIST. REV., 285 (1986), available at http://www.ihr.org/jhr/v07/v07p285_Hummel.html [<https://perma.cc/W6VG-7KCN>]; Anna O. Law, *Weil: The Sovereign Citizen*, 12 L. & POL. 621, 621–27 (2013) (book review).

²⁵ The Court made its position clear: "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." *Trop v. Dulles*, 356 U.S. 86, 101 (1957). Note that this was struck down despite the procedural protections instantiated in the 1940 Immigration and Nationality Act, which only allowed for revocation based on desertion after conviction by courts martial or a court of competent jurisdiction "because the penalty [was] so drastic." U.S. COMM. ON IMMIGR., REVISION AND CODIFICATION OF THE NATIONALITY LAWS OF THE UNITED STATES, S. REP. NO. 2150, 3 (1940).

²⁶ 387 U.S. 253, 257 (1967). See also WEIL, *supra* note 22, at 174 (discussing Justice Black's belief that the citizenship clause's text conferred absolute protection of one's citizenship as a basic right).

tion.²⁷ Lastly, the 1980 opinion *Vance v. Terrazas* affirmed the idea that citizenship, even of a dual national, could not be revoked without intent to relinquish it.²⁸ Current U.S. law specifies seven acts that, if performed voluntarily with the intention to relinquish U.S. nationality, will be grounds for expatriation, including service in a foreign army engaged in hostilities against the United States and conviction for an act of treason.²⁹

Although seven acts are still grounds for revocation, the Court has expressed strong disfavor in allowing revocation above traditional criminal or civil punishments.³⁰ In 1990, the head of the Board of Appellate Review, the body that oversaw appeals of citizenship-stripping cases pre-2008, wrote that after two-hundred years there was now a consensus in government that “an American citizen, natural born or naturalized, has a constitutional right to remain a citizen unless he/she voluntarily assents to relinquish citizenship.”³¹ Indeed, by 1995, Secretary of State Warren Christopher quipped: “It is no longer possible to terminate [an] American’s citizenship without the citizen’s cooperation. The laws should be amended to reflect this reality.”³²

1.2. *Other Western Nations*

France, Britain, and Australia have less radical turns to the pro-

²⁷ *Afroyim*, 387 U.S. at 268 (“Citizenship in this Nation is a part of a cooperative affair. Its citizenry is the country and the country is its citizenry. The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship.”).

²⁸ *Vance v. Terrazas*, 444 U.S. 252, 261 (1980) (holding that while acts specified in the 1940 Act may be “highly persuasive evidence” of intent to relinquish citizenship, the trier of fact must still conclude that an additional specific intent to relinquish citizenship existed).

²⁹ Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 349(a), 66 Stat. 163, 267-68 (1952) (current version at 8 U.S.C. § 1481 (2012)).

³⁰ See *Trop*, 356 U.S. at 114 (Brennan, J. concurring) (“it is . . . abundantly clear that these ends could more fully be achieved by alternative methods not open to these objections”).

³¹ Alan G. James, *Expatriation in the United States: Precept and Practice Today and Yesterday*, 27 SAN DIEGO L. REV. 853, 855 (1990).

³² LAURIE GROSSMAN & LEON WILDES, EXPATRIATION: OVERVIEW AND SPECIAL RENUNCIATION PROBLEMS 7 (1999), available at http://www.wildeslaw.com/images/stories/document_archive/aila_specialrenunciation.pdf [https://perma.cc/64NS-72E8].

tection of citizenship in their modern histories, but nonetheless exhibit a similar narrowing of the law post-World War II.

In Britain, citizenship-stripping did not exist until World War I and had been rejected by Parliament prior to then as a power too “transcendental” for the government to exercise.³³ Used only infrequently in both World Wars, the laws were narrowed post-World War II, shedding the provisions that allowed for stripping of those “not of good character” or “subject of a state at war.”³⁴ The law continued to be used exceedingly sparingly—from 1949–1973, Britain stripped ten people of citizenship.³⁵ From 1973–2003, that number decreased to zero.³⁶ Parliamentarians kept the provisions in a re-draft of the 1981 Immigration Act on the thought that “there should be power in the last resort” to use the law.³⁷ Although the law was not narrowed or curtailed by the courts as dramatically as in the U.S., in many ways there was no need to. The British government abided by the philosophy of last resort even in times of war, national fervors for recrimination against political dissidents, and other changes to the political direction of the State.

In France citizenship-stripping, or “*déchéance*,” is codified in Articles 25 and 26 of the Civil Code.³⁸ Originally designed to strip citizenship from those who continued to practice slavery after it was banned in 1848,³⁹ the provision is limited to only those citizens naturalized within the past ten years and grounds citizenship-stripping on conviction of serious crimes (crimes with a possible sentence of more than 5 years)⁴⁰ or engagement in acts on behalf of

³³ Matthew Gibney, *Deprivation of Citizenship in the United Kingdom: A Brief History*, 28 IMM., ASYLUM & NATIONALITY L. 326, 326–27 (2014).

³⁴ *Id.* at 329.

³⁵ Shai Lavi, *Punishment and the Revocation of Citizenship in the UK, U.S. and Israel*, 13 NEW CRIM. L. REV. 404, 408 (2010).

³⁶ *Id.*

³⁷ Gibney, *supra* note 33, at 330 (citing 423 PARL. DEB., H.L. (5th ser.) (1981) 423 (U.K.)).

³⁸ CODE CIVIL [C.Civ.] art. 25–26 (Fr.). The provisions were upheld for their Constitutionality in a 2015 judgment of the Constitutional Court. *See* Conseil constitutionnel [CC][Constitutional Court] Decision No. 2014 – 439QPC, Jan. 23, 2015 (Fr.) (confirming that citizenship-stripping, at least when used as a response to acts of terrorism, is a practice in conformity with the French Constitution.).

³⁹ Eugénie Bastie, *Déchéance de Nationalité: Que Dit le Droit?*, Le Figaro (Nov. 14, 2015) (Fr.), <http://www.lefigaro.fr/actualite-france/2015/01/23/01016-20150123ARTFIG00252-decheance-de-nationalite-que-dit-le-droit.php> [https://perma.cc/AW4P-YHR7].

⁴⁰ *Id.*

a foreign State that are incompatible with the qualities of the French and prejudicial to French interests. Article 25 was most notably used under the Vichy regime to strip 15,000 people, 7,000 of whom were Jews, of their citizenship, along with Frenchmen living outside the territory of France such as the Gaullists.⁴¹ Following World War II, Article 25 was used infrequently.⁴² Summing up a discussion of loss of nationality laws due to offenses against the State in European countries pre-9/11, one author stressed that “these modes of withdrawal of nationality seem generally to be of little relevance in practice in those States, where they have already been in force for some time.”⁴³

Australia only created independent citizenship from the U.K. in 1949,⁴⁴ but until 2007 it had no law on citizenship-stripping in the sense at issue.⁴⁵ Even in 2007, the law only allowed for naturalized citizens to be stripped for fraud in the application, for service in a foreign army at war with Australia, or for conviction of a serious offence (an offence committed before the person became an Australian citizen for which he/she has been sentenced to death or a serious prison sentence).⁴⁶

In sum, the world of nationality laws today is quite different than the world of even fifty years prior. The U.S. Supreme Court has made it near impossible to strip citizenship without affirmative

⁴¹ ANNE Simonin, *Le déshonneur de la République: une histoire de l'indignité, 1791-1958* 175 (2008) (Fr.); Patrick Weil, Speech at the French-American Foundation Luncheon (Apr. 2, 2013), available at <https://frenchamerican.org/new-weil-work-explores-us-citizenship-2082013> [<https://perma.cc/KZ7V-JYS3>]. One of the most oft-quoted quips in academic circles related to nationality comes from Hannah Arendt's influential 1951 novel *The Origins of Totalitarianism*, in which she made the claim that “one is almost tempted to measure the degree of totalitarian infection by the extent to which the concerned governments use their sovereign right of denationalization.” HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 278-79 (1951).

⁴² See Bastie, *supra* note 39 (describing 21 cases of stripping since 1989). The French political mindset had largely abandoned the practice until the rise of ISIS. See CHRISTOPHE BERTOSSI & ABDELLALI HAJJAT, *EUDO CITIZENSHIP OBSERVATORY: COUNTRY REPORT: FRANCE 24* (2013) (stating that *déchéance* was used less than once a year and described as a right of the government for use “in exceptional circumstances.”).

⁴³ Harald Waldrauch, *Loss of Nationality*, in 1 *ACQUISITION AND LOSS OF NATIONALITY: COMPARATIVE ANALYSES, POLICIES AND TRENDS IN 15 EUROPEAN COUNTRIES* 183, 207 (Rainer Baubock et al., eds., 2006).

⁴⁴ *Nationality and Citizenship Act 1948* (Cth) ss 10-16 (Austl.).

⁴⁵ Until 2002, citizens would lose their Australian nationality through acquiring another citizenship. *Id.* s 17 (repealed 2002).

⁴⁶ Australian Citizenship Act 2007 (Cth) s 37 (Austl.).

consent from the individual, and the practice has been legally and functionally abridged in other Western nations. U.S. law has omitted grounds that disfavored dual nationality as a threat without additional acts,⁴⁷ and many other nations post-World War II have similarly amended their laws so that dual citizens may retain their original citizenship in places like the Dominican Republic, El Salvador, Germany, Ireland, Italy, and Turkey.⁴⁸ Some have gone so far as to argue that dual nationality may morph into its own human right given the broad consensus on its enforceability.⁴⁹ Senator Johnson, in a 2014 speech at the passage of a Senate Resolution to bring attention to the injustices of the 1907 Expatriation Act, summed up this century-long trend in the American context: "U.S. citizenship means full participation in this incredible experiment in human freedom that is America. Something so coveted should never be taken away so frivolously"⁵⁰

2. CURRENT COUNTER-TERRORISM LAWS ON CITIZENSHIP

This section will be divided into two sub-parts: laws enacted and laws proposed. As homegrown terror attacks continue to make headlines, it is those countries that have only had proposed

⁴⁷ For example, although naturalized citizens are required to take a renunciation oath whose language sounds quite strict, the oath is not enforced. See RANDALL HANSEN & PATRICK WEIL, *DUAL NATIONALITY, SOCIAL RIGHTS AND FEDERAL CITIZENSHIP IN THE U.S. AND EUROPE: THE REINVENTION OF CITIZENSHIP* 25 (2002) (highlighting that those born dual nationals are not required to elect one, native-born Americans do not lose U.S. citizenship upon acquisition of another nationality, and no sanctions are brought against those retaining their original nationalities). The Oath of Allegiance text may be found in the Immigration and Nationality Act § 337(a). 8 U.S.C. § 1448.

⁴⁸ *Embracing Dual Nationality*, *supra* note 21. See also Peter J. Spiro, Hofstra University School of Law, Keynote Address at the Cantigny Conference Series: Immigration and Citizenship in America: Dual Nationality: Unobjectionable and Unstoppable (July, 2000), available at <http://cis.org/node/2939> [<https://perma.cc/A3VN-9JF5>] (arguing that it is "too late for the entrenchment of dual nationality to be reversed. Dual nationality has become a fact of globalization.").

⁴⁹ See generally Peter J. Spiro, *Dual Citizenship as Human Right*, 8 INT'L J. CONST'L L. 111 (2010).

⁵⁰ S. Res. 402, 113th Cong., (2014); Press Release, Al Franken, Frank Johnson Resolution Passes Senate, Brings Attention to History of Women Stripped of Citizenship & Voting Rights (May 15, 2014), http://www.franken.senate.gov/?p=press_release&id=2822 [<https://perma.cc/H4X5-CDJ3>].

laws whose fall into leniency will be most indicative of a sea change in the public world order.⁵¹ Nation-states in either stage of legal development present grave risks to the state of worldwide citizenship protection developed pre-2001.

2.1. *Enacted Laws*

2.1.1. *The UK*

As highlighted in the introduction, the U.K. currently has the most lenient citizenship-revocation laws, and it has used them with zeal. In *al-Jedda*, under section 40 of the British Nationality Act of 1981, as amended by the Immigration, Asylum and Nationality Act of 2006, citizenship can be removed a) from those who had acquired it fraudulently; or b) “where the Secretary of State is satisfied that the person has done something seriously prejudicial to the vital interests of the U.K., provided, as is made clear by section 40(4), that revocation of citizenship would not render him stateless.”⁵²

Although these restrictions may apply to nationals by birth or by naturalization, they have in practice solely been used against naturalized citizens, creating a discriminating policy of expatriation.⁵³ After the Supreme Court’s first ruling in *al-Jedda* protecting him from denaturalization on the basis of potential statelessness, the Home Secretary sought to amend section 40 to strip away this protection.⁵⁴ Lords in Parliament rejected the proposal as “an affront to civilised international relations,”⁵⁵ but an amended version

⁵¹ This has already happened in the year since this article was initially drafted. Additional proposed laws will almost certainly be enacted between the time of editing and publication, underscoring the steepness of this trend.

⁵² British Nationality Act, 1981, c. 61 § 40 (U.K.) (as amended by the Immigration, Asylum and Nationality Act, 2002, c. 41, c. 13; Nationality Act, 2014, c. 22).

⁵³ *Id.*; Helena Wray, *The New Powers of Deprivation of Citizenship in the UK*, EUDO CITIZENSHIP (June 28, 2014), <http://eudo-citizenship.eu/news/citizenship-news/1160-the-new-powers-of-deprivation-of-citizenship-in-the-uk> [<https://perma.cc/GR46-BJNF>].

⁵⁴ Shaheed Fatima, *Statelessness Knocked on the Head: House of Lords’ Defeat for the UK Government’s Citizenship-Stripping Proposal*, JUST SECURITY (Apr. 18, 2014), <http://justsecurity.org/9511/uk-governments-citizenship-stripping-proposal> [<https://perma.cc/ML56-MEJF>].

⁵⁵ 12 May 2014, Parl. Deb., H.L. (5th ser.) (2014) 1643 (U.K.), *available at*

passed on May 14, 2014. The new law requires the Secretary of State to have “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.”⁵⁶ This language gives significant discretion to the Home Secretary to determine the definition of “reasonableness.” In addition, in cases seeking to revoke citizenship of dual nationals, the Secretary need only believe it to be “conducive to the public good.”⁵⁷ This language is identical to the language in the Immigration Bill that allows the Minister to invoke deportation proceedings, infusing revocation with a sense of gravitas well below its recognized status as an extraordinary diplomatic tool.⁵⁸ To date, only al Jedda’s case, of the fifteen known appeals under the 2006 law, was found unlawful,⁵⁹ and since the law’s 2014 amendment, all revocations have been upheld.

From 2003–2012, Britain revoked the citizenship of twenty-seven people,⁶⁰ and in the year 2013 alone Britain stripped another twenty people of their citizenship on national security grounds.⁶¹

<http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140512-0001.htm> [<https://perma.cc/NXA5-PTXH>] (being stated by Lord Macdonald of River Glaven).

⁵⁶ Immigration Act, 2014, c. 22, § 66 (U.K.)

⁵⁷ Immigration, Asylum and Nationality Act, 2006, c. 13, § 56 (U.K.). See Ian Cobain, *Home Office Stripping More Dual-Nationality Britons of Citizenship*, *GUARDIAN* (Aug. 15, 2011), <http://www.theguardian.com/uk/2011/aug/15/home-office-law-dual-citizenship> [<https://perma.cc/VNQ3-NGUJ>] (describing the origins of this test).

⁵⁸ Immigration Act, 1971, c. 77 § 1(5)(b) (U.K.). See Lavi, *supra* note 35, at 408 (explaining this leveling of citizenship-stripping with other immigration procedures as evidence of the switch from citizenship as a “traditional notion of allegiance to a new paradigm of risk management”).

⁵⁹ Secretary of State for the Home Department v. Al-Jedda, [2013] UKSC 62 (appeal taken from Eng.). See Katrin Bennhold, *Britain Expands Power to Strip Citizenship From Terrorism Suspects*, *N.Y. TIMES* (May 14, 2014), <http://www.nytimes.com/2014/05/15/world/europe/britain-broadens-power-to-strip-terrorism-suspects-of-citizenship.html> [<https://perma.cc/T4NB-2UYJ>] (highlighting a 2014 British law that allows the government to revoke the citizenship of terror suspects even when they are not dual citizens, rendering such persons stateless).

⁶⁰ Victoria Parsons, *Citizenship Revoked: What Do We Know About Citizenship Stripping?*, *BUREAU OF INVESTIGATIVE JOURNALISM* (Dec. 10, 2014), <http://www.thebureauinvestigates.com/2014/12/10/what-do-we-know-about-citizenship-stripping> [<https://perma.cc/S2SB-777L>]. These numbers do not include citizenship revocation on grounds of fraudulent application.

⁶¹ *Id.*

Britain's fervent use of the revocation power and continued expansion of the law's leniency are the most egregious examples of the reversal of the 20th century development of citizenship-stripping as a final resort.

2.1.2. *Canada, Israel, and Australia*

Several other Western nations, like Canada and Israel, have adopted more lenient citizenship-stripping provisions since ISIS's rise to prominence.⁶² Canada passed Bill C-24, or the "Strengthening Canadian Citizenship Act," on June 16, 2014⁶³ to update its citizenship law for the first time in thirty years.⁶⁴ The new law, according to the Parliament's summation, establishes a "hybrid model for revoking a person's citizenship in which the Minister will decide the majority of cases and the Federal Court will decide the cases related to inadmissibility based on security grounds," wherein dual citizens who "engaged in certain acts contrary to the national interest of Canada" may be permanently barred from reacquiring citizenship.⁶⁵ The law has already been constitutionally upheld in *Rocco Galati v. David Johnston*, wherein the Federal Court stated "legislative and judicial responses . . . cast considerable doubt on the concept of a perpetual bond between the subject and sovereign as a common law principle, let alone one with a constitutional dimension."⁶⁶ However, in a notable sign of dissension within the government as to the legality or propriety of citizenship-stripping, the government in November 2015 suspended proceedings in two citizenship-stripping cases and declared it would conduct an "urgent review" of the "policy and legislation" related to

⁶² For other Western nations with proposed but not enacted revocation laws, see *infra* Section 2.2.1-2.

⁶³ Strengthening Canadian Citizenship Act, R.S.C. 2014, c. C-24 (Can.).

⁶⁴ The law will amend Citizenship Act, R.S.C. 1985, c. C-29 (Can.).

⁶⁵ Strengthening Canadian Citizenship Act, R.S.C. 2014, c. C-24 (Can.).

⁶⁶ *Galati v. Canada* (Governor General), [2015] FC 91, [2015] 4 F.C.R. 3, ¶ 79. This case has been appealed, and additional civil liberties groups are filing separate constitutional complaints. See Michelle McQuigge, *Citizenship Law Bill C-24 Challenged as Unconstitutional by Civil Rights Groups*, GLOBE & MAIL (Aug. 20, 2015), <http://www.theglobeandmail.com/news/national/citizenship-law-bill-c-24-challenged-as-unconstitutional-by-civil-rights-groups/article26032727> [<https://perma.cc/6HBZ-X3EW>] (Can.) (detailing the British Columbia Liberties Association's and the Canadian Association of Refugee Lawyers' claims that Bill C-24 violates the Charter of Rights and Freedoms).

the provisions.⁶⁷

Israel has allowed for citizenship revocation based on harm to State security since its founding, but it only exercised its powers for the first time in 2002.⁶⁸ In 2010 a proposed amendment to the Citizenship Law of 1952 would have required all non-Jews seeking citizenship to declare an oath of loyalty to the State, and would have allowed for the breach of such an allegiance by act of terrorism, treason, or acquiring citizenship in an enemy State or permanent residency in an enemy land to constitute grounds for revocation.⁶⁹ Parts of that law passed in 2011 allow Israeli judges to deny citizenship to anyone convicted of espionage or committing violence with nationalist motives.⁷⁰ In November 2014, a bill was proposed in the Knesset to revoke citizenship of Israeli Arab terrorists and their families,⁷¹ and since the Paris attacks of November

⁶⁷ Glen McGregor, *Court Told to Freeze Citizenship Revocations in Terror Cases*, OTTAWA CITIZEN (Nov. 16, 2015), <http://ottawacitizen.com/news/politics/government-asks-court-to-freeze-proceedings-in-citizenship-cases-while-it-revises-rules-for-revokation> [https://perma.cc/Z2BY-75FB] (Can.).

⁶⁸ Jonathan Steele, *Israel to Strip First Arabs of Citizenship*, GUARDIAN (Aug. 6, 2002), <http://www.theguardian.com/world/2002/aug/07/israel> [https://perma.cc/KP2H-QT9V]. The Israeli Supreme Court is dealing with the effects of a 2006 expatriation now. The Association for Civil Rights in Israel (ACRI) challenged the revocation of four Arabs' permanent residency statuses because they had accepted positions in Hamas's newly formed Parliament and therefore were serving as key members of a group committed to the destruction of the country. Shimon Cohen & Tova Dvorin, *High Court to Decide if Hamas Terrorists Can Be Deported*, ARUTZ SHEVA (Dec. 9, 2014), <http://www.israelnationalnews.com/News/News.aspx/188417#.VIisOofEbTZ> [https://perma.cc/527B-N2XC] (Isr.). The ACRI challenged on the grounds that the four men have no other citizenship and were not themselves engaged in known terrorist action. Ari Soffer, *High Court 'Trying to Avoid Expelling Hamas Terrorists'*, ARUTZ SHEVA, (Dec. 9, 2014), <http://www.israelnationalnews.com/News/News.aspx/188447#.VIisW4fEbTY> [https://perma.cc/F8YP-QFTA] (Isr.).

⁶⁹ Lavi, *supra* note 35, at 405; ABDALAH: THE LEGAL CTR. FOR ARAB MINORITY RIGHTS IN ISR., *NEW DISCRIMINATORY LAWS AND BILLS IN ISRAEL 4* (Nov. 29, 2010), *available at* http://www.adalah.org/uploads/oldfiles/Public/files/English/Legal_Advocacy/Discriminatory_Laws/Discriminatory-Laws-in-Israel-October-2012-Update.pdf [https://perma.cc/5JL7-FRNY] [Isr.].

⁷⁰ Allyn Fisher-Ilan, *Israel Eases Steps to Revoke Citizenship*, REUTERS (Mar. 28, 2011), <http://www.reuters.com/article/2011/03/28/us-israel-parliament-arabs-idUSTRE72R6OH20110328> [https://perma.cc/2PNA-2PUN] (describing the passage of the Fighting Terrorism Bill).

⁷¹ Harkov Lahav, *New Bill Seeks to Revoke Citizenship of Terrorists and Their Families*, JERUSALEM POST (Nov. 6, 2014), <http://www.jpost.com/Israel-News/New-bill-seeks-to-revoke-citizenship-of-terrorists-and-their-families-380988> [https://perma.cc/38UQ-D2FA] (Isr.).

2015 the Israeli Prime Minister has asked the attorney general to allow the government to rescind citizenship of anyone who joins the Islamic State.⁷²

Australia wrestled with amending its citizenship laws since January 2014,⁷³ ultimately passing into law a provision to revoke citizenship from dual nationals in December 2015.⁷⁴ In an attempt to demonstrate procedural fairness and transparency, the law requires the government to report the number of individuals stripped of their citizenship every six months, and the law will be reviewed in full by the National Security Legislation Monitor no later than the end of 2018.⁷⁵

2.1.3. *Non-Western Countries*

One apparent effect of new revocation laws is that non-Western countries, particularly the Gulf States, have taken cues from Western allies that citizenship-stripping is an acceptable means of promoting national security. As such, they have been using citizenship-stripping provisions in the name of State security to oust political rivals and those who threaten ruling parties. In 2012, Bahrain used its 1963 Citizenship Law to strip the citizenship of thirty-one individuals for allegedly damaging State security.⁷⁶

⁷² Carol J. Williams, *Join a Terrorist Group, Lose Your Citizenship*, L.A. TIMES (Nov. 24, 2015), <http://www.latimes.com/world/europe/la-fg-militants-security-citizenship-20151124-story.html> [https://perma.cc/T7AV-7P4Z].

⁷³ Katharine Murphy, *Australians Fighting in Syria Could Lose Citizenship*, Scott Morrison Signals, GUARDIAN (Jan. 20, 2014), <http://www.theguardian.com/world/2014/jan/20/australians-fighting-in-syria-could-lose-citizenship-say-scott-morrison> [https://perma.cc/9ABH-5R7H].

⁷⁴ Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 (Cth) sch 1 (Austl.).

⁷⁵ *Id.*; Shalailah Medhora, *Law to Strip Dual Nationals of Australian Citizenship Set to Pass Parliament*, GUARDIAN (Nov. 10, 2015), <http://www.theguardian.com/australia-news/2015/nov/10/law-to-strip-dual-nationals-of-australian-citizenship-set-to-pass-parliament> [https://perma.cc/8TN6-J59Y].

⁷⁶ Bahraini Citizenship Act of 1963 (last amended 1981); *Bahrain: Citizenship Rights Stripped Away*, HUMAN RTS. WATCH (Aug. 21, 2014), <http://www.hrw.org/news/2014/08/21/bahrain-citizenship-rights-stripped-away> [https://perma.cc/GJ3Z-ZTB2]. There were severe procedural issues with the decision as well. Appeals, which were permitted under law, could not be made because the individuals' names had been removed from the national registry, meaning they had no legal status and "could not give power of attorney to lawyers to lodge appeals on their behalf." *Id.*

Most were active members of protest movements.⁷⁷ Bahrain further amended the 1963 law in July 2014 to grant the Interior Ministry power to revoke citizenship of people who fail in their “duty of loyalty” to the State, presumably opening the law up to greater abuse.⁷⁸ In August 2014, Bahrain again stripped nine Shi’a citizens of their citizenship, which the largest Shi’ite political party called “an unacceptable violation of fundamental human rights.”⁷⁹

Kuwait similarly revoked the citizenship of fifteen people in August 2014.⁸⁰ Though the country would not release reasons for its decision, the revocations were against political dissidents and individuals allegedly connected to terrorist financing.⁸¹ A local lawyer, in response to the government’s actions, noted that the idea of revoking citizenship for political basis or otherwise was an act “extremely alien to [the Kuwaiti] community.”⁸² Saudi Arabia announced in August 2014 it would also consider using citizenship-stripping for security reasons, reviving laws on the books that historically have been “rare.”⁸³

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Alex MacDonald, *Bahrain Strips Nine Nationals of Citizenship for Alleged Iran Ties*, MIDDLE E. EYE (Aug. 7, 2014), <http://www.middleeasteye.net/news/bahrain-strips-nine-nationals-citizenship-466606651> [https://perma.cc/V4U3-QP4H].

⁸⁰ Associated Press, *Kuwait Strips 10 People, Top Preacher of Citizenship*, DAILY STAR (Aug. 11, 2014), <http://www.dailystar.com.lb/News/Middle-East/2014/Aug-11/266834-kuwait-strips-10-people-top-cleric-of-citizenship.ashx> [https://perma.cc/8PZX-TB9F] (Leb.).

⁸¹ *Id.*

⁸² Dahlia Kholaf, *Kuwait Strips Dissidents’ Citizenship*, AL JAZEERA (Jul. 22, 2014), <http://www.aljazeera.com/news/middleeast/2014/07/kuwait-strips-dissidents-citizenship-2014722112037525983.html> [https://perma.cc/2FSM-TAT4].

⁸³ *Saudi Arabia Considers Revoking Citizenships*, GULF NEWS (Aug. 18, 2014), <http://gulfnnews.com/news/gulf/saudi-arabia/saudi-arabia-considers-revoking-citizenships-1.1373339> [https://perma.cc/UAG8-58XW]. See also Jane Kinnimont, *Citizenship in the Gulf*, in *THE GULF STATES AND THE ARAB UPRISINGS* 47, 53–54 (Ana Echague ed., 2013) (for a general overview of Gulf States’ forays into citizenship-stripping).

2.2. Proposed Laws

2.2.1. The U.S.

Since 2001, several bill proposals have been floated through the Senate, with respective counterparts in the House, on the issue of citizenship-stripping. They have all died in committee or before referral. A 2003 draft proposal of the Domestic Security Enhancement Act, or the “Patriot II Act,” would have made serving in or providing material support to a terrorist organization “prima facie evidence that the act was done with the intention of relinquishing United States nationality.”⁸⁴

In 2010, Senator Joseph Lieberman introduced the Terrorist Expatriation Act, which proposed to add new grounds of expatriating conduct to the Immigration and Nationality Act for providing material support to designated foreign terrorist organizations, engaging in or materially supporting hostilities against the United States, or engaging in or materially supporting hostilities against any country supporting the United States in hostilities.⁸⁵ It was reintroduced without the material support provisions in the 2012 session of Congress as well.⁸⁶ In 2014, Senator Ted Cruz introduced a new bill alongside parallel legislation by Representative Bachmann in the House particularly aimed at defectors to the Islamic State,⁸⁷ since reintroduced in 2015.⁸⁸ Similar to the Patriot II Act, the bill would have determined that joining the Islamic State, or giving “material assistance” to terrorist organizations,⁸⁹ provided prima

⁸⁴ Domestic Security Enhancement Act of 2003 § 501 (as drafted, Jan. 9, 2003), available at <http://www-tc.pbs.org/now/politics/patriot2-hi.pdf> [<https://perma.cc/3HVG-ZUWK>] [hereinafter Patriot II].

⁸⁵ Terrorist Expatriation Act, S. 3327, 111th Cong. (2010).

⁸⁶ Enemy Expatriation Act, S. 1698, 112th Cong. (2011).

⁸⁷ Expatriate Terrorists Act, S. 2779, 113th Cong. (2014); Terrorist Denaturalization and Passport Revocation Act, H.R. 5408, 113th Cong. (2014); David Sherfinski, *Dems Block Cruz Bill to Strip U.S. Citizenship from Islamic State Defectors*, WASH. TIMES (Sept. 18, 2014), <http://www.washingtontimes.com/news/2014/sep/18/dems-block-cruz-strip-citizenship-isis-defectors> [<http://perma.cc/5L8K-626Y>].

⁸⁸ Expatriate Terrorist Act, H.R. 503, 114th Cong. (2015).

⁸⁹ This standard has been challenged by civil liberties groups for its over-

facie evidence of intent to relinquish citizenship to conform with the requirement of voluntary renunciation set forth in *Vance v. Terrazas*.⁹⁰

Academics posit that “there has been a bipartisan rejection of proposals to strip terrorists of their U.S. citizenship” and have surmised that the prospect of citizenship-stripping proposals will be left for academic inquiry rather than serious future consideration in echelons of U.S. government.⁹¹ Yet the possibility of the U.S. joining the bandwagon of the majority of Western nations’ more lenient citizenship-stripping legislation is not a moot point. First, the underlying concerns that led to the initial discussions of expatriation law revision under Patriot II remain valid and highlight unsolved gaps in the existing legal framework. As Section 501 of the Patriot II Act stated: “The current expatriation statute does not . . . provide for the relinquishing of citizenship in cases where an American serves in a hostile foreign terrorist organization. It thus fails to take account of the myriad ways in which, in the modern world, war can be waged against the United States.”⁹²

Just as with larger questions in international law, such as how to wage war with a non-state actor inhabiting a sovereign State’s territory,⁹³ there are serious questions that surround how to transplant current U.S. law modeled on citizens acting inside the State

inclusiveness. See Brief Amicus Curiae of the Carter Center, Christian Peacemaker Teams, et al. in Support of Humanitarian Law Project, et al. at 6, *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010) (advocating that the broad definition of “material support” in § 2339B to include “service,” “training,” “expert advice or assistance,” or “personnel” infringes on First Amendment protection); Brief for Academic Researchers & the Citizen Media Law Project as Amici Curiae in Support of Respondents/Cross-Petitioners at 8, *Holder*, 561 U.S. 1 (recommending that the Court read the material support statute narrowly, requiring “a specific intent to further an unlawful end” as well as “a likelihood of harm”); Brief of Amici Curiae Victims of the McCarthy Era in Support of Humanitarian Law Project, et al. at 14–22, *Holder*, 561 U.S. 1 (analogizing the AEDPA material support provision to unconstitutional McCarthy era Guilt by Association statutes).

⁹⁰ Expatriate Terrorists Act, S. 2279, 113th Cong (2014). Cruz asked “[W]ould any reasonable person want an American who is right now in Iraq . . . who is right now beheading children . . . — would anyone of good conscience in either party want that person to be able to come back and land in LaGuardia airport with a U.S. passport and walk unmolested onto our streets?” Sherfinski, *supra* note 87.

⁹¹ Spiro, *supra* note 19, at 2187 (“[T]he broader lesson is that citizenship is not much of a battleground any longer, reflecting its declining salience. The expatriation proposal proved little more than a political blip.”).

⁹² Patriot II, *supra* note 84, § 501.

⁹³ See *supra* note 13 (explaining how nation-states have addressed this dilemma to expand air strikes).

system, to the realities of modern warfare. This helps to explain why, as the recent bill of January 2015 demonstrates, there remains a serious contingent of legislators and presidential front-runners who are seriously interested in citizenship-stripping expansion. Optically, citizenship-stripping has played a part in how the government considers U.S. counter-terrorism strategy for a decade.⁹⁴

Second, the language used in the Senate focused not on the excessiveness of the proposal but on the need to have a longer-term discussion on the means of restricting constitutional liberties that did not accompany the introduction of Senator Cruz's bill. As the Democratic Senator from Hawaii stated in asking for the bill to be directed to the Senate Judiciary Committee, "fundamental constitutional rights . . . should be given the full deliberation of the Senate."⁹⁵ The public world order will likewise mandate that the U.S. engage with and respond to its foreign counterparts who have undertaken such legislative changes, thus reinforcing the need for American debate and consensus on the topic.

2.2.2. *Other Western Countries*

Former President of France Nicolas Sarkozy as early as 2010 made speeches threatening stripping foreign-born criminals of their French nationality if they used violence against police or public officials in the wake of violent street protests.⁹⁶ Since the Paris

⁹⁴ See H.R. Res. 1288, 111th Cong. (2010) (describing Congressman Charles Dent's proposed resolution in 2010 to strip Al-Aulaqi, the radical cleric born in New Mexico and later killed in a drone strike in Yemen, of citizenship). See also Eric Lichtblau, *U.S., Bowing to Court, to Free 'Enemy Combatant,'* N.Y. TIMES (Sept. 23, 2004), <http://www.nytimes.com/2004/09/23/politics/23hamdi.html> [<https://perma.cc/FB4M-E7ZL>] (detailing how, at Guantanamo, Yaser Hamdi, who was released on a plea deal to Saudi Arabia in 2004, is claimed to have voluntarily renounced his U.S. citizenship as part of the deal).

⁹⁵ Sherfinski, *supra* note 87.

⁹⁶ Associated Free Press, *Sarkozy Looks to Strip Citizenship from Those who Threaten Police*, FR. 24 (July 31, 2010), <http://www.france24.com/en/20100730-sarkozy-looks-strip-citizenship-threaten-security-forces-french-immigration> [<https://perma.cc/WQ7M-W55U>]. See also MATTHEW J. GIBNEY, SHOULD CITIZENSHIP BE CONDITIONAL? DENATIONALISATION AND LIBERAL PRINCIPLES 5 (Refugee Studs. Centre, Working Paper No. 75, 2011), available at <http://www.rsc.ox.ac.uk/files/publications/working-paper-series/wp75-should-citizenship-be-conditional-2011.pdf> [<https://perma.cc/WQ7M-W55U>] (detailing how France's Interior Minister Brice Hortefeux proposed adding polygamy and genital mutilation to the list of proposed grounds for citizenship loss).

attacks, France has proposed a constitutional amendment to strip French-born dual nationals convicted of terrorism of their citizenship,⁹⁷ a proposal that polls show is widely supported by the French public.⁹⁸ France stripped eight citizens between 2001–2014 and in 2015 upped the tally by six more citizens.⁹⁹ Russian legislators have made similar statements in the wake of the Paris attacks.¹⁰⁰ The Austrian Minister of the Interior advocated for a proposal to expatriate “persons participating in armed conflicts in a foreign armed group” for either dual nationals or, potentially, nationals with only Austrian citizenship, in the summer of 2014.¹⁰¹

Notably, Scandinavian and northern European countries that have relatively large swaths of their Muslim populations traveling to the Middle East to join ISIS have seen more hard line approaches to enforcement, including citizenship-stripping. Norway announced plans to consider revoking citizenship from citizens who joined ISIS in August 2014.¹⁰² Denmark, which has the second-highest number of foreign fighters to Syria as measured by total

⁹⁷ CODE CIVIL [C. CIV.] art. 25-1 (Fr.); David Revault d’Allonnes, *Reforme Constitutionnelle: Holland Maintient L’Extension de la Decheance de Nationalite*, LE MONDE (Dec. 23, 2015), http://www.lemonde.fr/politique/article/2015/12/23/reforme-constitutionnelle-francois-hollande-maintient-la-decheance-de-nationalite_4837002_823448.html [<https://perma.cc/UBJ4-TDAV>] (Fr.). This proposal was tabled in late March 2016. See Adam Nossiter, *Francois 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> [<https://perma.cc/6VAM-4F72>].

⁹⁸ *9 Out of 10 French Support Stripping Bi-Nationals of Citizenship*, RADIO FR. INTERNATIONALE (Dec. 30, 2015), <http://www.english.rfi.fr/general/20151230-9-out-10-french-support-stripping-bi-nationals-citizenship> [<https://perma.cc/5G4N-Z8B6>] (Fr.).

⁹⁹ Mathilde Golla, *Cinq Terroristes Bientot Dechus de la Nationalite Francaise*, FIGARO (Oct. 7, 2015), <http://www.lefigaro.fr/actualite-france/2015/10/06/01016-20151006ARTFIG00401-cinq-terroristes-bientot-dechus-de-la-nationalite-francaise.php> [<https://perma.cc/627K-3BDG>] (Fr.).

¹⁰⁰ See, e.g., Williams, *supra* note 72 (reporting that Federation Council member Konstantin Kosachev said that “there should be taken a decision to cancel operation of their [Russian citizens aiding terrorists] travel passports in order to, as much as possible, limit the freedom of their movement and enhance chances on quick arrest”).

¹⁰¹ Gerd Valchars, *Austrian Ministers Propose to Denaturalize Austrian Nationals Fighting in Syria*, EUDO CITIZENSHIP (May 6, 2014), <http://eudo-citizenship.eu/news/citizenship-news/1133-austrian-ministers-propose-to-denaturalize-austrian-nationals-fighting-in-syria> [<http://perma.cc/49T9-LUWL>].

¹⁰² Gianluca Mezzofiore, *Norway ‘to Make Citizens Fighting for Isis Stateless’*, INT’L BUS. TIMES (Aug. 27, 2014), <http://www.ibtimes.co.uk/norway-make-citizens-fighting-isis-stateless-1462776> [<http://perma.cc/U4B2-UZYA>].

population,¹⁰³ has attempted to revoke citizenship three times in its history—all of which have occurred post-2011. Denmark had its first successful revocation in July 2015.¹⁰⁴ The Netherlands, which already has a nationality law that allows for citizenship revocation following conviction of an “offence against the security of the Kingdom,”¹⁰⁵ has considered amendments to allow the government to revoke nationality “in the interests of national security” or upon “convict[ion] of a terrorist offence.”¹⁰⁶

The flurry of activity related to expatriation as a desirable means of weakening the FTF threat denotes a clear and present shift in global counter-terrorism policies. The advancement of lenient expatriation legislation supports the need to closely examine legal and policy justifications for expatriation to fully understand its effects.

3. WHAT RIGHTS DOES EXPATRIATION AFFECT?

Many academics have written on the declining protections of citizenship vis-à-vis other legal statuses in the U.S. context, arguing that one reason citizenship-stripping should not be favored is its inability to meaningfully restrict individuals’ rights. As this sec-

¹⁰³ *More Scandinavians Joining Isis*, LOCAL (Sept. 24, 2014), <http://www.thelocal.dk/20140924/new-fears-of-scandinavians-joining-islamic-state> [<https://perma.cc/H2JD-D9GL>] (Den.).

¹⁰⁴ See Christian Wenande, *Bookseller From Brønshøj Stripped of His Danish Citizenship*, COPENHAGEN POST (July 1, 2015), <http://cphpost.dk/news/bookseller-from-bronshoj-stripped-of-his-danish-citizenship.html> [<https://perma.cc/2WTF-7L37>] (Den.) (describing the conviction of a Danish citizen on charges of terrorism and his eventual loss of citizenship).

¹⁰⁵ Netherlands Nationality Act (2010), arts. 9(2), 14(1) (Olivier Vonk trans.), available at [http://eudo-citizenship.eu/NationalDB/docs/NL%20Netherlands%20Nationality%20Act%20\(consolidated%202010,%20English\).pdf](http://eudo-citizenship.eu/NationalDB/docs/NL%20Netherlands%20Nationality%20Act%20(consolidated%202010,%20English).pdf) [<https://perma.cc/5JES-CBFT>]; *Losing Dutch Nationality*, GOV’T OF NETH., available at <https://www.government.nl/topics/dutch-nationality/contents/loss-of-dutch-nationality> [<https://perma.cc/Y2DC-DVE7>] (last accessed Jan. 15, 2015).

¹⁰⁶ Press Release, Nat’l Coordinator for Sec. and Counterterrorism at Ministry of Sec. and Justice of Neth., *The threat level remains ‘substantial’* (June 30, 2015), available at https://english.nctv.nl/currenttopics/press_releases/2015/threat-level-for-the-netherlands-remains-substantial.aspx [<https://perma.cc/LNW6-Q9E7>]. See also Betty de Hart & Ashley Terlouw, *Born Here: Revocation and the Automatic Loss of Dutch Nationality in Case of Terrorist Activities*, in EQUALITY AND HUMAN RIGHTS: NOTHING BUT TROUBLE? 305, 305-06 (M. van den Brink et al, ed., 2015) (detailing earlier Dutch proposals to expatriate citizenships).

tion will demonstrate, those arguments come to the correct conclusion but from the wrong direction. Citizenship-stripping deprives individuals of meaningful rights, largely in the space of social liberties and procedural protections, but it does not restrict the practices that cause terrorism or potential attacks on U.S. persons at home or abroad.

Professors Peter Spiro and Peter Schuck both have advanced similar theories that apart from voting in national elections and the freedom of unrestricted foreign travel, U.S. citizenship affords few additional rights.¹⁰⁷ They might add recent revelations in the media of wiretapping and surveillance of U.S. citizens in violation of the Foreign Intelligence Surveillance Act and the Fourth Amendment¹⁰⁸ and the drone attack that killed U.S. citizen Anwar al-Aulaqi as evidence that the protections formerly afforded citizens have eroded in wartime.¹⁰⁹

Yet the package of citizenship in reality affords many additional rights. In both wartime examples given, U.S. citizens enjoy heightened standards of review before the government may decide to wiretap or engage in an unmanned aerial attack.¹¹⁰ The al-

¹⁰⁷ See Peter Schuck, *Citizen Terrorist*, 164 POL'Y REV. 61, 72-73 (2011) (demonstrating that the threat of denationalization is not a significant deterrent from terrorist activities). See generally Peter J. Spiro, *The (Dwindling) Right and Obligations of Citizenship*, 21 WM. & MARY BILL RTS. J. 899 (2013).

¹⁰⁸ Letter from Kathleen Turner, Dir. of Legislative Affairs at the Office of the Dir. of Nat'l Intelligence to Sen. Ron Wyden (July 20, 2012), available at www.wired.com/images_blogs/dangerroom/2012/07/2012-07-20-OLA-Ltr-to-Senator-Wyden-ref-Declassification-Request.pdf [<https://perma.cc/C55G-VPSX>] (admitting that "on at least one occasion the Foreign Intelligence Surveillance Court held that some collection carried out pursuant to the Section 702 minimization procedures [for collection of U.S. data] used by the government was unreasonable under the Fourth Amendment").

¹⁰⁹ See Memorandum from David Barron, Acting Assistant Att'y Gen. for Office of Legal Counsel on Applicability of Federal Criminal Laws and the Constitution to Contemplated Lethal Operations Against Shaykh Anwar al-Aulaqi to the Att'y Gen. 21-22 (July 16, 2010), available at https://www.aclu.org/sites/default/files/field_document/2014-06-23_barron-memorandum.pdf [<https://perma.cc/KX9R-97WK>] [hereinafter "Al-Aulaqi Memorandum"] (outlining the legal justification for the 2011 killing of U.S. citizen Anwar al-Aulaqi in Yemen).

¹¹⁰ See *id.* at 21-23 (referencing the scope of AUMF in authorizing lethal force used against United States citizens in appropriate circumstances); Foreign Intelligence Surveillance Act of 1879 Amendments Act of 2008, 50 U.S.C. § 1881(a) (requiring a court order for intelligence surveillance of U.S. persons, and putting greater limitations on storage of surveillance of U.S. persons and domestic calls and required minimization procedures). For a more detailed explanation of the law, see FISA Amendments Act of 2008 Section 702 Summary Document, OFFICE OF GEN. COUNS., (Dec. 23, 2008), available at

Aulaqi story has been further categorized by CIA Director John O. Brennan as a “last resort” taken “when there is no alternative,” and the government has made it clear that the preferred means of combating U.S. citizens who commit acts of terrorism is by capture rather than by killing.¹¹¹

The harbinger of wartime’s erosion of civil liberties is not new. From aggressive expansion of material support laws¹¹² to proliferation of the States secrets privilege¹¹³ to indefinite detention at Guantanamo,¹¹⁴ war’s frenzied fear of enemy threats infuses much of American law.¹¹⁵ However, if we believe that these expansions

<http://apps.washingtonpost.com/g/page/world/fisa-amendments-act-of-2008-section-702-summary-document/1141/> [https://perma.cc/33YN-LY78]. Critics may point to the sixteen-hour interrogation of U.S. naturalized citizen Dzhokar Tsarnaev under the public safety exception as an example of Fourth Amendment erosions for citizens, but the sixteen-hour exception is incomparable to the nearly seventy day interrogation of non-U.S. citizen Ahmed Abdulkadir Warsame aboard a U.S. military vessel. DANIEL KLAIDMAN, *KILL OR CAPTURE: THE WAR ON TERROR AND THE SOUL OF THE OBAMA PRESIDENCY* 241–65 (2011).

¹¹¹ *Nomination of John O. Brennan to Be Director of the Central Intelligence Agency: Hearing Before the S. Select Comm. on Intelligence*, 113th Cong. 56 (Feb. 7, 2013) (testimony of John O. Brennan). See also Kirstin Roberts, *How Many Americans Are on the Kill List? Zero.*, WIRE (Mar. 20, 2013), <http://www.thewire.com/politics/2013/03/how-many-americans-are-kill-list-zero/63369/> [https://perma.cc/ER2K-YURC] (noting the remarks of the House Intelligence Chairman that there are currently no Americans on the kill list and that al-Aulaqi was “unique among homegrown terrorists”).

¹¹² See *Holder v. Humanitarian Law Project*, 561 U.S. 1, 40 (2010) (upholding the constitutionality of the material-support statute); Adam Liptak, *Civil Liberties Today*, N.Y. TIMES (Sept. 7, 2011), <http://www.nytimes.com/2011/09/07/us/sept-11-reckoning/civil.html> [http://perma.cc/Q3N2-6UWF] (noting that after the September 11th attacks, existing material support statutes were used significantly more, charging more than 100 people in the 5 years following the attacks).

¹¹³ See, e.g., *El-Masri v. Tenet*, 437 F. Supp. 2d 530, 537–39 (E.D. Va. 2006) (dismissing a case asserting extraordinary rendition on the grounds that the disclosure of related information would be absolutely protect by the United States’ State secrets privilege). See generally Louis Fisher, *The Law: The State Secrets Privilege: From Bush II to Obama*, 46 PRESIDENTIAL STUD. Q. 173 (outlining the continuation of the abuse of the State secrets privilege from the Bush to Obama administrations).

¹¹⁴ The Supreme Court has heard four major detainee cases. *Boumediene v. Bush*, 553 U.S. 723 (2008); *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); *Rasul v. Bush*, 542 U.S. 466 (2004). See also *Civil Liberties in Wartime Timeline*, ANNENBERG CLASSROOM, <http://www.annenbergclassroom.org/Files/Documents/Timelines/CivilLibertie sinWartime.pdf> [https://perma.cc/C9ZG-QA23] (last visited Dec. 15, 2015) (detailing major civil rights issues post 9/11, including the Guantanamo detentions).

¹¹⁵ For a longer history of wartime restrictions on civil liberties, see generally Lee Epstein et al., *The Supreme Court During Crisis: How War Affects Only Non-War*

in government power threaten core freedoms of our society and should be temporary measures used only in times of necessity, the potential for abuse of citizenship-stripping laws becomes even more salient. With no end in sight to the current threats from Al-Qaeda and its splinter cell organizations and with the proliferation of terrorist threats multiplying to include groups like ISIS and the Khorasan Group,¹¹⁶ the limited duration of wartime that has in times past cured restrictions of civil liberties remains elusive. Moreover, an expansion of citizenship-stripping laws now will appear effective, in retrospect, when current hostilities cease and may be further expanded to combat subsequent threats.

Exigencies of wartime aside, the package of rights afforded by citizenship does provide tangible benefits absent from other legal categories. First, it affords a status that is more protectable and certain than any denominative one. The permanency of citizenship allows a freedom of movement and livelihood without question of administrative violations or misunderstanding of the gaps in rights and protections afforded to permanent residents or illegal aliens.¹¹⁷ Second, citizenship affords rights in the international arena that cannot be obtained through other means, such as the right to petition a home State for representation at an international court or the right to bring a case against a nation to a regional international court mechanism.¹¹⁸ Third, citizenship grants civic rights that are

Cases, 80 N.Y.U. L. REV. 1 (2005) (performing a large-scale, quantitative study on the effects of civil liberties in wartime and finding that they empirically have a high probability of being curtailed). The article reminds us of Cicero's maxim *inter arma, silent leges* ("during war, law is silent"). *Id.*, at 3.

¹¹⁶ Dan Kedmey, *Worse Than ISIS? A Primer on the Khorasan Group*, TIME (Sept. 23, 2014), <http://time.com/3421701/khorasan-al-qaeda-iraq-isis-syria> [<http://perma.cc/TF9Y-7EGJ>]; Olga Khazan, *Why Africa Is the New Terrorism Hub*, ATLANTIC (Sept. 24, 2013), <http://www.theatlantic.com/international/archive/2013/09/why-africa-is-the-new-terrorism-hub/279956> [<https://perma.cc/78WJ-RR49>].

¹¹⁷ For example, even permanent residents may lose their status and be subject to deportation if they "declare [themselves] a 'nonimmigrant' on [a] tax return[]" or "fail to file income tax returns while living outside of the United States for any period of time." *Maintaining Permanent Residence*, U.S. CITIZENSHIP AND IMMIGR. SERVICES, <http://www.uscis.gov/green-card/after-green-card-granted/maintaining-permanent-residence> [<https://perma.cc/VT54-PZYY>] (last updated Aug. 29, 2013).

¹¹⁸ Representation would be available for institutions such as the International Court of Justice or European Court of Justice. *Contentious Jurisdiction*, INT'L CT. OF JUST., <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1> [<https://perma.cc/6WLP-RERL>] (last visited Dec. 15, 2015); *Competences of the Court of Justice of the European Union*, EUR. PARL.,

aspirational and that foster a community ethos of equal participation and service. For example, citizens serve jury duty,¹¹⁹ are eligible to run for office,¹²⁰ and are eligible to apply for federal government positions.¹²¹

Finally, the right to freedom of movement across international borders, perhaps the main right associated with citizenship and its iconic symbol of the passport, should not be overlooked. As Mark Twain once stated, "Travel is fatal to prejudice, bigotry, and narrow-mindedness."¹²² Travel allows individuals to expand their cultural and intellectual horizons, to visit friends or family abroad, to engage in international business, and to gain a unique perspective that encourages inclusion rather than isolation. The Universal Declaration of Human Rights codifies the right to movement within national and international borders under Article 13¹²³ and the European Union guarantees the right under the Schengen Agreement and the Schengen Convention of 1990.¹²⁴ In today's world of cross-border economic investment, job growth, and ease of transportation, this right is even more important than it was in Twain's time.

A State's grant of citizenship, then, creates an important and useful bundle of rights. The valuable nature of the grant comes not

http://www.europarl.europa.eu/aboutparliament/en/ftu.html?ftuld=FTU_1.3.10.html [https://perma.cc/8QZV-H2SA] (last updated Apr. 2014). Other courts, such as the European Court of Human Rights, require a particular type of citizenship (namely, citizenship in an EU country) to bring a case against a State and have it adjudicated in the international court. Interestingly, these institutions may also not have jurisdiction to hear individual petitions on a deprivation of nationality claim. See Adam I. Muchmore, *Passports and Nationality in International Law*, U.C. DAVIS J. INT'L L. & POL'Y 301, 312 n. 26 (2004) (listing different courts to which one might bring a deprivation of nationality claim and the relative chances of getting past the jurisdictional stage).

¹¹⁹ Jury Service and Selection Act, 28 U.S.C. § 1861 (2012). This is perhaps viewed as a requirement rather than a right, but it is nonetheless an important means of civic participation.

¹²⁰ U.S. CONST., art. 1, §§ 2-3.

¹²¹ Exec. Order No. 11,935, 41 Fed. Reg. 37,301, 37,301 (Sept. 3, 1976).

¹²² MARK TWAIN, *INNOCENTS ABROAD* 650 (Oxford Univ. Press, 1996) (1869).

¹²³ The Universal Declaration of Human Rights (UDHR) art. 13, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (providing that "1) Everyone has the right to freedom of movement and residence within the borders of each state; 2) Everyone has the right to leave any country, including his own, and to return to his country").

¹²⁴ European Parliament and Council Directive 2004/38/EC of 29 Apr. 2004 (amending Regulation (EEC) No. 1612/68), 2004 O.J. (L 158). See also The International Covenant for Civil and Political Rights (ICCPR) art. 12, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (codifying similar rights with limitations).

necessarily from the individual rights included but rather from the package as a whole and the symbolism of a State's willingness to offer its protection and defense to an individual in the Westphalian nation-State world order.¹²⁵ Each of the rights granted could be curtailed individually or could be selectively not applied by States, as in the case of representation at international legal institutions. But once the package of rights becomes more valuable than the sum total of its parts, its revocation merits additional scrutiny.¹²⁶

4. MERITS OF CITIZENSHIP-STRIPPING PROVISIONS

4.1. International Legal Limitations

The international legal system does not have strong prescriptions against revocation that causes either statelessness or loss of dual nationality. Though the former is substantially more serious, the latter similarly deprives an individual of one set of very valuable rights connected to an additional country.¹²⁷ Given the fact that dual nationality until recently was disfavored by the majority of nations,¹²⁸ regulation of its grant and revocation are largely left to States' prerogatives without the direction or influence of international legal limitations.¹²⁹ No UN-based treaties regulate dual na-

¹²⁵ This is true even in the case of dual citizenship. Citizenship is not unitary—there are not multiple “grades” of it in kind. Having a different set of rules for dual citizenship, or applying the uniform laws in ways that only target or reach dual citizens, will erode the value of unitary citizenship as well by undoing the premise underlying both and either form.

¹²⁶ There is a large literature on the inherent value of citizenship in forming a social democratic nation that is not the subject of this article. However, this article takes as a starting point the inherent value of citizenship as a social and theoretical construct that has value beyond the rights given. For additional reading, see generally AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* (2009); Stephen H. Legomsky, *Why Citizenship?*, 35 VA. J. INT'L L. 279 (1995); T.H. Marshall, *Citizenship and Social Class*, in 2 *THE WELFARE STATE READER* 30 (Christopher Pierson & Francis G. Castles eds., 2006); Maurice Roche, *Citizenship, Social Theory, and Social Change*, 16 *THEORY & SOCIETY* 363 (1987); Bryan S. Turner, *Outline of a Theory of Citizenship*, 24 *SOCIOLOGY* 189 (1990).

¹²⁷ See *infra* Section 3 (describing the applicable rights attached to citizenship).

¹²⁸ See *supra* note 48 and accompanying text (detailing recent changes to States' policies toward dual nationality).

¹²⁹ See generally Yvonne Schroter & Reinhold S. Jager, *Multiple Citizenship in*

tionality. Regional treaties either make no mention of provisions related to loss of dual nationality¹³⁰ or explicitly allow for loss of nationality based on the “voluntary acquisition of another nationality.”¹³¹

International law provides greater restraints on loss of nationality that begets statelessness, but caveats related to national security weaken these protections. As the European Convention on Nationality’s Explanatory Report states, “the obligation to *avoid* statelessness has become part of customary law.”¹³² This formulation of customary international law at best prevents no more than egregious or repeated arbitrary revocations of nationality. The caveat that stripping, even to the point of statelessness, is lawful for reasons of security provides States a wide opening to construct their laws accordingly. The Universal Declaration of Human Rights Article 2 declares, “No one shall be *arbitrarily* deprived of his nationality nor denied the right to change his nationality.”¹³³ The International Covenant on Civil and Political Rights’ (ICCPR) freedom of movement clause under Article 12 guarantees the rights to leave and re-enter one’s “own country.”¹³⁴ Although the broad language of Article 12 has been clarified by the General Comment as applying to nationals, aliens, and “any individual who has special ties to or claims in relation to a given country,” including nationals who have been stripped of their nationality in violation of international law, the broad understanding of persons to whom the Article may apply is capped by national security caveats.¹³⁵ The

Germany, in MULTIPLE CITIZENSHIP AS A CHALLENGE TO EUROPEAN NATION-STATES 81 (D. Kalekin-Fishman & P. Pitkanen eds., 2006) (detailing why Germany continues to have extremely limited allowance for dual nationals as its immigration default); William Thomas Worster, *International Law and the Expulsion of Individuals with More than One Nationality*, 14 UCLA J. INT’L L. FOREIGN AFF. 423 (2009) (explaining that a State’s decision to expel a national is not a violation of international law provided the individual has an additional nationality).

¹³⁰ American Convention on Human Rights, art. 20(1), Nov. 21, 1969, 1144 U.N.T.S. 143.

¹³¹ European Convention on Nationality, art. 7(1)(a), Nov. 6, 1997, E.T.S. 166 (entered into force Mar. 1, 2000).

¹³² *Explanatory Note to the European Convention on Nationality*, ¶ 33 (Nov. 6, 1997), available at <http://conventions.coe.int/Treaty/en/Reports/Html/166.htm> [<https://perma.cc/WW2R-8AR5>] (emphasis added) [hereinafter “Explanatory Report”].

¹³³ UDHR, *supra* note 123, art. 2.

¹³⁴ ICCPR, *supra* note 124, art. 12(2), (4).

¹³⁵ Human Rights Committee, General Comment on Article 12 of the Cove-

right to enter one's own country must not be deprived "arbitrarily," and the right to leave one's own country may be subject to restrictions "necessary to protect national security, public order . . . or the rights and freedoms of others."¹³⁶

The two codified legal instruments on the right to nationality, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, have similar qualifiers.¹³⁷ The 1961 Convention states under Article 8 that a Contracting State "shall not deprive a person of his nationality if such deprivation would render him stateless" but adds "notwithstanding th[at] provision[] . . . a Contracting State may retain the right to deprive a person of his nationality, if . . . being grounds existing in its national law at that time . . . the person . . . (ii) Has conducted himself in a manner seriously prejudicial to the vital interests of the State."¹³⁸ The 1954 Convention, under Article 32, requires Contracting States to "as far as possible facilitate the assimilation and naturalization of stateless persons"¹³⁹ but waives all requirements laid out in the Convention as applied to persons who "have committed a crime against peace, a war crime, or a crime against humanity" or who "have been guilty of acts contrary to the purposes and principles of the United Nations."¹⁴⁰ The United Nations High Commissioner for Refugees' (UNHCR) Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention for the Protection of Refugees, which uses identical language, clarifies the breadth of the latter term.¹⁴¹ "Formal

nant ¶ 20, U.N. Doc. CCPR/C/21/Rev.1/Add.9, General Comment No. 27 (Nov. 2, 1999).

¹³⁶ ICCPR, *supra* note 124, art. 12(2), (4).

¹³⁷ According to the UNHCR website, these are the "key legal instruments in the protection of stateless people." *UN Conventions on Statelessness*, UNHCR, <http://www.unhcr.org/pages/4a2535c3d.html> [<https://perma.cc/9CT8-V7E6>] (last visited Dec. 15, 2015).

¹³⁸ Convention on the Reduction of Statelessness, art. 8(1), (3)(ii), 989 U.N.T.S. 175 (entered into force Dec. 13, 1975). Note that this is the exact language used in the 1981 British Nationality Act.

¹³⁹ Convention Relating to the Status of Refugees, art. 32, 189 U.N.T.S. 150 (entered into force Apr. 22, 1954).

¹⁴⁰ *Id.* art. 1(2)(iii)(a), (c).

¹⁴¹ The Handbook for the 1951 Convention is more comprehensive than the Handbook for the 1954 Convention, and the explanations that are given for certain terms in the 1954 Handbook parallel those interpretations from the 1951 Handbook. See UNHCR, HANDBOOK ON PROTECTION OF STATELESS PERSONS 2 (2014), available at <http://www.refworld.org/docid/53b676aa4.html> [<https://perma.cc/D9X6-NABY>] (superseding the Guidelines on Statelessness

proof of previous penal prosecution is not required,” and the determination of whether a stateless person falls into one of these categories is made by the “Contracting State in whose territory the applicant seeks recognition.”¹⁴²

Regional international law bodies are just as guilty of upholding toothless provisions. The European Convention of Nationality of 1997 Article 7 provides that States may deprive nationals of their nationality where statelessness will ensue only in certain cases, including for “conduct seriously prejudicial to the vital interests of the State Party.”¹⁴³ The Explanatory Report clarifies that conduct “seriously prejudicial” is drawn from the 1961 Convention. Such conduct would not include criminal offences of a general nature,¹⁴⁴ but affirmative examples of prejudicial conduct are not given. The Explanatory Report further alludes to the power of individual States to make this determination when it declares, under the requirement for written notification, that “for decisions involving national security, only a minimum amount of information has to be provided.”¹⁴⁵ The American Convention tracks the language of the Universal Declaration of Human Rights, stipulating under Article 20(3) that “no one shall be *arbitrarily* deprived of his nationality”¹⁴⁶

No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons; Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person; and Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level).

¹⁴² UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees ¶ 149, U.N. Doc. HCR/IP/4/Eng/REV.1 (1992).

¹⁴³ European Convention on Nationality, *supra* note 131, art. 7. Perhaps more troublesome is the fact that neither France nor the United Kingdom has ratified the European Convention on Nationality (ECN). *Chart of Signature and Ratification of Treaty 166, European Convention on Nationality, Status as of Dec. 11, 2014*, COUNCIL OF EUR., <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=166&CM=&DF=&CL=ENG> [<https://perma.cc/GSH3-6GK3>].

¹⁴⁴ Explanatory Report, *supra* note 132, ¶ 67(1). The only reservation related to Article 7 is from Austria, which arguably diluted the protection against statelessness even further by stipulating that Austria “declares to retain the right to deprive a national of its nationality, if such person, being in the service of a foreign State, conducts himself in a manner seriously prejudicial to the interests or the reputation of the Republic of Austria.” *List of Declarations Made with Respect to Treaty No. 166*, COUNCIL OF EUR., http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/declarations?p_auth=tirwvaqR [<https://perma.cc/ZH7D-LPG2>] (last updated Dec. 12, 2014).

¹⁴⁵ Explanatory Report, *supra* note 132, ¶ 86.

¹⁴⁶ American Convention on Human Rights, *supra* note 130, art. 20(3) (em-

The European Court of Justice (ECJ)'s *Rottman* Judgment,¹⁴⁷ issued in 2010, illustrates the high level of discretion afforded to nations to determine matters of nationality bordering on statelessness. *Rottman*, an Austrian, applied for citizenship in Germany while undergoing legal proceedings on charges of fraud in Austria. Once Germany granted him citizenship, Austria revoked his Austrian citizenship per standard procedure. Germany, upon learning of his failure to declare pending charges in Austria, then denied his naturalization, making him effectively stateless.¹⁴⁸ *Rottman* brought his case to the ECJ. After affirming that the acts in debate technically did not violate the European Convention or the Universal Declaration because they were not arbitrary,¹⁴⁹ the Court upheld the acts of both States as lawful provided that the German national courts' determination to withdraw nationality obtained by deception "observe[d] the principle of proportionality."¹⁵⁰ The Court's affirmation that statelessness under certain circumstances would be upheld as lawful verified the precarious legal protections for nationality.

In both cases of regional and international treaties, the language of exceptions provides less concern than the general lack of signatories, which is the real restraint to a robust international consensus on the limits of statelessness. Only twenty countries have ratified the ECN.¹⁵¹ Fifty-five countries have ratified the 1961 Convention, most only after a "major campaign" launched in 2011 to mark its fiftieth anniversary.¹⁵² Another practical issue in implementation is that non-governmental organizations and international actors tend to focus on larger trends of statelessness related to mass population deprivations. The NGO and third party

phasis added).

¹⁴⁷ Case C-135/08, *Rottmann v. Bayern*, 2010 E.C.R I-1467.

¹⁴⁸ *Id.* ¶¶ 22–34.

¹⁴⁹ *Id.* ¶ 60.

¹⁵⁰ *Id.* ¶ 65.

¹⁵¹ *Chart of Signature and Ratification of Treaty 166, European Convention on Nationality, Status as of Dec. 11, 2014, supra* note 143. Twenty-nine countries have signed the ECN. *Id.*

¹⁵² *Convention on the Reduction of Statelessness, List of Accession and Ratification*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en [<https://perma.cc/5NWF-CSAN>] (last visited Dec. 15, 2015); *Key for Protecting the Stateless*, UNHCR, <http://www.unhcr.org/pages/4a2535c3d.html> [<https://perma.cc/653Y-9MVD>] (last visited Dec. 15, 2015).

movement largely focuses on stateless persons in aggregate, a group estimated to be at around 10 million,¹⁵³ such as populations rendered stateless by border delimitations like the dissolution of the former Yugoslavia¹⁵⁴ or by mass expatriations due to revisions of citizenship laws like in Burma.¹⁵⁵ Need-based organizations target alleviating basic access issues and primarily help to address the effects of statelessness, rather than attacking the causes.¹⁵⁶

Despite the relative shortcomings of the international legal regime related to citizenship revocation, the existence of two Conventions and myriad protections within regional rights regimes point to an implicit recognition of the durability of citizenship or a rebuttable presumption in favor of criminal sanction up to but never including its revocation. One might think of the international legal regime as a means of constraining the space available to States to impose blanket revocation policies, instead forcing States to craft more careful and heightened levels of scrutiny for evoking such extreme sanctions. This presumption becomes more persuasive in light of the second prong of analysis—arguments related to wise policy measures. By all accounts, expanding the reach of citizenship-stripping provisions, no matter the result, is a bad policy decision.

4.2. *International Policy Implications*

Expansion of citizenship-stripping proposals fractures international cooperation, provides tacit encouragement to States who

¹⁵³ *An Introduction to Statelessness*, UNHCR, <http://www.unhcr.org/pages/49c3646c155.html> [https://perma.cc/V4L7-8GSR] (last visited Dec. 15, 2015).

¹⁵⁴ *See Who is Stateless and Where?*, UNHCR, <http://www.unhcr.org/pages/49c3646c15e.html> [https://perma.cc/K3XC-G8MA] (last visited Dec. 15, 2015) (stating that “Montenegro, which was formerly part of the Yugoslav federation, has approximately 3,200 registered stateless people”).

¹⁵⁵ *Id.* See *Situation of Human Rights in Myanmar*, Oct. 31, 2014, U.N. Doc. A/C.3/69/L.32, GAOR, 69th Sess. (2014) (calling for increased efforts in “providing access to full citizenship on an equal basis” for religious minorities in Myanmar).

¹⁵⁶ *Stateless – UNHCR Actions*, UNHCR, <http://www.unhcr.org/pages/49c3646c16a.html> [https://perma.cc/V8QF-CKJQ] (last visited Dec. 15, 2015) (naming the four categories on which the Commission works: Identification, Protection, Prevention and Reduction).

use citizenship-stripping as a political tool to consolidate power, normatively sets the international community backwards in its evolution towards rights promotion and individual empowerment, and requires implementation of a new and extreme policy where existing law enforcement tools already exist. This applies whether the stripping results in loss of dual nationality or in statelessness.

4.2.1. *Fractured International Cooperation*

Ancient Greece and Rome used banishment, or what we call citizenship-stripping, as a form of punishment and social control.¹⁵⁷ Those societies' use of banishment led influential thinkers like Immanuel Kant to justify banishment as a natural right of States.¹⁵⁸ However, the Greek and Roman versions sent the individual outside the bounds of civilization. Today, 'banishment' is akin to shipping an individual to another State to have it assume responsibility, or to colloquially 'clean up the mess.'¹⁵⁹ If this becomes the new norm, what happens if all countries want to strip a threatening individual's citizenship? Whose national law takes priority, if limitations on statelessness are still a goal to be respected?

4.2.2. *Use as a Political Tool*

As noted in Part II, countries known for grave human rights abuses and powerful autocratic governments like Bahrain, Qatar, and Kuwait now use citizenship-stripping for self-perpetuating aims.¹⁶⁰ If this continues, the delicate balance of States and indi-

¹⁵⁷ Gibney, *supra* note 96, at 6.

¹⁵⁸ *Id.*

¹⁵⁹ As one op-ed stated, "No country has a right to shift its terrorists to others." Saul, *supra* note 14. An interesting theoretical way to consider this in reverse was also offered. *Id.* ("Our culture, too, produced these 'terrorists.'").

¹⁶⁰ *Supra* Section 2.1.3. See also Patrick Galey & Alice K. Ross, *Lords Deal Blow to Home Office Plans to Make Terror Suspects Stateless*, BUREAU OF INVESTIGATIVE JOURNALISM (Apr. 8, 2014), <http://www.thebureauinvestigates.com/2014/04/08/lords-deal-blow-to-home-office-plans-to-make-terror-suspects-stateless> [https://perma.cc/L3N5-H5AP] (describing Lord Pannick QC's opposition to the Immigration Act of 2014 when he stated that "there are regrettably all too many dictators around the World willing to use the creation of statelessness as a weapon against opponents and we should do nothing to suggest that such conduct is acceptable").

vidual rights that the international community has worked hard to achieve will start to erode.¹⁶¹ Once we as a collective take the first few steps backwards, there is no telling how far the system can slide and how much long-term damage the current world order will sustain.

4.2.3. *Rejection of Less Disruptive, More Effective Tools*

Perhaps most importantly, the decision to advance citizenship-stripping adds an unnecessary tool to an already well-stocked toolkit. Its usage so far has raised many issues that harm implementing States' reputations.¹⁶² This may be the singular difference between the use of citizenship-stripping laws during wars for citizens who became members of a foreign State's armed forces fighting against their country of nationality and the potential use of similar provisions for citizens joining non-state actor groups today.

4.2.4. *Creation of Inconsistent Laws on Terrorism*

First, the determination to revoke citizenship requires a concerted understanding of what types of actions will warrant revocation. If the distinguishing factor is "terrorism," nations will vary wildly in their application of policies based on the longstanding difficulty of agreeing on an internationally-acceptable definition of the term.¹⁶³ This differs from other interpretations wherein a term

¹⁶¹ This is already true in the political rhetoric surrounding citizenship-stripping proposals. Many government officials are quick to incorrectly state the legal standard as a conditional right of citizenship without a clear understanding of the issue. See Chris Alexander, House Debate, *Bill C-24: Strengthening Canadian Citizenship Act*, CAN. PARLIAMENT, <http://openparliament.ca/bills/41-2/C-24> [<https://perma.cc/373E-7ASP>] ("Citizenship has never been inalienable. Canadian citizenship was legislated in the House."); Charlie Savage, *Bill Targets Citizenship of Terrorists' Allies*, N.Y. TIMES (May 6, 2010), http://www.nytimes.com/2010/05/07/world/07rights.html?_r=0 (quoting Hillary Clinton as stating "United States citizenship is a privilege . . . [i]t is not a right.").

¹⁶² See *infra* Sections 4.2.4-6.

¹⁶³ See, e.g., Case No. STL-11-01/I, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, ¶ 83 (Feb. 16, 2011) (U.N. Special Trib. for Lebanon, Appeals Chamber) (finding a customary international law crime of terrorism for the first time in a hybrid tribunal). See generally BEN SAUL, *DEFINING TERRORISM IN INTERNATIONAL LAW* (2006) (cover-

has been defined but the limits of the bounded definition itself are debatable. In the terrorism context, the bounds of action that could be considered a springboard to revocation are even more undefined, leaving a frightening amount of discretion to domestic courts.

Second, the determination requires domestic courts like those in the UK to make highly factualized decisions based on foreign immigration laws without an appropriate level of training or cultural understanding. Unlike in cases of jurisdictional disputes, these administrative law issues require courts to decide substantive matters of foreign law that are often subject to a large amount of executive discretion in the foreign country, making precedent or explanatory reports difficult to obtain.¹⁶⁴

Third, revocation requires courts to interpret the 1954 Convention's definition of statelessness as applied to persons who may qualify for citizenship in a country but who for non-legal reasons will not or have not yet been recognized as citizens by the second State.¹⁶⁵ UK courts have expressed this difference as one between

ing all major attempts to define terrorism since the 1920s). The absence of a singular definition of terrorism has led to the proliferation of act-specific conventions that are included in the umbrella of terrorism. See *Text and Status of the United Nations Conventions on Terrorism*, U.N. TREATY COLLECTION (Dec. 26, 2013), https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml [<https://perma.cc/K83N-ZC6J>] (listing act-specific conventions aimed at suppressing, for example, nuclear terrorism, financing terrorism, and terrorist bombings).

¹⁶⁴ See Daniel Kanstroom, *Surrounding the Hold in the Doughnut: Discretion and Deference in U.S. Immigration Law*, 71 TUL. L. REV. 703, 703 (1997) (suggesting U.S. immigration law is in a "crisis of discretion and judicial deference" and would benefit from greater oversight regarding discretionary agency decisions); Jo Shaw & Nina Miller, *When Legal Worlds Collide: An Exploration of What Happens When EU Free Movement Law Meets UK Immigration Law*, 38 EUR. L. REV. 137 (2013) (concluding that in some fields of EU immigration law there has been a consistent failure to apply EU principles at the national level, particularly in the UK).

¹⁶⁵ This tends to work to the detriment of appellants. In the B2 case in the UK, appellant won at the SIAC on the argument that Vietnam did not consider him as a citizen and hence revocation would make him stateless. The Commission analyzed Vietnamese nationality law in principle and in practice and concluded that the legislation was "deliberately ambiguous so as to permit the Executive to make whatever decisions it wished" and because SIAC found that the Vietnamese government "does not consider [appellant] to be a Vietnamese national," the revocation order could not proceed. *B2 v. Secretary of State for the Home Department*, Judgment on Preliminary Issue [2012] SIAC ¶¶ 18-20 (Eng.). However, the revocation order was upheld at the appeals court on the grounds that "if . . . it is clear that an individual under the law of a foreign state is a national of that state, then he is not *de jure* stateless," which is the qualification that is relevant for the purposes of determining statelessness under international law. *B2*

de jure and *de facto* statelessness. This parsing of titular distinctions threatens to expand the ambit of citizenship revocation in cases of statelessness—the most egregious cases of abuse of States’ power. It may also generate a confusing split between nations’ interpretations of the 1954 Convention that will need clarification from a higher legal body. Although similar issues of interpretation exist in international law, the combination of discriminatory results, widening of the possibility for statelessness, and higher courts’ deference to domestic decision-making make these cases particularly unsuitable for counter-terrorism policies.

4.2.5. Procedural Fairness Questioned

In addition, the laws create questions of how a State will give notice of revocation to an individual who is abroad and how the individual will then have adequate knowledge or resources to make use of the right to an appeal.¹⁶⁶ If an individual has been stripped of citizenship while in the home country but has not simultaneously been convicted of a crime and does not have a country to which she may be immediately deported, the host State faces the difficult and perhaps optically embarrassing position of either indefinitely detaining the person until deportation or letting the per-

v. Secretary of State for the Home Department, [2013] EWCA Civ. 616, ¶ 92 (Eng.). In this case, the appeals court held that Vietnam’s actions merely rendered the appellant *de facto* stateless, which was not a recognized legal status for purposes of following the mandates of international law. *Id.* B2’s statelessness was upheld by the UK Supreme Court in a judgment on Mar. 25, 2015. *Pham v. Secretary of State for the Home Department* [2015] UKSC 19 ¶ 38 (Eng.). In that judgment, the Court also dismissed B2’s argument that deprivation of any nationality violated his rights under the European Convention on Human Rights. *Id.* at ¶¶ 58–59.

¹⁶⁶ There is already evidence that failure to appeal by the statutory deadline has affected citizens who have been denaturalized under UK’s 2006 Immigration Act. See Matthew Gibney, ‘A Very Transcendental Power’: Denaturalisation and the Liberalisation of Citizenship in the United Kingdom, 61 POL. STUD. 637, 650 (2013) (citing Amanda Weston, *Deprivation of Citizenship - By Stealth*, INST. OF RACE REL. (June 9, 2011), <http://www.irr.org.uk/2011/june/ha000018.html> [<https://perma.cc/2TSL-X2YK>]) (noting that a number of applicants have missed their deadlines now that they can be denaturalized before an appeal is heard). The right to an in-country appeal in the UK has been found to require a guarantee in legislation, and the 2004 changes to the law have expressly removed such possibility. All citizens revoked of their rights while abroad must pursue appeals abroad. See *G1 v. Secretary of State for the Home Department*, [2012] EWCA Civ. 867, 867 (Eng.) (denying the right to appeal based on the 2004 amendment to the statute).

son remain in the country without legal status.¹⁶⁷ In the recent case of M2 in the UK, M2 had his citizenship revoked but was able to re-enter the country because his passport still had “indefinite leave to remain” stamped on it, raising serious questions about the enforcement of citizenship-stripping and the efficacy of the practice.¹⁶⁸

4.2.6. *Lack of Transparency and Potential for Abuse of Discretion*

Finally, the recent rise in citizenship-stripping cases has been accompanied with a notable lack of transparency both in terms of the number of cases and exact reasons for the ultimate decisions.¹⁶⁹ This lack of transparency is contrary to the goals of criminal justice and security, as it provides no logical promotion of deterrence or publicized sense of retribution.¹⁷⁰ For example, the British Home

¹⁶⁷ This is what the U.S. did in cases of former Nazis found within U.S. territory. See Tom Teicholz, *The Pariah Loophole*, L.A. TIMES (June 13, 2008), <http://articles.latimes.com/2008/jun/13/opinion/oe-teicholz13> [<https://perma.cc/6T4C-MGTH>] (describing the situation of six Nazi criminals who were legally deported but remain in the United States because no country would accept them). For a recent example of indefinite detention of a defendant in the B2 case in England, see Sandra Mantu, *Citizenship Deprivation in the United Kingdom*, 19 TILBURG L. REV. 163, 169-70 (2014) (describing how B2’s citizenship revocation order was upheld by the UK Supreme Court, but as his country of origin, Vietnam, would not immediately recognize his claimed citizenship rights, he was “placed in legal limbo” as “an alien placed by the UK executive in detention awaiting removal to a country that does not recognize him as one of its nationals and cannot be forced to take him back”).

¹⁶⁸ Victoria Parsons & Alice Ross, *UK Government Faces Long Legal Battle After Man Stripped of Citizenship Returns*, GUARDIAN (Aug. 20, 2015), <http://www.theguardian.com/uk-news/2015/aug/20/uk-government-legal-battle-man-stripped-citizenship-returns> [<https://perma.cc/NH6F-TMXN>].

¹⁶⁹ See Chris Woods & Alice K. Ross, *‘Medieval Exile’: The 42 Britons Stripped of Their Citizenship*, BUREAU OF INVESTIGATIVE JOURNALISM (Feb. 26, 2013), <http://www.thebureauinvestigates.com/2013/02/26/medieval-exile-the-21-britons-stripped-of-their-citizenship> [<https://perma.cc/QW6U-ZCYM>] (noting that at least eleven people were not given reasons for denials, and that the Bureau had to do a FOIA request to get the information they compiled). The SIAC is also allowed to hear evidence in secret under its “closed material procedure” that allows the Home Secretary to present material to the court without disclosing it to the appellant or his representative. Special Immigration Appeals Commission Act, 1997, c. 68 § 5(3) (Eng.).

¹⁷⁰ Although for cases in the U.S., under *Terrazas v. Vance*, the revocation cannot be for punitive reasons and is thus technically a civil penalty, its broadcasting to the public can still in many ways fulfill some of the theories of the criminal

Office refused to explain the reasons for depriving citizenship in eleven of the thirteen cases from 2006–2010, and in two of the cases that had been appealed, the individuals were killed in American drone attacks in Somalia while waiting for their appeals.¹⁷¹ The lack of transparency, fueled by the nature of the practice as an executive measure with limited judicial review, leads to great concerns about the potential for abuse of discretion and overuse. In the United States, the Board of Appellate Review, a quasi-independent judicial body¹⁷² responsible for overseeing loss of nationality appeals, was replaced in 2008 with the Bureau of Consular Affairs—an executive agency that now performs “on a discretionary basis an alternative, less cumbersome review.”¹⁷³ More recently proposed laws that do not require a criminal conviction before invoking citizenship-stripping provisions are particularly alarming.¹⁷⁴ The mantra ‘history repeats itself’ blares loud in the face of sustained Islamophobia and anti-immigrant sentiment.¹⁷⁵

punishment system given its severity and practical effects. This also defeats one possible goal of the program—public shaming. For more on this, see Schuck, *supra* note 107, at 72.

¹⁷¹ Bennhold, *supra* note 59; Cobain, *supra* note 57. The government cited the “Data Protection Act,” which forbids it from releasing personal data held on individuals without individual consent or with narrowly tailored exceptions that the government claims would not apply in these cases. Data Protection Act 1998 c. 29 §§ 7(4)–(6) (Eng.); Smith, *supra* note 14. There was speculation that these occurrences were connected. See *infra* note 211 and accompanying text.

¹⁷² 22 C.F.R. § 7.8 (1981). The board’s decision could be reviewed in a trial de novo in federal district court. 8 U.S.C. § 1503(a) (1980). For more on the Board of Appellate Review (BAR), see Lawrence Abramson, *United States Loss of Citizenship After Terrazas: Decisions of the Board of Appellate Review*, 16 N.Y.U. J. Int’l L. & Pol. 829, 843–44 (1984). The BAR has called citizenship “the most fundamental right of an American.” *In Re BAS*, Bd. App. Rev. 12 (Feb. 3, 1983).

¹⁷³ 22 C.F.R. §§7, 50; 73 Fed. Reg. 62196, 62196 (2008).

¹⁷⁴ See *Case of Al-Jedda v. The United Kingdom*, App. No. 27021/08, 2011 Eur. Ct. H.R. at ¶ 11 (2011) (detailing circumstances where Mr. Al-Jedda was identified by the Home Secretary as a terrorist threat and subjected to consequences prior to a conviction); Sangeetha Pillai, *Proposals to Strip Citizenship Take Australia a Step Further Than Most*, CONVERSATION (May 28, 2015), <http://theconversation.com/proposals-to-strip-citizenship-take-australia-a-step-further-than-most-42398> [<https://perma.cc/QZR9-EY4U>] (detailing a new Australian law where the authority to strip a dual citizen of their citizenship is left to the discretion of ministerial decisions).

¹⁷⁵ Anna Sauerbey, *Paris and Europe’s Anti-Refugee Backlash*, N.Y. TIMES (Nov. 16, 2015), <http://www.nytimes.com/2015/11/17/opinion/paris-and-europes-anti-refugee-backlash.html> [<https://perma.cc/QHQ2-A95X>]; *Islamophobia: Understanding Anti-Muslim Sentiment in the West*, GALLUP, <http://www.gallup.com/poll/157082/islamophobia-understanding-anti-muslim-sentiment-west.aspx> [<https://perma.cc/ZCJ6-RUM9>] (last visited Jan. 15,

For these reasons, the policy rationales behind citizenship revocation in the national security context fall short.

5. ALTERNATIVE PROPOSALS TO COMBAT THE EXPANSION OF TERRORISM

There are several less draconian measures that have been explored and which could be further implemented to stem the tide of FTFs, beyond the plethora of existing crimes in domestic codes under which returning FTFs could be held liable¹⁷⁶ and preventive societal programs that could stem the underlying appeal for FTFs to engage in terrorist training.¹⁷⁷ This Part will suggest several possible alternatives and defend their legality.

5.1. *Passport Suspension, Revocation, and Temporary Travel Documents*

If the main right in the bundle of citizenship that currently threatens Western nations is the right of returning FTFs to travel—both to ISIS-dominated areas and then back to their countries of origin—restrictions on this right would be the most direct way of achieving the same pragmatic result as citizenship-stripping with-

2015).

¹⁷⁶ See, e.g., 18 U.S.C. §§ 2331–39 (2012) (listing and criminalizing terrorist acts, such as the use weapons of mass destruction and financial support for terrorists under the chapter entitled “Terrorism”). Some countries are already using their terror laws to charge citizens with recruitment. See *Austria: 13 Are Accused of Recruiting Militants*, N.Y. TIMES (Nov. 29, 2014), <http://www.nytimes.com/2014/11/29/world/europe/austria-13-are-accused-of-recruiting-militants.html> [<https://perma.cc/C7XC-LTKN>] (detailing the arrest of thirteen individuals in Austria suspected of recruiting fighters for radical groups); *Four Charged in Finland’s First Terror Case*, YLE UUTISET, Sept. 17, 2014, http://yle.fi/uutiset/four_charged_in_finlands_first_terror_case/7475726 [<https://perma.cc/C5QW-578W>] (Fin.) (reporting that in Finland’s first terrorism trial, one of the four defendant’s charged is facing recruiting charges).

¹⁷⁷ See, e.g., HOME OFFICE, COUNTER-EXTREMISM STRATEGY, 2015, Cm. 9148, 17–19 (U.K.), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470088/51859_Cm9148_Accessible.pdf [<https://perma.cc/WJ2Z-GWBN>] (outlining a strategy to understand the causes of extremism involving building more cohesive communities and partnering with other groups working to oppose extremism).

out the severe costs. Absent a blanket travel ban to certain areas of the world,¹⁷⁸ there are three individualized means of restricting freedom of movement. These are passport suspension, passport revocation, and the issuance of temporary travel identification documents.¹⁷⁹

Encouragingly, many of the same countries that implemented citizenship-stripping have signaled moves towards policies of passport revocation, perhaps recognizing it as a more humane, large-scale, and temporary measure. Canada¹⁸⁰ and the United States¹⁸¹ have used some form of limitations on passports in the

¹⁷⁸ Although travel bans for citizens of other countries entering the U.S. are legal under the Constitution's common defense clause, U.S. citizens have a right of return and right of free movement. These rights may only be restricted with an administrative notice and opportunity to comment; hence, they may not be applied in a blanket fashion. This was decided in *Bauer v. Acheson*, where the DC appeals court struck down the government's argument that a passport was a political document at the complete discretion of the Executive. 106 F. Supp. 445, 449-50 (D.C. Cir. 1952). Australia's new counter-terrorism law employs this presumption of illegality for travel to "declared areas" in which "a listed terrorist organization is engaging in a hostile activity in that area of a foreign country." Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (Cth) ss 119.2-.3 (Austl.). However, this provision may violate basic rights, including the UDHR's Article 13 (Right to freedom of movement) and the ICCPR's Article 12 (same). UDHR, *supra* note 123, art. 13; ICCPR, *supra* note 124, art. 12. Although the U.S. Supreme Court has upheld the Executive's authority to restrict travel to countries or continents as a blanket restriction during World War II, it remains unclear whether or not such broad restrictions would be upheld as against non-state actors rather than a country with which the U.S. has declared war. See *Zemel v. Rusk*, 85 S. Ct. 1271, 1277 (1965) (explaining that travel to all of Europe was prohibited in 1939, travel to Yugoslavia was restricted in the late 1940s, and travel to Albania, Bulgaria, Communist China, Rumania, Poland, Hungary, Czechoslovakia and the Soviet Union was restricted in 1952).

¹⁷⁹ Under §215 of the Immigration and Nationality Act of 1952, it is unlawful to enter the U.S. without a valid passport, which demonstrates the significance of these restrictions on freedom of movement. Pub. L. No. 82-414, § 215, 66 Stat. 163, 190 (1952) (codified at 8 U.S.C. § 1185 (1994)).

¹⁸⁰ Jesse Tahirali, *Ottawa Revoking Passports of Canadians Who Join Extremists*, CTV NEWS (Can.) (Sept. 20, 2014), <http://www.ctvnews.ca/canada/ottawa-revoking-passports-of-canadians-who-join-extremist-groups-alexander-1.2017048> [<https://perma.cc/JHN9-5WRE>].

¹⁸¹ See generally Ramzi Kassem, *Passport Revocation As Proxy Denaturalization: Examining the Yemen Cases*, 82 FORDHAM L. REV. 2099 (2014). Ted Cruz's citizenship-stripping bill also included a provision to revoke passports. See Expatriate Terrorists Act, S. 2779, 113th Cong. § 2 (2014) (amending the Immigration and Nationality Act to include provisions on loss of nationality if a citizen becomes a member of or assists a designated foreign terrorist organization). A third way would be for the U.S. not to touch nationality at all as a counter-terrorism tool, avoiding both citizenship and passport revocation. At least in the cases of FTFs, this seems to be the case. See Susan Jones, *State Dept. Has Not Cancelled Passports of*

fight against terrorism or FTFs. On February 12, 2015, the UK passed a new Counter-Terrorism and Security Act that gives the government powers to seize and retain passports and temporarily exclude individuals from the UK for up to two years.¹⁸² Although these measures also fall under rebuke for their constriction of civil liberties and relative absence of due process, they have been legally available and incorporated as levers into foreign and domestic policy since well before the new terrorist threats. I will describe how these policies may be used in a lawful manner and why they are advantageous from a policy perspective.

Contrary to the evolving norm against citizenship-stripping, restrictions on passport issuance have been consistently used in the U.S. legal system as measures to restrain travel when individuals do not comply with laws or regulations.¹⁸³ Under current U.S. law, a passport may be revoked if the individual is legally required to be imprisoned or is on parole or other supervised release after having been imprisoned as a result of a conviction for drug law felonies and certain misdemeanors.¹⁸⁴ Freedom of movement may also

Any 'ISIS or Foreign Fighters' Returning to U.S., CNSNEWS (Dec. 3, 2014), <http://cnsnews.com/news/article/susan-jones/state-dept-has-not-cancelled-passports-any-isis-or-foreign-fighters> [<https://perma.cc/Y57D-MHTX>] (explaining that the no-fly list is one such tool that avoids citizenship and passport revocation). However, this particular threat remains in its infancy, and the possibility of more concerted action on the part of the U.S. government remains possible.

¹⁸² Counter-Terrorism and Security Act, 2015, c. 6, s 1, sch 1 (Eng.). It remains to be seen whether these new provisions will supplant or add to existing citizenship-stripping measures.

¹⁸³ The UK and Canada have done similarly as well. In the UK, passport issuance is a Royal prerogative and is not regulated by legislation. Passports may be revoked when a person's continued possession of one would be "contrary to the public interest." See HM PASSPORT OFFICE, THE ROYAL PREROGATIVE: PASSPORT ENTITLEMENT (Jan. 13, 2012) (U.K.), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118554/royal-prerogative.pdf [<https://perma.cc/NE8E-7DML>] (highlighting the role that the discretion of the Home Secretary plays in passport issuance). The Home Secretary redefined public interest in April 2013 in a Written Ministerial Statement to make the provision particularly applicable to "individuals who seek to engage in fighting, extremist activity or terrorist training outside the United Kingdom, and then return to the UK . . ." Passports, Written Ministerial Statements, 25 Apr. 2013, Parl. Deb., H.C. (6th ser.) (2014) 69WS (U.K.). For Canada's policy, which is very similar to the U.S. policy, see Canadian Passport Order, SI/81-86 (Can.).

¹⁸⁴ 22 U.S.C. §2714 (2012). See also 22 C.F.R. § 51.65 (2009) (detailing the process for notifying an individual of denial or revocation of a passport); 22 C.F.R. §§ 51.60-62 (2009) (explaining what the Department of State should consider when denying and restricting the issuance of passports).

be restricted through other statutory provisions: if the individual has obtained a passport through fraudulent or illegal means,¹⁸⁵ if the individual owes an amount greater than US \$2,500 in child support,¹⁸⁶ or if the individual has been convicted of sex tourism,¹⁸⁷ to name a few.¹⁸⁸ The Department of State through Executive Order No. 11295 has been empowered to prescribe additional rules governing passport verification and issuance.¹⁸⁹ To the extent that the government can justify passport revocation for FTFs under similar reasoning—to prevent an individual from evading the law or engaging in crimes related to international travel—additional grounds for passport revocation should not raise any new constitutional concerns.

With respect to FTF regulation in particular, the Passport Act of 1926 and its subsequent amendments allow the Department of State to deny and revoke passports for the protection of national security and foreign policy interests.¹⁹⁰ This right was affirmed in

¹⁸⁵ 8 U.S.C. § 1504 (2012).

¹⁸⁶ 42 U.S.C. § 652(k)(1) (1996). Under a 2005 amendment to the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), any person who owes child support in an amount greater than \$2,500 will be denied a U.S. passport until the matter is cleared up. Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 7303, 12 Stat. 4, 145 (2005).

¹⁸⁷ 22 U.S.C. § 212(a) (2012).

¹⁸⁸ State courts have the authority to order a parent, possessing a child's passport, to surrender the passport to the court or the court's designee. 22 C.F.R. § 51.28(b) (2007); *Fact Sheet on Passports for Family Law Judges and Lawyers*, U.S. DEP'T OF ST. – BUREAU CONSULAR AFF., <https://travel.state.gov/content/passports/en/passports/information/legal-matters/family-law.html> [<https://perma.cc/7YDA-E9H7>] (last updated Feb., 2008). In 2012 and 2015, legislation was introduced in the House and Senate proposing to revoke passports of citizens who had serious “tax delinquencies” that amount to more than \$50,000. Fixing Americas Surface Transportation (FAST) Act, H.R. 22, 1st Cong. § 32,101 (2015); Moving Ahead for Progress in the 21st Century (MAP-21) Act, S. 1813, 112th Cong. § 40,304 (2012) (including the provision).

¹⁸⁹ Exec. Order No. 11,295, 31 Fed. Reg. 10,603, 10,603 (1966). *See also* Policy Memorandum: Procedures for Recommending Revocation of a U.S. Passport to the Department of State, U.S. CITIZENSHIP AND IMMIGR. SERVICES, PM-602-0036 (Apr. 15, 2011) (describing the Department of State's power to revoke passports and appropriate ways for USCIS field officers to report suspicious passport activity).

¹⁹⁰ 22 U.S.C. § 211(a) (2012) (“The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by diplomatic representatives of the United States . . . under such rules as the President shall designate and prescribe for and on behalf of the United States . . .”). This was affirmed in *Haig v. Agee*. 453 U.S. 280, 289-91, 308 (1981). However, because the right to travel is a part of citizens' liberty interest under the Four-

the 1981 Supreme Court case *Haig v. Agee*, which also made clear that the Secretary of State has the power to deny a passport for reasons not specified in the federal statutes and that the power of revocation is encompassed in the power of denial more generally.¹⁹¹ Secretary of State John Kerry, in a House Foreign Affairs Committee session, has expressed his prerogative to make greater use of passport suspension regulations against FTFs. He asserted that his “authority to revoke passports” would be examined as a possible means of preventing FTFs from returning home when the preferred and traditional model of law enforcement and arrest proved inadequate.¹⁹² Reflecting the growing awareness of this power, Representative Poe has introduced the Foreign Terrorist Organization (FTO) Passport Revocation Act to require the Secretary of State not to issue passports to any individual whom the Secretary has determined is a member or who is aiding and abetting a designated FTO.¹⁹³

Patrick Weil, in a 2014 Comment in the *Yale Law Journal*, argues that U.S. passport revocation violates the Fourteenth Amendment guarantees of the Privileges and Immunities Clause¹⁹⁴ because it eliminates a citizen’s right to be “recognized, in foreign countries, as an American citizen.”¹⁹⁵ Weil finds this right in the words of an 1835 case *Urtetiqui v. D’Arcy*, which construed identification as the second primary function of the passport, alongside its function as a request that its bearer may pass safely and freely

teenth Amendment, it may not be deprived without due process of law. See *Kent v. Dulles*, 357 U.S. 116, 125 (1958) (stating that the discretion of the Secretary cannot be exercised to avoid this due process requirement).

¹⁹¹ *Haig*, 453 U.S. at 301-04.

¹⁹² *The ISIS Threat: Weighing the Obama Administration’s Response: Hearing before the H. Comm. on Foreign Aff.*, 113th Cong. 16 (2014) (statement of John Kerry, Sec. of State).

¹⁹³ H.R. 237, 114th Cong. § 2 (2015-2016). This bill has passed the House and was received by the Senate and referred to the Committee on Foreign Relations on July 22, 2015. *H.R. 237 - FTO Passport Revocation Act of 2015*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/237> [<https://perma.cc/9ZV6-BN7A>] (last visited Jan. 15, 2015).

¹⁹⁴ U.S. CONST. art. IV § 2(1) (“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”).

¹⁹⁵ Patrick Weil, *Citizenship, Passports, and the Legal Identity of Americans: Edward Snowden and Others Have a Case in the Courts*, 123 YALE L.J. F. 565, 569 (2014), available at <http://www.yalelawjournal.org/forum/citizenship-passports-and-the-legal-identity-of-americans> [<https://perma.cc/JZ89-VK8L>] (quoting *Urtetiqui v. D’Arcy*, 34 U.S. 692, 699 (1835)).

abroad.¹⁹⁶

Yet he has little authority to suggest why the right to a legal identity abroad could not be curtailed within the bounds of due process, as is the right to international travel.¹⁹⁷ The historical moment at which the *Urtetiqui* case was decided suggests that the legal identity protected by a passport was not a federally issued identification of citizenship but rather a heterogeneous smorgasbord of identification cards with mixed levels of recognition.¹⁹⁸ Exactly what the right to identity means¹⁹⁹ remains an unanswered question. And while the passport revocation debate is in vogue with regard to FTFs, previously applied statutes allowing for revocation had no territorial limit. Their possible application abroad has not triggered any judicial petitions. Without a better understanding of the manifestation of the right to a legal identity in practice, it is difficult to articulate how deprivation of this right harms an individual.

Even granting an acceptable articulation of the harm, Weil is too quick to dismiss alternative forms of identification and consular records.²⁰⁰ There is no universal standard of sufficient identification of nationality. International customary law and municipal laws do not recognize the passport as the conclusive proof of na-

¹⁹⁶ *Urtetiqui*, 34 U.S. at 699.

¹⁹⁷ Weil, *supra* note 195, at 570–71 (citing to the development of citizenship as a right not to be easily revoked, rather than citing the evolution of the doctrine of the passport as a source of legal identity).

¹⁹⁸ Passports were issued by individual states and municipalities through 1856, when the federal government asserted its exclusive right to issue passports. See JOHN C. TORPEY, *THE INVENTION OF THE PASSPORT: SURVEILLANCE, CITIZENSHIP AND THE STATE* 95 (2000) (“The issuance of passports . . . by state and local authorities before 1856 reflects the accuracy of the holding that, during the antebellum period, the central government of the United States had ‘only a token administrative presence in most of the nation and [its] sovereignty was interpreted by the central administration as contingent on the consent of the individual states.’” (citation omitted)).

¹⁹⁹ This is harder to understand in the context of an 1835 case because until May 27, 1941, it was not illegal for a U.S. citizen to leave the country without a passport. DANIEL C. TURACK, *THE PASSPORT IN INTERNATIONAL LAW* 10 (1974). The practical lack of enforcement of citizens carrying passports for identity purposes indicates that the issue of identity did not arise with any frequency or gravity. For a more current history of passports and their use in international law, see Muchmore, *supra* note 118, at 319–21 (agreeing that the *Urtetiqui* case itself seems too outdated to remain relevant given the change in the federal passport regime).

²⁰⁰ Weil mentions in passing that “other identity documents such as driver’s licenses and birth certificates are not necessarily available or recognized abroad.” Weil, *supra* note 195, at 576.

tionality.²⁰¹ Passports are one form of identification; but others can substitute for passports,²⁰² just as passports that are legally valid documents for travel purposes and would qualify as “passports” under the U.S. definition of the term may be insufficient to identify nationality.²⁰³ Countries like the United States issue certain documents that are valid for limited or no travel purposes, but which are only issued on confirmation of one’s citizenship—it is unclear why those documents could not be used abroad to show proof of

²⁰¹ TURACK, *supra* note 199, at 231. According to Turack, in many countries, a passport is prima facie or rebuttable proof of citizenship but not conclusive. *Id.* at 231 nn. 49–50.

²⁰² For example, the U.S. will recognize many alternative documents if one loses a passport and needs proof of citizenship for purposes of obtaining a new passport for travel. See U.S. Dept. of State, *Application for a U.S. Passport, DS-11*, 2 (Sept. 2013), available at <http://travel.state.gov/content/passports/english/passports/first-time.html> [<https://perma.cc/CK23-GB8V>] (listing a U.S. birth certificate and naturalization certificate as primary evidence of U.S. citizenship and early public records, a state-issued Letter of No Record, or a Form DS-10 Birth Affidavit as secondary evidence of citizenship). The primary documents accepted for proof of citizenship may be even stronger forms of identification because they are protected with more procedural process than passports. See Kassem, *supra* note 181, at 2105, 2105 nn. 40, 43 (noting that certificates of naturalization and citizenship cannot be revoked without a pre-deprivation hearing, while a passport may be revoked merely with a written notification and directions for seeking any applicable post-revocation review). The U.S. government, for internal benefits that require proof of citizenship, will also accept non-passport forms of identity. See, e.g., *Proof of U.S. Citizenship and Identity for Medicaid*, VA. DEPT. OF SOC. SERVICES (Jan. 2011), www.dss.virginia.gov/proof_of_citizenship_01-25-11.pdf [<https://perma.cc/DCH4-7BNT>] (listing documents for proof of citizenship including an official military record of service, an insurance record, and evidence of civil services employment by the U.S. government).

²⁰³ §101(a)(30) of the Immigration and Nationality Act of 1952 defines a “passport” to be any travel document issued by a competent authority showing the bearer’s origin, identity and nationality, if any, which is valid for the entry of the bearer into a foreign country. Immigration and Nationality Act of 1952, Pub. L. No. 82-414 § 101(a)(30), 66 Stat. 163, 267 (1952) (current version at 8 U.S.C. § 1481 (2012)). Passports that qualify under that definition have been issued by non-state entities, such as the Free City of Danzig, the Order of Malta, and the Holy See and the Vatican. TURACK, *supra* note 199, at 207–13. Similarly, the World Citizen Passport has been developed by Gary Davis as an experiment in reducing statelessness; since its invention in 1948 over 2.5 million passports have been issued, and it has been accepted in several nations. See Margalit Fox, *Garry Davis, Man of No Nation Who Saw One World of No War, Dies at 91*, N.Y. TIMES (July 28, 2013), <http://www.nytimes.com/2013/07/29/us/garry-davis-man-of-no-nation-dies-at-91.html> [<https://perma.cc/K3NK-D4JF>] (summarizing the life’s work of Garry Davis, who invented the idea of a world passport and justified its legal validity under Article 13 of the UDHR); *The World Passport*, WORLD GOV’T OF WORLD CITIZENS, <http://www.worldservice.org/docpass.html> [<https://perma.cc/8CXU-EB5Y>] (last visited Feb. 17, 2016) (providing information on the World Passport).

nationality.²⁰⁴ Finally, if documents that are acceptable by a country of origin to substitute for a passport as proof of citizenship are insufficient in a foreign country, any underlying rights that would need to be vindicated by the U.S. government would still be guaranteed. Presumably an individual would need to contact a U.S. embassy or consulate to obtain non-travel-related rights concurrent with citizenship. As written notification is necessary for revocation of a passport, the paper trail could be prima facie evidence of nationality available to an individual.²⁰⁵

Passport restrictions are not only legal, they are policy-preferred. Restrictions have flexibility in their application not available with the permanent and rudimentary denial of all rights by citizenship-stripping. The government may choose to permanently revoke a passport or temporarily suspend a passport for a limited period of time in light of fears of terrorist training in Iraq and Syria.²⁰⁶ The government may then issue limited emergency travel documents for authorization to travel either only to a country of origin in the event that a passport is suspended while the individual is abroad²⁰⁷ or a limited validity travel document for trav-

²⁰⁴ For example, the U.S. issues U.S. Passport Cards that verify citizenship, which are only good for land travel to/from the U.S. and cannot be used for international travel by air. *U.S. Passport Card*, U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFF., <http://travel.state.gov/content/passports/english/passports/information/card.html> [https://perma.cc/U4BA-GB6F] (last visited Dec. 15, 2015). States also now issue enhanced drivers licenses (EDLs), which provide proof of identity and U.S. citizenship but are not available for international travel by air. *Enhanced Drivers Licenses: What Are They?*, U.S. DEP'T OF HOMELAND SECURITY, <http://www.dhs.gov/enhanced-drivers-licenses-what-are-they> [https://perma.cc/98R6-ELYS] (last updated Nov. 6, 2014).

²⁰⁵ 22 C.F.R § 51.65(a) (2009).

²⁰⁶ Britain will suspend passports for up to two years. See David Cameron, Prime Minister of the UK, Speech at the Australian Parliament (Nov. 14, 2014) [hereinafter "Cameron Speech"] (stating that the soon-to-be-introduced Counter-Terrorism Bill will include new powers to seize passports). Britain also has plans to issue temporary exclusion orders for up to thirty days, preventing entry into the country of citizens and requiring them to submit to an interview with police upon arrival in the UK. Counter-Terrorism and Security Act 2015 (c. 6) §§ 2-4 (Eng.).

²⁰⁷ See, e.g., *Emergency Travel*, U.S. CITIZENSHIP AND IMMIGR. SERVICES, <http://www.uscis.gov/green-card/green-card-processes-and-procedures/travel-documents/emergency-travel> [https://perma.cc/2VSP-MDPK] (last updated Oct. 16, 2014) (describing the nature of the emergency travel document); *Application for a United Kingdom Emergency Travel Document*, U.K. FOREIGN & COMMONWEALTH OFFICE, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/375913/ETD_Application_Form.pdf [https://perma.cc/TQ6B-SAXG] (last updated Nov. 11, 2014) (reviewing the emergency travel protocols in the United

el with geographic limitations for emergency or humanitarian exceptions.²⁰⁸ In all of these situations, the law restricts freedom of movement because the actions the individual will take once in the foreign country, or the mere act of going to the foreign country, would be in violation of U.S. law and grounds for prosecution.

Passport revocation is also policy-preferred because it promotes the same aims as citizenship revocation with a more limited, less restrictive approach. Particularly in the case of FTFs, the targeted terrorists would be lower level, recently radicalized individuals, particularly youth,²⁰⁹ whose surveillance is most critical for intelligence purposes to understand the larger threats of ISIS. Passport suspension would allow for a gathering of intelligence, a temporary halt to freedom of movement, and possible prosecution for supporting terrorism, without the indefinite and unknown consequences of total banishment. This is a solution for a different type of terrorist threat than those terrorists who pose an imminent and direct threat to a nation's security, which is a comparatively limited group of individuals on lists for targeted killings.²¹⁰

Limitations on freedom of movement are only advantageous if used with appropriate discretion, transparency, and procedural

Kingdom).

²⁰⁸ 22 U.S.C. § 2714(d) (2012) ("Emergency and humanitarian exceptions"); *Request for Limited-Validity Travel Document in Special Circumstances under Urgent, Compelling and Compassionate Considerations*, PASSPORT CAN., <http://www.cic.gc.ca/english/passport/security/limited-validity.asp> [<https://perma.cc/FF53-5QHM>] (last updated June 7, 2013).

²⁰⁹ See, e.g., GLOBAL COUNTERTERRORISM FORUM, "FOREIGN TERRORIST FIGHTERS" (FTF) INITIATIVE: THE HAGUE – MARRAKECH MEMORANDUM ON GOOD PRACTICES FOR A MORE EFFECTIVE RESPONSE TO THE FTF PHENOMENON 1, (2014), available at https://www.thegctf.org/documents/10162/140201/14Sept19_The+Hague-Marrakech+FTF+Memorandum.pdf [<https://perma.cc/5SAT-K7ZL>] (endorsing the effects of individualized mentoring programs in providing "counter-narratives" that support youth otherwise at risk of radicalization).

²¹⁰ Although the two groups could overlap, citizenship-stripping is not co-terminous with targeted killing, and the two measures serve different but not mutually exclusive purposes. In any event of a serious, imminent threat, with the proper international and national legal authorization, individuals threatened with passport revocation could also be subject to targeted killing. However, the total number of individuals who are lawfully targeted for unmanned aerial attacks, while classified, is only a small percentage of the number of people surveilled and alleged to have engaged in terrorist-related actions. The individuals targeted must meet certain criteria to be considered a threat substantial enough to warrant targeting. See Cora Currier, *Everything We Know So Far About Drone Strikes*, PROPUBLICA (Feb. 5, 2013), <http://www.propublica.org/article/everything-we-know-so-far-about-drone-strikes> [<https://perma.cc/BN9F-QEGC>] (describing the process for selecting individuals for targeted killing).

due process guarantees. For example, Britain has recently added to its counter-terrorism law the offense of “glorif[y]ing” terrorism through speech or online posting.²¹¹ As the Passport Act now makes clear following a 1991 amendment, in the United States, First Amendment protections on free speech may not be repealed as grounds for denying or revoking a passport.²¹² Any potential passport suspension regulations that would threaten individuals’ protected First Amendment rights would be impermissible.²¹³ Britain’s new measure allows for suspension for up to two years, recognizing exigencies of wartime and the need to evaluate changes to the world order in the short term, given the situation’s volatility.²¹⁴ The length of time warranted for passport suspension remains debatable. Nevertheless, the idea that in most cases the appropriate course of action will be temporary rather than an ultimate revocation is an important recognition of the non-punitive nature of passport limitations²¹⁵ and one that distinguishes this administrative measure from the permanent revocation of citizenship.

Similarly, the lack of transparency present in citizenship-stripping cases thus far appears to have infected the policy of passport suspension. Canadian officials have revoked passports in “multiple cases” but will not say how many or based on what objective criteria beyond the “public interest.”²¹⁶ U.S. Homeland Security Secretary Jeh Johnson has advocated that suspension be

²¹¹ Terrorism Act, 2006, c. 11 §§ 1(3), 2(4), 3(8) (Eng.).

²¹² See Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Pub. L. No. 102-138, § 113, 105 Stat. 647, 655 (1991) (codified at 22 U.S.C. § 2721 (2012)) (“A passport may not be denied issuance, revoked, restricted, or otherwise limited because of any speech, activity, belief, affiliation, or membership [which] would be protected by the first amendment to the Constitution of the United States.”).

²¹³ See, e.g., Jillian C. York, *The Internet is Not the Enemy*, FOREIGN POL’Y (Oct. 22, 2014), <http://foreignpolicy.com/2014/10/22/the-internet-is-not-the-enemy> [<https://perma.cc/4MZC-2RYN>] (quoting leaders of China and Iraq in their attempts to restrict IS’s use of the Internet and to broadly evoke censorship policies at the expense of free speech).

²¹⁴ Counter-Terrorism and Security Act of 2015, c. 2, § 4(3) (Eng.).

²¹⁵ For the current regulations on passport suspension or revocation, once the harm is alleviated (payment to the government, service of a sentence, etc.), the passport can be re-issued.

²¹⁶ Stewart Bell, *Canadian Government Begins Invalidating Passports of Citizens Who Have Left to Join Extremist Groups*, NAT’L POST (Sept. 20, 2014), <http://news.nationalpost.com/2014/09/20/canadian-government-revoking-passports-of-citizens-trying-to-join-extremist-groups> [<https://perma.cc/R4W5-JQPE>] (Can.).

used on a “case-by-case basis” in order to evaluate its potential effectiveness alongside other options.²¹⁷ The veil of secrecy that continues to shroud these counter-terror measures upsets sensibilities on appropriate levels of due process. Just as the Office of Legal Counsel released its internal memos detailing the objective criteria for determining the legality of a drone attack on a U.S. citizen,²¹⁸ the same collective policy for passport revocation should be publicly announced and debated so that it becomes an accepted, known part of criminal justice enforcement in counter-terrorism cases. The perception of arbitrariness that both citizenship-stripping and passport revocation policies have fostered detracts from the policies’ effectiveness and acceptance.

Passport suspension must also not be used for illegitimate purposes. In Yemen, commentators have written on the revocations of hundreds of naturalized Yemenis’ passports on the alleged basis of fraudulent applications or minor discrepancies in forms.²¹⁹ Similar events have occurred in Pakistan.²²⁰ Several of the Yemeni cases, once challenged in U.S. federal court, were resolved in favor of the individuals, who were returned their passports and allowed to travel immediately.²²¹ The program’s lack of transparency to the public paled in comparison to the lack of forthrightness with the individuals affected, many of whom did not know their procedural rights to challenge the determinations.²²² In order to successfully

²¹⁷ David Martosko, *Senator Blocks Ted Cruz Bill to Seize Passports from ISIS Fighters Who Return to the US*, DAILY MAIL (Sept. 18, 2014), <http://www.dailymail.co.uk/news/article-2761333/Swords-cross-Capitol-Hill-senator-blocks-bill-stripping-citizenship-American-foreign-fighters-aid-ISIS-terror-army.html> [<https://perma.cc/5UTG-LEJM>] (U.K.).

²¹⁸ Al-Aulaqi Memorandum, *supra* note 109.

²¹⁹ Kassem, *supra* note 181.

²²⁰ See Leti Volpp, *Citizenship Undone*, 75 FORDHAM L. REV. 2579, 2579 (2007) (detailing the placement of a family on the no-fly list because of listing the “wrong person” on their passports for the emergency contact); Glenn Greenwald, *Banished U.S. Citizens Mysteriously Permitted to Return Home (Maybe)*, UNCLAIMED TERRITORY (Sept. 13, 2006), <http://glenngreenwald.blogspot.com/2006/09/banished-us-citizens-mysteriously.html> [<https://perma.cc/7AP4-DJV7>] (criticizing the Bush administration’s decision to “unilaterally decree[] a secret punishment that could not be seen, read, understood or meaningfully challenged”).

²²¹ For three such examples of cases which were then withdrawn by the plaintiff, see *Mousa v. United States of America et al.*, No. 3:13-cv-05958-BHS (W.D.W.A. filed Nov. 1, 2013); *Qassem v. Holder et al.*, No. 6:13-cv-06041 (W.D.N.Y. filed Jan. 30, 2013); *Alarir et al. v. Holder et al.*, No. 1:12-cv-07781 (S.D.N.Y. filed Oct. 18, 2012).

²²² Per *Haig v. Agee*, a restriction on the liberty to travel must conform with the provisions of the Fifth Amendment. Due Process in these cases guarantees a

advocate for the continued use of passport suspension in place of citizenship-stripping measures, such actions should not be repeated. Used with appropriate restraint, transparency, and discretion, passport revocation could be a consequential alternative to citizenship-stripping.

5.2. *Secondary Alternatives: Rehabilitation Programs, Increased Border Security, and Civil Aviation Liability*

Many of the following proposed practices are being implemented and strengthened at the time of this writing. States' serious consideration of alternative policies should be applauded, but they should also be encouraged to supplant rather than supplement citizenship-stripping laws.

Terrorist rehabilitation is an idea unique to the post 9/11 al-Qaida and its affiliate organizations' threats.²²³ Saudi Arabia has the most extensive rehabilitation program, which it has been developing since 2004.²²⁴ Despite contentious reporting on high recidivism rates,²²⁵ both Saudi and American officials have called the program a success, and, at the encouragement of the United States, it has become a model for the future Yemeni rehabilitation centers.²²⁶ Other Muslim countries worried about radicalization, in-

statement of reasons and an opportunity for a prompt post-revocation hearing. *Haig v. Agee*, 435 U.S. 280, 309 (1981). Even with successful challenges, the information explaining an individual's release was "Kafkaesque." Volpp, *supra* note 220, at 2586.

²²³ See John Horgan & Kurt Braddock, *Rehabilitating the Terrorists?: Challenges in Assessing the Effectiveness of De-radicalization Programs*, 22 *TERRORISM & POLITICAL VIOLENCE* 267, 268 (2010) (conducting a one year study of de-radicalization programs in Northern Ireland, Colombia, and Saudi Arabia to assess their effectiveness).

²²⁴ Benjamin Barthe, *Saudi Correctional Centre Claims Success with Goremer Jihadists*, *GUARDIAN* (Sept. 27, 2014), <http://www.theguardian.com/world/2014/sep/27/mohammed-bin-nayef-centre-rehabilitation-jihadists> [https://perma.cc/3C8B-8FPX].

²²⁵ Jessica Stern, *Mind Over Martyr: How to Deradicalize Islamist Extremists*, *FOREIGN AFF.* (Jan. 2010), <http://www.foreignaffairs.com/articles/65896/jessica-stern/mind-over-martyr> [https://perma.cc/R42D-PKMN].

²²⁶ Marisa Porges, *The Saudi Deradicalization Experiment*, *COUNCIL ON FOREIGN REL.* (Jan. 22, 2010), <http://www.cfr.org/radicalization-and-extremism/saudi-deradicalization-experiment/p21292> [https://perma.cc/WC4N-3UR3]. See also John Horgan & Mary Beth Altier, *The Future of Terrorist De-Radicalization Programs*, 13 *GEO. J. INT'L AFF.* 83, 84 (2012) (suggesting that, despite the potential for recidivism, "ultimately, disengaged terrorists themselves may be the most potent force

cluding Egypt, Algeria, Singapore, Indonesia, and Malaysia, now have similar programs,²²⁷ and European countries faced with large numbers of FTFs for the first time are following suit.²²⁸ While the U.S. has not embraced rehabilitation for domestic jihadists, branches of the Department of State provide support to international efforts to expand these programs.²²⁹

Rehabilitation programs provide means of addressing the underlying causal harms that create FTFs. In conjunction with traditional prison programs, they are a supplementary approach to counterterrorism strategies that target recidivism. They directly oppose one of the main criticisms of citizenship-stripping—that countries foist their dirty laundry on others by ridding themselves of any association with the alleged terrorist—instead seeking to promote values of inclusion and re-acceptance of the individual into the political community of the State. In so doing, programs may be contrived with nation-specific conceptions of what types of educational and vocational courses to offer, or they may be designed regionally and still support the underlying goals of increased in-

in pre-empting engagement among prospective recruits”).

²²⁷ Horgan & Altier, *supra* note 226, at 85–86. See generally TERRORIST REHABILITATION AND COUNTER-RADICALISATION (Rohan Gunaratna et al. eds., 2011) (analyzing examples of such programs in a number of these and other states).

²²⁸ See Elisabeth Braw, *Inside Denmark's Radical Jihadist Rehabilitation Programme*, NEWSWEEK (Oct. 17, 2014), <http://www.newsweek.com/denmark-offers-returning-jihadis-chance-repent-277622> [<https://perma.cc/L896-N8X7>] (highlighting examples in Denmark and Scandinavia).

²²⁹ Part of the exit strategy in Iraq involved the establishment of educational and moderate faith-based programming in the criminal system, though the program remains voluntary for prisoners. See Sara Wood, *Iraq Detention Operations Focus on Education, Rehabilitation*, U.S. DEP'T OF DEF. NEWS (Oct. 10, 2007), <http://www.defense.gov/news/newsarticle.aspx> [<https://perma.cc/R8RC-MZCA>] (discussing the educational programming undergone in Iraq). See generally AMI ANGELL & ROHAN GUNARATNA, TERRORIST REHABILITATION: THE U.S. EXPERIENCE IN IRAQ (2011) (overviewing the various types of programming utilized by the U.S. in Iraq). Since 2009 the Department of State has funded a long-term program called “Countering Violent Extremism” (CVE), which works with groups such as the UN’s Interregional Crime and Justice Research Institute and the International Center for Counterterrorism, a Dutch NGO, to “strengthen the capabilities of key countries to rehabilitate and reintegrate [violent] offenders.” BUREAU OF COUNTERTERRORISM, U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2013 250 (2014). CVE supports the use of the Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders, a set of best practices to facilitate growth in rehab programs. GLOBAL COUNTERTERRORISM FORUM, *Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders* (2014), available at <https://www.thegctf.org/documents/10162/38330/Rome+Memorandum-English> [<https://perma.cc/2ZPW-RUBJ>].

ternational partnership as stated in UN Resolution 2178, the UN's best collective response to ISIS to date.²³⁰

Resolution 2178 further recommended "intensify[ing] and accelerat[ing] the exchange of operational information regarding actions or movement of terrorists"²³¹ and "prevent[ing] the entry into or transit through their territories [of travelers] for the purpose of participating in [terrorist acts]."²³² The UN Security Council Counter-Terrorism Committee (CTC) has already begun this work by organizing a European conference on the matter and spearheading a working group related to "detecting suspicious travel movements: tools for analysis and identification."²³³ The CTC could go further by organizing a special meeting in the likes of the five special meetings it held from 2003 to 2007 under the mandate of Resolution 1373, which preceded 2178 on the issue of the cross-border movement of terrorists.²³⁴

Increased information sharing can facilitate border apprehen-

²³⁰ S.C. Res. 2178, ¶ 4, U.N. Doc. S/RES/2178 (Sept. 24, 2014) (calling for Member States to develop and implement "rehabilitation and reintegration strategies for returning foreign terrorist fighters"). The UN in its latest resolution condemning ISIS attacks again calls upon member States to "redouble and coordinate their efforts to prevent and suppress terrorist acts committed specifically by ISIL" and urges member states to "continue to fully implement the above-mentioned resolutions" (including Resolution 2178). S.C. Res. 2249, *supra* note 11, ¶¶ 4-5. See also S.C. Res. 2195, ¶¶ 1-2, U.N. Doc. S/RES/2195 (2014) (calling upon Member States to "strengthen border management to effectively prevent the movement of terrorists and terrorist groups" and stressing "the need to work collectively to prevent and combat terrorism in all its forms and manifestations").

²³¹ S.C. Res. 2178, *supra* note 230, ¶ 3.

²³² *Id.* ¶ 8.

²³³ *Member States, International Experts Pledge to Strengthen Response to FTF Threat*, SEC. COUNCIL COUNTER-TERRORISM COMM., http://www.un.org/en/sc/ctc/news/2014-11-27_eu_commission_swiss_confederation.html [https://perma.cc/TC3H-XH3Z] (last updated Nov. 28, 2014).

²³⁴ S.C. Res. 1373, ¶ 6, U.N. Doc. S/RES/1373 (Sept. 28, 2001); *Cooperation with International, Regional and Subregional Organizations*, SEC. COUNCIL COUNTER-TERRORISM COMM., <http://www.un.org/en/sc/ctc/cooperation.html> [https://perma.cc/EDK7-JX3K] (last updated Feb. 2, 2011). The fifth and last of the planned conferences was in 2007, on the exact issue of "Prevention of Terrorist Movement and Effective Border Security." *Fifth Special Meeting of the Counter-Terrorism Committee with International, Regional and Subregional Organizations, "Prevention of Terrorist Movement and Effective Border Security,"* SEC. COUNCIL COUNTER-TERRORISM COMM., <http://www.un.org/en/sc/ctc/specialmeetings/2007-nairobi/docs.html> [https://perma.cc/SX26-H7LS] (last updated 2007). The papers and presentations given for that conference may be of use to States today, particularly the International Civil Aviation Organization's presentation and paper regarding its Machine Readable Travel Document program to standardize passport and visa readers at border controls. *Id.*

sion, mitigate the harms that encourage citizenship-stripping, such as radicalized training in wartime areas of Syria and Iraq, and return to a country of origin. Particular focus should be placed on heightening standards of border security in Northern Africa²³⁵ and Turkey.²³⁶ Turkey might explore expanding its bilateral agreements with European countries to promote information sharing along the lines of a recently announced agreement with Britain,²³⁷ increasing security measures at seaward ports of entry,²³⁸ and expanding checkpoint operations along its borders with Syria and Iraq.²³⁹ Border security enhancement is not a new or radical idea specific to counter-terrorism, but it is a foundational concern that

²³⁵ Border security regimes in North Africa are still in their infancy. See *Morocco Hosts North Africa Border Security Conference*, NTD (Nov. 15, 2013), <http://www.ntd.tv/en/news/world/middle-east/-/africa/20131115/83311-morocco-hosts-north-africa-border-security-conference.html> [<https://perma.cc/94W8-KYBT>] (describing a regional conference conducted to improve border security in North Africa); Danica M. Sirmans, *NPS Helps Northern Africa Improve Border Security Through a Series of Workshops*, NAVAL POSTGRAD. SCHOOL, <http://www.nps.edu/About/News/NPS-Helps-Northern-Africa-Improve-Border-Security-Through-Series-of-Workshops.html> [<https://perma.cc/76JJ-LQXP>] (last updated Mar. 13, 2014) (outlining regional efforts to exchange intelligence information and threat warnings).

²³⁶ Turkey has come under fire for having a porous border and not making sufficient efforts to stop the flow of FTFs. See *Turkey's Border Security Problem*, AL-MONITOR, <http://www.al-monitor.com/pulse/originals/2014/11/turkey-border-security-problem.html> [<https://perma.cc/7Y6L-YK7Y>] (last visited Dec. 15, 2015) (outlining the border security plan as it existed in 2014 and highlighting gaps).

²³⁷ *Britain, Turkey Work 'Closely' to Stop Foreign Fighters Flow*, HURRIYET DAILY NEWS (Dec. 10, 2014), <http://www.hurriyetdailynews.com/britain-turkey-work-closely-to-stop-foreign-fighters-flow.aspx> [<https://perma.cc/R79R-44GP>]. Turkey also has an agreement with Frontex from 2012 that could be further specified. See MEMORANDUM OF UNDERSTANDING BETWEEN THE EUROPEAN AGENCY FOR THE MANAGEMENT OF OPERATIONAL COOPERATION AT THE EXTERNAL BORDERS OF THE MEMBER STATES OF THE EUROPEAN UNION AND THE MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF TURKEY (May 28, 2012), available at http://www.frontex.europa.eu/assets/Partners/Third_countries/WA_with_Turkey.pdf [<https://perma.cc/VRG4-4TQW>] (agreeing to exchange strategic intel and border control best practices, thereby promoting practical cooperation among Frontex and Turkish authorities).

²³⁸ See *Interpol: Would-Be ISIL Fighters Taking Turkey-Bound Cruises to Join ISIL*, BGN NEWS (Nov. 7, 2014), <http://national.bgnnews.com/interpol-would-be-isil-fighters-taking-turkey-bound-cruises-to-join-isil-haberi/1378> [<https://perma.cc/4BJV-9XMS>] (identifying a pattern of ISIL recruits utilizing cruises to travel to Syria and Iraq in order to avoid airport monitoring).

²³⁹ *Turkey's Border Security Problem*, *supra* note 236 (noting that the Border Security Law only requires Turkey to secure a border of 3/8 of a mile, a relatively narrow boundary).

should not be overlooked in the discussion of more targeted means of FTF reduction.

Airlines may be asked to play a greater role in prevention and detection. With the recent announcement of the cancellation of subsidized terrorism insurance in the U.S., at least, airlines may have greater motivation to cooperate for fear of an uninsurable attack.²⁴⁰ The Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 requires all airline carriers on transatlantic flights to provide detailed passenger lists to be screened against government no-fly lists.²⁴¹ Australia newly introduced the same requirement in its Foreign Fighters Bill,²⁴² and Britain may soon propose similar legislation.²⁴³ The European Council, after years of debate,²⁴⁴ passed an agreement to mandate European countries regulate transfer of Passenger Name Record data from airlines to national authorities at the close of 2015.²⁴⁵ The rest of the world, including Asia, Turkey, and Africa, currently has no such requirement.²⁴⁶ Improving information transfer between airline carriers

²⁴⁰ Jonathan Weisman, *Congressional Roadblock Upends Market for Terrorism Insurance*, N.Y. TIMES (Dec. 17, 2014), <http://www.nytimes.com/2014/12/18/business/a-bill-on-terrorism-insurance-is-stopped-by-a-senators-objection.html> [<http://perma.cc/6RUU-78QH>].

²⁴¹ Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458 § 4011, 118 Stat. 3638, 3712-19 (2004). These requirements were implemented by the Secure Flight Program. 49 C.F.R. pt. 1540, 1544, 1560 (2008).

²⁴² *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Cth) s 6, pt 1, div 1(12) (Austl.).

²⁴³ Cameron Speech, *supra* note 206.

²⁴⁴ *Proposal for a Directive of the European Parliament and of the Council on the Use of Passenger Name Record Data for the Prevention, Detection, Investigation and Prosecution of Terrorist Offences and Serious Crime*, at 6, COM (2011) 32 final (Feb. 2, 2011); *Passenger Name Record: EU Reaches Agreement*, BBC NEWS (Dec. 4, 2015), <http://www.bbc.com/news/world-europe-35010807> [<https://perma.cc/P4MU-38RD>].

²⁴⁵ *Regulating the Use of Passenger Name Record (PNR) Data*, COUNCIL OF THE EUR. UNION, <http://www.consilium.europa.eu/en/policies/fight-against-terrorism/passenger-name-record> [<https://perma.cc/T5E3-JBU3>] (last accessed Jan. 15, 2015). The text will be revised by “lawyer-linguists” and formally adopted in 2016, after which countries will have two years to implement the provisions. *Id.* As with all options in the fight against terrorism, this policy will need to be carefully monitored for potential intrusions on civil liberties and adequate public transparency. For a more recent update, see James Kanter, *Europe, in Wake of Attacks, Votes to Collect Air Passenger Data*, N.Y. TIMES (April 14, 2016), <http://www.nytimes.com/2016/04/15/business/international/eu-collect-air-passenger-data.html> [<https://perma.cc/DD4Y-T2QW>].

²⁴⁶ Alan Travis, *European Counter-Terror Plan Involves Blanket Collection of Passengers’ Data*, GUARDIAN (Jan. 27, 2015), <http://www.theguardian.com/uk-news/2015/jan/28/european-commission-blanket-collection-passenger-data>

and government security officials integrate public and private actors involved in the transport of foreign terrorist fighters and standardize law enforcement practices across the world, further decreasing the need for citizenship-stripping.

6. CONCLUSION: ON THE PROHIBITION OF EXPENDABLE IDENTITY

There was a time in the history of the world order when people were another commodity of nation-states—disposable, expendable, and without basic rights. But the world order of the twenty-first century strikes a balance between individuals' rights and States' rights. I have shown that the discretion of revoking citizenship has been at all times philosophically conceived of as a power of last resort and has in practice been narrowed in its application and legal availability since World War II in several Western nations, the United States taking the strictest position in protecting the rights of the citizen. I have also shown how the current Western counter-terrorism laws that have emerged as a response to post-9/11 forms of terrorism threaten to upend this world order. If lawmakers have not viewed their proposals with an eye towards historical trends, these new revocation laws seem innovative and firm in their stance towards banishment. But viewed in the light of history, the current focus on revocation seems anachronistic and medieval as a form of punishment. In reply, I have advocated for the primary tool already available and legally acceptable to combat terror threats: passport suspension, passport revocation, and temporary travel documents. There remain several other legally available alternative means that could be further explored, such as rehabilitation centers, increased border security, and existing national criminal law—the mainstay of holding individuals accountable for violations of law.

Sparing use of citizenship-stripping cannot be the mainstay of a counter-terrorism strategy, and its continued use, even rarely, maintains its acceptability. Nations must be convinced that there is no need or utility to augment draconian citizenship-stripping

[<https://perma.cc/6KQU-H4UW>]; Michael McCaul, Op-Ed., *Europe Has a Jihadi Superhighway Problem*, TIME (Nov. 11, 2014), <http://homeland.house.gov/news/mccauley-op-ed-europe-has-jihadi-superhighway-problem-time> [<https://perma.cc/96U7-8PFA>].

2016]

Expatriation as Counter-Terrorism Tool

1329

measures in conjunction with myriad other counter-terrorism tools outlined in this paper. This is particularly true in today's globalized world, where threats are directed not at nations but at versions of societies that are present nearly everywhere and the relationship between a State and its citizenry at times seems to take backstage to a more unified, global solidarity. It is time for an affirmative rejection of citizenship-stripping, once and for all.