

# LYING IN WAIT: THE ABSENCE OF REPATRIATION OF ISIS BRIDES AND CHILDREN FROM AL-HOL REFUGEE CAMP

## ABSTRACT

*Initially established by the United Nations High Commissioner for Refugees (“UNHCR”) as a place of refuge for those displaced by the 1991 Gulf War, al-Hol Refugee Camp, situated near the Syria-Iraq border, now houses thousands of foreign fighters, their wives, and children who left their States of Origin to join the Islamic State in various capacities. Since the fall of ISIS in 2018, States and international organizations have called for the repatriation of foreign-born ISIS wives and children to their States of Origin. This global call to action has resulted in an ever-deepening divide among nations concerning repatriation policies.*

*Generally, repatriation policies fall into two camps. For example, the policy approaches of nations like Great Britain and Jordan include stripping the individual of their citizenship and denying any chance of repatriation. In contrast, nations like the United States and Kazakhstan have successfully repatriated many of their respective citizens that allegedly joined ISIS. Upon a finding of criminal liability for involvement with the Islamic State, the policies of the United States and Kazakhstan require the repatriation and subsequent prosecution of their citizens on terrorism charges, including charges that concern aiding, abetting, and financing of the terrorist group. Both camps contend that their policy provisions are the best and most efficient means of ensuring national security.*

*This Note provides a comprehensive and comparative analysis of global policies and case studies to determine whether repatriation laws requiring the return of foreign ISIS fighters, wives, and children are the best and most efficient means of balancing the interests of justice and national security. As a result of that analysis, this Note proposes two approaches to repatriation that the International Community should adopt: (1) repatriation, rehabilitation, and reintegration; and (2) the formation of an international criminal tribunal for the investigation and prosecution of those affiliated with ISIS. Ultimately, this Note concludes that repatriation laws that obligate the repatriation, prosecution, and rehabilitation of foreign-born ISIS brides and their children are the best and most efficient means of balancing the interests of justice, dignity, and national security.*

## I. INTRODUCTION

Sharing a border with the Mediterranean Sea and some of the most volatile nations in the world, Syria is home to some of the oldest and richest history on Earth.<sup>1</sup> Unfortunately, since 2013, the place where life began has been riddled with death and desperation.<sup>2</sup> In 2015, news headlines worldwide were flooded with graphic descriptions of the Syrian Civil War.<sup>3</sup> In the United States, Americans were horrified by a picture of a Syrian child who died on a beach shore while fleeing from the violence taking root in his country.<sup>4</sup> While Syrians fled their homeland to prevent imminent death and the assured destruction of their homes, foreign fighters rushed to Syria to take up arms for Islamic State (“ISIS,” “Islamic State of Iraq and Syria,” or “Islamic Caliphate”).<sup>5</sup>

At the time of this writing, four years have passed since the fall of the Islamic State.<sup>6</sup> Persons and their families identified as foreign fighters who left countries including the United States, Kazakhstan, Great Britain, and Jordan now sit idly in al-Hol Refugee Camp in northeastern Syria, a territory controlled by the Syrian Democratic Forces (“SDF”).<sup>7</sup> Many foreign-born ISIS brides have requested to be repatriated to their States of Origin, but their requests have largely been denied.<sup>8</sup> Such

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<sup>1</sup> Joshua J. Mark, *Ancient Syria*, WORLD HIST. ENCYC. (June 17, 2014), <https://www.worldhistory.org/syria/>.

<sup>2</sup> See *Timeline: The Rise, Spread, and Fall of the Islamic State*, WILSON CTR. (Oct. 28, 2019), <https://wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state>.

<sup>3</sup> See, e.g., Divers, *More Than Four Million Syrians Have Now Fled War and Persecution*, U.N. REFUGEE AGENCY (July 9, 2015), <https://www.unhcr.org/en-us/news/latest/2015/7/559d648a9/four-million-syrians-fled-war-persecution.html>; Zack Beauchamp, *Syria's Civil War: A Brief History*, VOX (Oct. 2, 2015, 10:09 AM), <https://www.vox.com/2015/9/14/9319293/syrian-refugees-civil-war>.

<sup>4</sup> Ishaan Tharoor, *Death of Drowned Syrian Toddler Aylan Kurdi Jolts World Leaders*, WASH. POST (Sept. 3, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/09/03/image-of-drowned-syrian-toddler-aylan-kurdi-jolts-world-leaders/>.

<sup>5</sup> See *ISIS and the Threat from Foreign Fighters: Hearing Before the Subcomm. on Terrorism, Nonproliferation, and Trade and the Subcomm. on the Middle East and N. Africa of the H. Comm. on Foreign Affs.*, 113th Cong. 4, 12, 42 (2014) (statements of Rep. Ted Poe, Chairman, H. Subcomm. on Terrorism, Nonproliferation, and Trade, and Rep. Lois Frankel, Member, H. Comm. on Foreign Affairs) (discussing foreign fighters entering Syria at an alarming rate and fleeing peoples from foreign countries surrounding Syria).

<sup>6</sup> See WILSON CTR., *supra* note 2.

<sup>7</sup> Vera Mironova, *Life Inside Syria's al-Hol Camp*, MIDDLE E. INST. (July 9, 2020), <https://www.mei.edu/publications/life-inside-syrias-al-hol-camp>; *The Bittersweet Taste of Home: Former ISIL Wife Returns to Kazakhstan*, U.N. NEWS (Feb. 13, 2022), <https://news.un.org/en/story/2022/02/1111552>; Tanya Mehra, *European Countries Are Being Challenged in Court to Repatriate Their Foreign Fighters and Families*, INT'L CTR. FOR COUNTER-TERRORISM (Nov. 7, 2019), <https://www.icct.nl/publication/european-countries-are-being-challenged-court-repatriate-their-foreign-fighters-and>.

<sup>8</sup> See Nicolas Pinault, *Jihadist Women's Demands Come at Crucial Time for France*, VOICE AM. (Mar. 1, 2021, 9:19 AM), [https://www.voanews.com/a/europe\\_jihadist-womens-demands-come-crucial-time-france/6202702.html](https://www.voanews.com/a/europe_jihadist-womens-demands-come-crucial-time-france/6202702.html).

denials seem demonstrative of the International Community's unwillingness to repatriate foreign fighters and their families for fear of jeopardizing the national security of repatriating nations.<sup>9</sup> Thus, this Note seeks to determine whether repatriation laws requiring the return of foreign ISIS fighters, wives, and children are the best and most efficient means of balancing the interests of justice and national security when requests to do so are denied.

Section II provides background information necessary to understand the current state of repatriation from al-Hol and similar refugee camps. Specifically, it focuses on the formation of ISIS; how countries, including the United States, responded to the terrorist group's widespread campaign of brutality; and the squalid living conditions at al-Hol.<sup>10</sup> Section III examines the existing United Nations ("UN") Security Council Resolutions and acknowledges repatriation as a right.<sup>11</sup> Section IV analyzes the policies of two nations that repatriate foreign born ISIS brides and of two nations that do not.<sup>12</sup> Section IV also highlights several significant cases and explains conflicting holdings where necessary.<sup>13</sup> Finally, Section V proposes a repatriation policy for the International Community to adopt that preserves the dignity of repatriates, respects the rule of law and an individual's right to due process, and protects international and national security.<sup>14</sup>

## II. BACKGROUND TO THE CRISIS

Formed from the crumbling remnants of al-Qaeda in Iraq in 2004, ISIS emerged in 2011, adding to the strife and instability in Syria, Iraq, Israel, and Jordan, or what is known as "the Levant."<sup>15</sup> According to the Carnegie Endowment for International Peace, "[t]he Islamic State presents itself as the representative of authentic Islam," or what is known as "Wahhabism."<sup>16</sup> Associated with violence from its founding, Wahhabism is "known as an intolerant and aggressive form of [Sunni]

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<sup>9</sup> TEUTA AVDIMETAJ & JULIE COLEMAN, WHAT EU MEMBER STATES CAN LEARN FROM KOSOVO'S EXPERIENCE IN REPATRIATING FORMER FOREIGN FIGHTERS AND THEIR FAMILIES 1, 6 (2020), [https://www.clingendael.org/sites/default/files/2020-06/Policy\\_Brief\\_Kosovo\\_experience\\_repatriating\\_former\\_foreign\\_fighters\\_May\\_2020.pdf](https://www.clingendael.org/sites/default/files/2020-06/Policy_Brief_Kosovo_experience_repatriating_former_foreign_fighters_May_2020.pdf).

<sup>10</sup> See *infra* Section II.

<sup>11</sup> See *infra* Section III.

<sup>12</sup> See *infra* Section IV.

<sup>13</sup> See *infra* Section IV.

<sup>14</sup> See *infra* Section V.

<sup>15</sup> WILSON CTR., *supra* note 2; *Levant*, ENCYC. BRITANNICA (July 20, 2021), <https://www.britannica.com/place/Levant>.

<sup>16</sup> Hassan Hassan, *The Sectarianism of the Islamic State: Ideological Roots and Political Context*, CARNEGIE ENDOWMENT FOR INT'L PEACE (June 13, 2016), <https://carnegieendowment.org/2016/06/13/sectarianism-of-islamic-state-ideological-roots-and-political-context-pub-63746>.

Islam” that is aimed at purifying the Islamic faith through reasserting monotheism and reliance on the Quran and hadiths.<sup>17</sup>

In 2013, the group formally named itself the “Islamic State of Iraq and Syria” or “ISIS.”<sup>18</sup> From 2013 to 2014, ISIS, led by Abu Bakr al-Baghdadi, began to form a caliphate in the region.<sup>19</sup> The Islamic Caliphate sought to “remain and expand” and “overthrow the Westphalian nation-state model and the post-World War II American international system.”<sup>20</sup> To achieve this goal at the peak of its expansion, ISIS exercised a theology of beheadings, rape, systematic sexual slavery, and forced conversions.<sup>21</sup> In tandem with the Islamic State’s policy of brutality, the group employed strategic recruiting efforts that captivated the attention of those who would eventually become foreign fighters. Primarily, ISIS claimed that foreign men and women who left their homes to join the Caliphate, whether to fight against the infidel or to provide spousal support, would be given great earthly and eternal rewards.<sup>22</sup> These recruitment efforts largely took place on social media and “mobilized an estimated 40,000 foreign nationals from 110 countries to join the group.”<sup>23</sup>

In response to the brutality of the Islamic State, the U.S. Department of State announced the formation of a Global Coalition to defeat ISIS in adherence to the counterterrorism principles set forth by U.N. Security Council Resolution 2170.<sup>24</sup> The Global Coalition was designed to combat ISIS through five means: “(1) [p]roviding military support to . . . partners; (2) [i]mpeding the flow of foreign fighters; (3) [s]topping financing and

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<sup>17</sup> *Wahhabism: What Is It and Why Does It Matter?*, THE WK. U.K. (Aug. 17, 2017), <https://www.theweek.co.uk/87832/wahhabism-what-is-it-and-why-does-it-matter>; see *Wahhābī*, ENCYC. BRITANNICA (Feb. 15, 2023), <https://www.britannica.com/topic/Wahhabi>; see also Henri Laoust, *Ibn Taymiyyah*, ENCYC. BRITANNICA (Jan 1, 2023), <https://www.britannica.com/biography/Ibn-Taymiyyah>.

<sup>18</sup> Ctr. for Int’l Sec. & Coop., *The Islamic State*, FREEMAN SPOGLI INST. FOR INT’L STUD. <https://cisac.fsi.stanford.edu/mappingmilitants/profiles/islamic-state> (Apr. 2021).

<sup>19</sup> *Id.*

<sup>20</sup> Aaron Y. Zelin, *Colonial Caliphate: The Ambitions of the Islamic State*, WASH. INST. FOR NEAR E. POL’Y (July 8, 2014), <https://www.washingtoninstitute.org/policy-analysis/colonial-caliphate-ambitions-islamic-state>.

<sup>21</sup> See Liam Stack, *How ISIS Expanded Its Threat*, N.Y. TIMES (Nov. 14, 2015), [https://www.nytimes.com/interactive/2015/11/14/world/middleeast/isis-expansion.html?mt\\_rref=google.com&gwh=0ADF377B9DCA60707246E1A91375C18E&gwt=pay&assetType=PAYWALL](https://www.nytimes.com/interactive/2015/11/14/world/middleeast/isis-expansion.html?mt_rref=google.com&gwh=0ADF377B9DCA60707246E1A91375C18E&gwt=pay&assetType=PAYWALL); see also *Iraq: Forced Marriage, Conversion for Yezidis*, HUM. RTS. WATCH (Oct. 11, 2014, 11:45 PM), <https://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yezidis>.

<sup>22</sup> See Suleyman Ozeren et al., *An Analysis of ISIS Propaganda and Recruitment Activities Targeting the Turkish-Speaking Population*, 56 INT’L ANNALS OF CRIMINOLOGY 105, 114, 115, 116 (2018).

<sup>23</sup> Antonia Ward, *ISIS’s Use of Social Media Still Poses a Threat to Stability in the Middle East and Africa*, RAND BLOG (Dec. 11, 2018), <https://www.rand.org/blog/2018/12/isis-use-of-social-media-still-poses-a-threat-to-stability.html>.

<sup>24</sup> See *About Us—The Global Coalition to Defeat ISIS*, U.S. DEPT OF STATE, <https://www.state.gov/about-us-the-global-coalition-to-defeat-isis/> (last visited Nov. 5, 2021).

funding; (4) [a]ddressing humanitarian crises in the region; and (5) [e]xposing [ISIS's] true nature.”<sup>25</sup> In December 2018, after four years of intense fighting, former President Donald J. Trump announced that the United States had defeated ISIS in Syria.<sup>26</sup> After the collapse of the Islamic State, foreign fighters and their families were housed in camps in northeastern Syria, a territory controlled by the SDF.<sup>27</sup> One of those camps is al-Hol.

Established by the United Nations to house refugees who left Iraq during the Gulf War, al-Hol is used by the SDF to shelter the brides and children of ISIS.<sup>28</sup> Now, four years after the fall of ISIS, al-Hol is “home” to nearly 62,000 residents, 7,000 of whom are children, making it the “largest camp for displaced people in Syria.”<sup>29</sup> Since 2019, the condition of the camp has been in a state of constant deterioration: babies die of exposure, foreign nationals die due to the squalid conditions, fires kill and injure children, and targeted murders are a daily occurrence.<sup>30</sup> Additionally, the threat of radicalization—or re-radicalization in most instances—is the greatest threat of all as it jeopardizes the stability of international security.

As a result of these conditions, many foreign-born ISIS brides and their children seek repatriation.<sup>31</sup> Those cries for repatriation have been supported by international organizations, including the Human Rights Watch (“HRW”) and the United Nations International Children’s Emergency Fund (“UNICEF”).<sup>32</sup> Additionally, the global cry for repatriation from al-Hol has heightened after the successful use of similar

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<sup>25</sup> *Id.*

<sup>26</sup> *Trump Claims U.S. Has Defeated ISIS in Syria*, REUTERS (Dec. 19, 2018, 9:40 AM), <https://www.reuters.com/article/us-usa-trump-syria-isis/trump-claims-u-s-has-defeated-isis-in-syria-idUSKBN10I10A>.

<sup>27</sup> See Mironova, *supra* note 7.

<sup>28</sup> Christian Vianna de Azevedo, *ISIS Resurgence in Al Hawl Camp and Human Smuggling Enterprises in Syria*, 14 PERSPS. ON TERRORISM 43, 43 (2020).

<sup>29</sup> *UNICEF Urges Repatriation of All Children in Syria's Al-Hol Camp Following Deadly Fire*, U.N. NEWS (Feb. 28, 2021), <https://news.un.org/en/story/2021/02/1085982>.

<sup>30</sup> Zana Omer & Sirwan Kajjo, *Iraqi Refugees Alarmed at Increasing Violence at Syria's Al-Hol Camp*, VOICE OF AM. (Aug. 11, 2021, 6:44 AM), <https://www.voanews.com/al-extremism-watch-iraqi-refugees-alarmed-increasing-violence-syrias-al-hol-camp/6209399.html>; see also U.N. NEWS, *supra* note 29.; *Violence, Displacement Continue, as 29 Babies Die of Cold in Northeast Syria Camp*, U.N. NEWS (Jan. 31, 2019), <https://news.un.org/en/audio/2019/01/1031772>.

<sup>31</sup> Janet Walker, *Beltway Insider: Trump Nat'l Emergency, Israeli PM Election, Venezuela Erupts, El Chapo Jury, Kraft Shocker, Isis Brides, Bernie Sanders*, HAUTE-LIFESTYLE (Feb. 24, 2019, 2:10 PM), <https://www.haute-lifestyle.com/haute-lifestyle-news/beltway-insider/3895-beltway-insider-trump-nat-l-emergency-israeli-pm-election-venezuela-erupts-el-chapo-jury-kraft-shocker-isis-brides-bernie-sanders.html>.

<sup>32</sup> *Syria: Dire Conditions for ISIS Suspects' Families*, HUM. RTS. WATCH (July 23, 2019, 12:01 AM), <https://www.hrw.org/news/2019/07/23/syria-dire-conditions-isis-suspects-families#>; see U.N. NEWS, *supra* note 29.

policies to assist those impacted by conflict in Guatemala, Cambodia, the Balkans, and Afghanistan.<sup>33</sup> Thus, as indicated by the Brookings Institute, these experiences “indicate that identifying the [S]tate of [O]rigin’s responsibilities to returnees and ensuring these duties are met is integral to safe and sustainable repatriation and peacebuilding processes and, in turn, a stable political future.”<sup>34</sup>

Ultimately, though repatriation has been historically successful, a global consensus is yet to be reached about the best repatriation policy. Most of the world has a policy of non-repatriation due to concerns regarding national security and the lack of sufficient evidence to prosecute ISIS affiliates.<sup>35</sup> For example, the policy approaches of nations like Great Britain and Jordan strip ISIS affiliates of their citizenship and deny them any chance of repatriation.<sup>36</sup> Conversely, nations like the United States repatriate and prosecute ISIS affiliates but do not help those individuals reintegrate into society.<sup>37</sup> The remaining nations, including Kazakhstan, repatriate and rehabilitate foreign-born ISIS fighters and their families but do not hold them criminally liable for their actions.<sup>38</sup> Each of the repatriation camps contend that their policy provisions are the best and most efficient means of ensuring national security.

### III. THE RIGHT TO REPATRIATE

To begin, this Section will provide a comprehensive overview of the meaning and elements of repatriation. In the next Section, this Note will provide a comparative analysis of the statutes, case law, and statistics of four nations regarding their repatriation policies. The four nations include the United States, Great Britain, Kazakhstan, and Jordan.

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<sup>33</sup> See MEGAN BRADLEY, *REFUGEE REPATRIATION: JUSTICE, RESPONSIBILITY AND REDRESS 1* (2013).

<sup>34</sup> *Id.*

<sup>35</sup> See Aïssata Athie, *The Children of ISIS Foreign Fighters: Are Protection and National Security in Opposition?*, INT’L PEACE INST. GLOB. OBSERVATORY (Dec. 18, 2018), <https://theglobalobservatory.org/2018/12/children-isis-foreign-fighters-protection-national-security-opposition/>.

<sup>36</sup> See Megan Specia, *U.K. Court Upholds Ruling Stripping Shamima Begum’s Citizenship*, N.Y. TIMES (Feb. 22, 2023), <https://www.nytimes.com/2023/02/22/world/europe/shamima-begum-uk-citizenship-isis.html> (stating that an immigration court upheld the British government’s decision to strip three individuals of their British citizenship when they traveled to Syria to join ISIS); Lila Hassan, *Repatriating ISIS Foreign Fighters is Key to Stemming Radicalization, Experts Say, but Many Countries Don’t Want Their Citizens Back*, PBS (Apr. 6, 2021), <https://www.pbs.org/wgbh/frontline/article/repatriating-isis-foreign-fighters-key-to-stemming-radicalization-experts-say-but-many-countries-dont-want-citizens-back/>.

<sup>37</sup> See VERA MIRONOVA, MIDDLE E. INST., *THE CHALLENGE OF FOREIGN FIGHTERS: REPATRIATING AND PROSECUTING ISIS DETAINEES 2–3* (2021).

<sup>38</sup> Andrew E. Kramer, *Kazakhstan Welcomes Women Back from the Islamic State, Warily*, N.Y. TIMES (Aug. 10, 2019), <https://www.nytimes.com/2019/08/10/world/europe/kazakhstan-women-islamic-state-deradicalization.html>.

According to the International Organization for Migration's ("IOM") *Glossary on Migration*, repatriation is "[t]he personal right of a prisoner of war, civil detainee, refugee, or of a civilian to return to his or her country of nationality under specific conditions laid down in various international instruments[,] . . . [human-rights] instruments, . . . [and] customary international law."<sup>39</sup> It is the responsibility of the United Nations High Commissioner for Refugees ("UNHCR") to ensure that repatriations are voluntary.<sup>40</sup> Repatriation that occurs involuntarily is deemed to be a forced return and is not a repatriation at all.<sup>41</sup> The UNHCR additionally requires that repatriation be done in a dignified manner and that the returnees be returned safely.<sup>42</sup> Thus, when considering the deteriorating conditions of camps like al-Hol, it is quite easy to understand how "the free and voluntary return to one's country of origin in safety and dignity[] is the solution of choice for a vast majority of refugees."<sup>43</sup> Additionally, the individuals seeking repatriation need a just return accomplished through legal means and measures. Pursuant to Article 12.4 of the International Covenant on Civil and Political Rights, "[n]o one shall be arbitrarily deprived of the right to enter his own country."<sup>44</sup> Similarly, Article 13(2) of the Universal Declaration of Human Rights indicates that "[e]veryone has the right to leave any country, including his own, and to return to his country."<sup>45</sup>

In addition to these express statements by international treaties and declarations that indicate that repatriation is a right, the U.N. Security Council, "(UNSC)", has passed several resolutions focusing on the treatment and repatriation of suspected terrorists and their accompanying family members. Passed in 2017, Security Council Resolution 2396 "[c]alls on Member States . . . to take appropriate action regarding" ISIS affiliates and their accompanying families "by considering appropriate prosecution, rehabilitation, and reintegration measures . . . in compliance with domestic and international law."<sup>46</sup> Similarly, Security Council Resolution 2427 requires that Member States be cognizant of their international commitments to take actions to protect children

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<sup>39</sup> INT'L ORG. FOR MIGRATION, GLOSSARY ON MIGRATION 182 (2019).

<sup>40</sup> *The Practical Guide to Humanitarian Law: Repatriation*, DRS. WITHOUT BORDERS, <https://guide-humanitarian-law.org/content/article/3/repatriation/> (last visited Apr. 6, 2023).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> U.N. HIGH COMM'R FOR REFUGEES, HANDBOOK FOR REPATRIATION AND REINTEGRATION ACTIVITIES 2 (2004).

<sup>44</sup> International Covenant on Civil and Political Rights art. 12(4), Dec. 19, 1966, 999 U.N.T.S. 171.

<sup>45</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 13(2) (Dec. 10, 1948).

<sup>46</sup> S.C. Res. 2396, ¶ 29 (Dec. 21, 2017).

affected by armed conflict.<sup>47</sup> For example, Member States should protect children in conflict areas by repatriating them with their mothers so as not to violate the Convention on the Rights of the Child.<sup>48</sup> Furthermore, repatriation is also addressed by Security Council Resolution 2178, which requires countries to prevent suspected foreign terrorist fighters from entering hostile nations or territories controlled by groups like ISIS.<sup>49</sup> Pursuant to Resolution 2178, Member States are required to share information about known foreign terrorist fighters in effort to implement laws that target and prosecute such persons.<sup>50</sup>

#### IV. COMPETING APPROACHES

##### A. *Repatriation with Process*

According to a report by Arab Weekly, as of November 2022, most major European countries have repatriated “at least a handful of their citizens” from camps like al-Hol.<sup>51</sup> However, though these nations have agreed to repatriate their citizens, they largely disagree as to what the repatriation should look like. The following subsections will analyze the process-based repatriation offered by the United States and Kazakhstan.<sup>52</sup>

##### 1. The United States

While the United States has a fewer number of potential repatriates than most other Western nations, it leads the West in repatriation and has successfully repatriated “all Americans held by the Syrian Democratic Forces [] against whom criminal charges have been lodged for offenses relating to their support for ISIS.”<sup>53</sup> According to the Wall Street Journal, the Trump Administration “facilitated the return of wives and children. This was America at its best: offering the children of terrorists a shot at a normal life while giving even the most repulsive citizens their day in court.”<sup>54</sup> Generally, such individuals were prosecuted under 18 U.S.C. §

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<sup>47</sup> S.C. Res. 2427, ¶ 1 (July 9, 2018).

<sup>48</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>49</sup> S.C. Res. 2178, ¶ 2–4 (Sept. 24, 2014).

<sup>50</sup> *Id.*

<sup>51</sup> Faisal Al Yafi, *Spanish Decision Shows Tide Turning on Repatriating ISIS Brides*, ARAB WKLY. (Nov. 25, 2022), <https://thearabweekly.com/spanish-decision-shows-tide-turning-repatriating-isis-brides>.

<sup>52</sup> The United States and Kazakhstan have allowed repatriation of foreign fighters sent to Syria, of which Kazakhstan sent an estimated 1,136-1,236 foreign fighters. Hassan, *supra* note 36.

<sup>53</sup> Press Release, U.S. Dep’t of Just., The United States Has Repatriated 27 Americans from Syria and Iraq Including Ten Charged with Terrorism-Related Offenses for Their Support to ISIS (Oct. 1, 2020).

<sup>54</sup> Adam O’Neal, *When ISIS Families Come Home: Kazakhstan’s Efforts at Rehabilitation and Reintegrations Put Europe to Shame*, WALL ST. J. (June 10, 2021, 6:08 PM), <https://www.wsj.com/articles/when-isis-families-come-home-11623362925>.



2339A, “Providing Material Support to Terrorists,” and 18 U.S.C. § 2339B, “Providing Material Support or Resources to Designated Foreign Terrorist Organizations.”<sup>55</sup>

Though the United States’s repatriation laws are not comprehensively codified, the nation’s repatriation policies are embodied by the U.S. Repatriation Program, which was established in 1935 “to provide temporary assistance to private U.S. citizens and their dependents who have been identified as having returned . . . from a foreign country . . . because of destruction, illness, war, threat of war, or a similar crisis, . . . [and] without resources immediately available.”<sup>56</sup> Ultimately, the United States’s repatriation policies are best understood when one delves into relevant U.S. case law. For example, the case of *United States v. Elhassani* is particularly illustrative of the United States’s successful repatriation of American-born ISIS brides.<sup>57</sup>

i. SAMANTHA ELHASSANI

Samantha Elhassani, or Sam Sally, is one of the most widely known American-born ISIS brides. In fact, her story is so well known that Frontline PBS released two one-hour documentaries about her life under ISIS and her repatriation to the United States.<sup>58</sup> In 2020, Elhassani, a resident of Elkhart, Indiana, pled guilty to financing terrorism.<sup>59</sup> In July 2018, Elhassani and her children were held in SDF-controlled camps, like al-Hol, until they were extradited to the United States.<sup>60</sup> According to the Government’s Response to the Defendant’s Motion for Release, Elhassani, her husband, and her two minor children traveled to Syria to join ISIS somewhere between April and July 2015.<sup>61</sup> Like in many ISIS families,

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<sup>55</sup> 18 U.S.C. §§ 2339(A)–2339(B).

<sup>56</sup> *Repatriation*, OFF. HUM. SERV. EMERGENCY PREPAREDNESS & RESPONSE, <https://www.acf.hhs.gov/ohsepr/programs/repatriation> (Feb. 1, 2023).

<sup>57</sup> See Government’s Response to Defendant’s Motion for Release at 1–2, *United States v. Elhassani*, No. 2:18-cr-33 PPS/JEM, 2020 WL 7232420 (N.D. Ind. Nov. 9, 2020).

<sup>58</sup> FRONTLINE PBS, *An American Mom Who Lived Under ISIS Rule Speaks Out*, YOUTUBE (Apr. 11, 2018) [hereinafter *An American Mom Who Lived Under ISIS Rule Speaks Out*], <https://www.youtube.com/watch?v=Kd71Q31sDHk>; FRONTLINE PBS, *Return from ISIS*, YOUTUBE (Dec. 15, 2020) [hereinafter *Return from ISIS*], <https://www.youtube.com/watch?v=3uvipYMuHeQ>.

<sup>59</sup> Press Release, U.S. Dep’t of Just., Former Elkhart, Indiana Resident Sentenced to Over Six Years in Prison for Financing of Terrorism (Nov. 9, 2020).

<sup>60</sup> Aimee Ambrose, *Sentence Delayed for Woman Who Admitted to Helping Husband in Terrorism Case*, GOSHEN NEWS (Aug. 27, 2020), [https://www.goshennews.com/news/sentence-delayed-for-woman-who-admitted-to-helping-husband-in-terrorism-case/article\\_678effae-e8d6-11ea-a79e-efa8d6963052.html](https://www.goshennews.com/news/sentence-delayed-for-woman-who-admitted-to-helping-husband-in-terrorism-case/article_678effae-e8d6-11ea-a79e-efa8d6963052.html).

<sup>61</sup> Government’s Response to Defendant’s Motion for Release, *supra* note 57, at 1.

Elhassani's husband was killed in an airstrike in 2017.<sup>62</sup> The record indicates that Elhassani aided her husband and his brother in their plan to join ISIS and "laid the groundwork for [the implementation of] their plan."<sup>63</sup> Rather than being used solely as a proxy case against the Elhassani brothers, Elhassani was charged for her own willful participation in the plot to join ISIS.<sup>64</sup> Disturbingly, the record also notes that Elhassani's decision to join ISIS not only endangered the lives of her children but also endangered the lives of others, particularly those of Yazidi women whom she purchased and supervised as her slaves.<sup>65</sup> As noted in *Elhassani*,

[t]he Yazidis are a religious minority indigenous to a region in northern Iraq, northern Syria[,] and southeastern Turkey. The United Nations has recognized ISIS as a perpetrator of genocide against the Yazidis. Among other atrocities, ISIS abducted and enslaved thousands of Yazidi wom[e]n and girls and sold them at auction to ISIS families.<sup>66</sup>

Additionally, Elhassani allowed her young children to become radicalized. Most notably, Elhassani "facilitated the use of her son as a trainee and propaganda tool for" ISIS.<sup>67</sup> In Frontline's documentary "Return From ISIS," Elhassani's son is asked a question about what he would do if an American helicopter approached him and his mother. While assembling a suicide bomb, the boy responds and says,

I am going to hide it [the suicide bomb] under my shirt. I'm going to walk out and say "Come save me! Come save me! My name is Matthew. I'm American. Come save me! Come save me!" And, as soon as the helicopter comes on the ground, I'm going to pull my pin.<sup>68</sup>

In *Elhassani*, the Government noted that as a part of the repatriation law and charges facing Elhassani, she had a burden "to produce . . . evidence to show that she w[ould] not constitute a danger to the public or a serious

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<sup>62</sup> Aimee Ambrose, *No Release for Elkhart Widow Charged with Aiding ISIS*, GOSHEN NEWS (Dec. 20, 2018), [https://www.goshennews.com/news/local\\_news/no-release-for-elkhart-widow-charged-with-aiding-isis/article\\_52423328-40d0-59c1-af3f-4db58383dce3.html](https://www.goshennews.com/news/local_news/no-release-for-elkhart-widow-charged-with-aiding-isis/article_52423328-40d0-59c1-af3f-4db58383dce3.html).

<sup>63</sup> Ambrose, *supra* note 60.

<sup>64</sup> *Id.*

<sup>65</sup> *See id.*

<sup>66</sup> Government's Response to Defendant's Motion for Release, *supra* note 57, at 2 n.1.

<sup>67</sup> *Id.* at 2; *see also* Katie Zavadski, *ISIS Uses American Boy to Threaten Trump in New Video*, DAILY BEAST, <https://www.thedailybeast.com/isis-uses-american-boy-to-threaten-trump-in-new-video> (Sept. 12, 2017, 1:29 PM).

<sup>68</sup> *Return From ISIS*, *supra* note 58, at 3:01 to 3:23.

risk of flight.”<sup>69</sup> Ultimately, while Elhassani was permitted to keep her citizenship, she was sentenced to 78 months in prison and three years of supervised release.<sup>70</sup> In addressing Elhassani’s repatriation, John Demers, the Assistant Attorney General for National Security, stated, “[w]e repatriated Elhassani from Syria because every nation is responsible for holding its citizens accountable and addressing the future threat they may pose.”<sup>71</sup> In 2018, Elhassani’s children were repatriated—nearly without their mother.<sup>72</sup> Since 2018, Elhassani’s children have been under “the care of the Indiana Department of Child Services.”<sup>73</sup> Ultimately, Elhassani’s repatriation demonstrates the United States’s successful repatriation and subsequent prosecution of a foreign-born ISIS bride and should serve as an example of repatriation to the rest of the world.

ii. DANIELA GREENE AND SHANNON CONLEY

The United States’ repatriation policies have also been demonstrated in the cases of *United States v. Greene* and *United States v. Conley*. Daniela Greene worked as a linguist for the FBI and fell in love with a wanted terrorist and ISIS leader in Syria, Denis Cuspert, who was under federal investigation.<sup>74</sup> Greene traveled to Syria, married Cuspert, and allegedly warned him of the FBI’s inquiries into his terror-related activities.<sup>75</sup> Ultimately, upon Greene’s volitional return to the United States, she was arrested and pled guilty to 18 U.S.C. § 1001, “False Statements, Concealment,” for the false statements she made involving international terrorism.<sup>76</sup> According to the Detroit Free Press, Greene served two years in prison and is now on supervised release.<sup>77</sup> While Daniela Greene returned to the United States on her own and was not

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<sup>69</sup> Government’s Response to Defendant’s Motion for Release, *supra* note 57, at 8.

<sup>70</sup> U.S. Dep’t of Just., *supra* note 59.

<sup>71</sup> *Id.*

<sup>72</sup> Anne Speckhard, *Can Case of Samantha Elhassani Be a Positive Example for Repatriation of Other ISIS Wives?*, HOMELAND SEC. TODAY (Nov. 16, 2020), <https://www.hs.todays.us/subject-matter-areas/counterterrorism/can-case-of-samantha-elhassani-be-a-positive-example-for-repatriation-of-other-isis-wives/>.

<sup>73</sup> Jeff Seldin, *American Mom Who Joined IS Sentenced to More Than 6 1/2 Years in Prison*, VOICES AM. (Nov. 10, 2020, 3:33 AM), <https://www.voanews.com/a/usa-american-mom-who-joined-sentenced-more-6-12-years-prison/6198171.html>.

<sup>74</sup> Affidavit in Support of Criminal Complaint at 5, 7, *United States v. Greene*, 1:14-CR-00230 (D.D.C. August 1, 2014), [https://www.investigativeproject.org/case\\_docs/us-v-greene/3313/criminal-affidavit.pdf](https://www.investigativeproject.org/case_docs/us-v-greene/3313/criminal-affidavit.pdf); Tresa Baldas, *FBI Translator in Detroit Secretly Married ISIS Leader*, DETROIT FREE PRESS (May 2, 2017, 9:45 PM), <https://www.freep.com/story/news/local/michigan/detroit/2017/05/02/fbi-translator-detroit-married-isis/101201764/>.

<sup>75</sup> Baldas, *supra* note 74.

<sup>76</sup> Governments Proffer of Proof in Support of Defendant’s Plea of Guilty at 7, 11, 13, *United States v. Greene*, No. 14–CR–00230 (D.D.C. Dec. 12, 2014).

<sup>77</sup> Baldas, *supra* note 74.

repatriated by the United States, her case demonstrates the U.S. Government's policy of encouraging the return and prosecution of "all Americans . . . against whom criminal charges have been lodged for offenses relating to their support for ISIS."<sup>78</sup> Additionally, Greene's case illustrates that when Americans, against whom criminal charges have been filed for offenses relating to their support of ISIS cooperate with prosecutorial authorities, such cooperation may result in reduced penalties even when their "conduct skirt[s] a line dangerously close to other more serious charges."<sup>79</sup>

Similarly, Shannon Conley was arrested in April 2014 prior to her departure to join ISIS in Syria.<sup>80</sup> Like the previously mentioned women, Conley was engaged to an ISIS jihadi fighter who encouraged her to join him in Syria and pick up arms for the cause of ISIS if necessary.<sup>81</sup> Ultimately, Conley was arrested pursuant to 18 U.S.C. § 2339B.<sup>82</sup> In 2014, Conley pled guilty to conspiring to provide material support to a designated foreign terrorist organization.<sup>83</sup> While Conley was arrested before her departure on a flight to Turkey, her criminal conviction demonstrates the U.S. Government's pursuit and preservation of national security.

Rather than allowing American citizens to languish in squalid conditions and radicalize those around them, the United States repatriates and prosecutes those who either attempted to or successfully joined the Islamic State and provided support to the Caliphate. Thus, the U.S. Government's repatriation policies should be used as a model for the International Community. The U.S. Government's repatriation policy protects global security, dignifies both victims and repatriates, and holds American-born ISIS brides criminally liable for their involvement in and support of ISIS. However, repatriation and prosecution alone do not resolve the risk of re-radicalization.

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<sup>78</sup> *Id.*; U.S. Dep't of Just., *supra* note 53.

<sup>79</sup> Scott Glover, *The FBI Translator Who Went Rogue and Married an ISIS Terrorist*, CNN (May 1, 2017, 11:40 PM), <https://www.cnn.com/2017/05/01/politics/investigates-fbi-syria-greene>.

<sup>80</sup> Press Release, U.S. Dep't of Just., *Arvada Woman Pleads Guilty to Conspiracy to Provide Material Support to a Designated Foreign Terrorist Org.* (Sept. 10, 2014), <https://www.justice.gov/opa/pr/arvada-woman-pleads-guilty-conspiracy-provide-material-support-designated-foreign-terrorist>.

<sup>81</sup> *Id.*

<sup>82</sup> Criminal Complaint at 19, 22, *United States v. Conley*, No. 14-MJ-01045-KLM (D. Colo. April 9, 2014).

<sup>83</sup> Plea Agreement and Statement of Facts Relevant to Sentencing at I, *United States v. Conley*, No. 14-CR-00163-RM (D. Colo. Sept. 10, 2014).

## 2. Kazakhstan

As part of the Former Eastern Bloc, Kazakhstan has a rich history and a predominantly Muslim population.<sup>84</sup> Bordered by Russia, China, Kyrgyzstan, Uzbekistan, and Turkmenistan, Kazakhstan is in a volatile region, as evidenced by the nine terrorist attacks endured by the country between 2008 and 2018.<sup>85</sup> It is with this background in mind that Kazakhstan's repatriation policies can be best understood.

According to a study conducted by the International Centre for the Study of Radicalisation, researchers found that of the Kazakh citizens who left Kazakhstan to join ISIS, 25-30% were women.<sup>86</sup> As the home of a large number of female ISIS fighters, Kazakhstan took action to become the first nation to repatriate a large number of its citizens from Syria.<sup>87</sup> Through Operation Zhusan, the Government of Kazakhstan repatriated 157 women and 413 children.<sup>88</sup> Upon successful repatriation, Kazakhstan places repatriates in rehabilitation centers where they undergo a long process to help them reintegrate into society.<sup>89</sup> Kazakhstan's repatriation and societal rehabilitation of Kazakh-ISIS fighters and their families has been praised by the United Nations.<sup>90</sup> In fact, high-ranking United Nations officials have noted that Kazakhstan's successful repatriation and reintegration policies demonstrate "a positive implementation of Kazakhstan's international obligations under Security Council [R]esolution 2178."<sup>91</sup> Additionally, Kazakhstan's repatriation efforts adhere to the Constitution of Kazakhstan, which grants the citizens of Kazakhstan the right to return to their home country (although that right can be restricted).<sup>92</sup> In addition to repatriation fulfilling the nation's international and domestic obligations, "[r]epatriation is seen as

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<sup>84</sup> *World Factbook: Kazakhstan*, CENT. INTEL. AGENCY (Oct. 2021), <https://www.cia.gov/the-world-factbook/static/0b9c0d6fd3fb9bdfbd1c22cd0f8b6d62/KZ-summary.pdf>.

<sup>85</sup> EDWARD LEMON, WILSON CTR., TALKING UP TERRORISM IN CENTRAL ASIA (2018), [https://www.wilsoncenter.org/sites/default/files/media/documents/publication/kennan\\_cable\\_38.pdf](https://www.wilsoncenter.org/sites/default/files/media/documents/publication/kennan_cable_38.pdf).

<sup>86</sup> See JOANA COOK & GINA VALE, FROM DAESH TO 'DIASPORA': TRACING THE WOMEN AND MINORS OF ISLAMIC STATE 17 (2018).

<sup>87</sup> O'Neal, *supra* note 54.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Shahida Yakub et al., 'Such Despair': Widows, Children of Islamic State Fighters Given Second Chance in Kazakhstan, RADIO FREE EUR. (June 26, 2021, 4:18 PM), <https://www.rferl.org/a/such-despair-widows-children-of-islamic-state-fighters-given-second-chance-in-kazakhstan/31327679.html>.

<sup>91</sup> Fionnuala Ni Aoláin, *Time to Bring Women and Children Home from Iraq and Syria*, JUST SEC. (June 4, 2019), <https://www.justsecurity.org/64402/time-to-bring-women-and-children-home-from-iraq-and-syria/>.

<sup>92</sup> *Kazakhstan's Constitution of 1995 with Amendments Through 2017*, CONSTITUTE PROJECT (Apr. 27, 2022, 1:23 PM), [https://www.constituteproject.org/constitution/Kazakhstan\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Kazakhstan_2017.pdf?lang=en).

Kazakhstan's contribution to international efforts to eliminate the risk of militants escaping responsibility and involving themselves in terrorist activities."<sup>93</sup>

As such, Kazakhstan has implemented a policy that focuses on the deradicalization of repatriates.<sup>94</sup> According to a report published by the United States Institute of Peace ("USIP"), "Kazakhstan's aspirational deradicalization approach relies on theological, psychological, and social interventions to transform harmful, ideologically driven behavior and to support reintegration into communities."<sup>95</sup> Furthermore, the USIP notes that the Government of Kazakhstan has dedicated itself to ensuring that its repatriates do not commit terrorist attacks or spread their radicalized ideology.<sup>96</sup> Under this policy of deradicalization, Kazakhstan has adopted a three-staged approach to repatriation: (1) adaptation, (2) rehabilitation, and (3) reintegration.<sup>97</sup>

Under the adaptation stage, repatriates spend one month in an adaptation center undergoing medical treatment and criminal investigation.<sup>98</sup> As of 2020, Human Rights Watch reports that twelve Kazakh women have been convicted of participating in ISIS-related hostilities or propaganda operations.<sup>99</sup> Unfortunately, the details of the convictions are under seal by the Government of Kazakhstan, and information detailing the criminal investigations of Kazakhstan's repatriates are known only to the Kazakh Secret Services.<sup>100</sup> However, one detail that is known indicates that during their detainment, repatriates who are convicted of assisting ISIS "undergo psychological and theological interventions for deradicalization . . . ."<sup>101</sup>

As has already been identified, the second stage of Kazakhstan's repatriation policy is rehabilitation, which is still ongoing as of 2021.<sup>102</sup> During this stage, repatriates are provided legal, psychological, and social

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<sup>93</sup> WILLIAM B. FARRELL ET AL., U.S. INST. OF PEACE, SPECIAL REPORT NO. 498, PROCESS OF REINTEGRATING CENTRAL ASIAN RETURNEES FROM SYRIA AND IRAQ 5 (2021), [https://www.usip.org/sites/default/files/2021-07/sr\\_498-processes\\_of\\_reintegrating\\_central\\_asian\\_returnees\\_from\\_syria\\_and\\_iraq.pdf](https://www.usip.org/sites/default/files/2021-07/sr_498-processes_of_reintegrating_central_asian_returnees_from_syria_and_iraq.pdf).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Press Release, Embassy of the Republic of Kaz. in the U.S., Zhusan Humanitarian Operation: Kazakhstan's Repatriation of Foreign Fighters & Their Families (Jan. 8, 2021) (on file with author).

<sup>98</sup> FARRELL ET AL., *supra* note 93, at 7.

<sup>99</sup> *Kazakhstan Events of 2020*, HUM. RTS. WATCH (2021), <https://www.hrw.org/world-report/2021/country-chapters/kazakhstan#>.

<sup>100</sup> FARRELL ET AL., *supra* note 93, at 21.

<sup>101</sup> *Id.* at 7.

<sup>102</sup> YULIA SHAPOVAL, KAZAKHSTAN'S APPROACH AND EXPERIENCE IN REHABILITATION AND REINTEGRATION OF REPATRIATES 6 (2021), <https://www.sfcg.org/wp-content/uploads/2021/08/KZ-approach-and-experience-in-rehabilitation-of-repatriates-EN.pdf>.

rehabilitation.<sup>103</sup> Additionally, repatriates are given medical examinations, and children are prepared to enter the Kazakh school system.<sup>104</sup> Unfortunately, as noted by Yulia Shapoval, a professor of the Department of Religious Studies at the Eurasian National University, the rehabilitation stage “leaves unsettled the question of further measures for reaching repatriates’ children.”<sup>105</sup>

The third stage is reintegration.<sup>106</sup> During reintegration, individual plans are created for each repatriate to determine how best to reintegrate them into Kazakh society.<sup>107</sup> Unfortunately, during this stage, repatriates have been provided with uneven access to support and services, which has rendered them frustrated with their respective situations.<sup>108</sup> Sadly, this uneven distribution of resources is exacerbated by the constant monitoring of returnees that distances the repatriates from the greater Kazakh community.<sup>109</sup>

Thus, although Kazakhstan statistically leads the world for the number of citizens successfully repatriated from Syria, the nation’s program has not received full support from the Kazakh public.<sup>110</sup> As a result, Kazakhstan often experiences serious challenges in maintaining its repatriation policies. Primarily, the USIP indicates that the Government of Kazakhstan has failed to provide a clear explanation to its citizens as to why it has chosen to repatriate those who joined ISIS.<sup>111</sup> Additionally, the USIP identifies that Kazakhstan’s efforts to deradicalize the repatriates have focused on outward expression and adherence to radical Islam rather than on the repatriates’ underlying beliefs.<sup>112</sup> However, the Government of Kazakhstan seems to be shifting its focus to fighting a long-term battle “for [the] hearts and minds of” its repatriates.<sup>113</sup> Furthermore, the USIP report criticizes the Kazakh Government’s lack of preparation, coordination, and funding.<sup>114</sup> The USIP suggests that the Kazakh Government can resolve the issues mentioned above by encouraging the communication and interaction between repatriates and the greater Kazakh community.<sup>115</sup> This dialogue will allow local citizens to become involved in the resettlement process, which

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<sup>103</sup> FARRELL ET AL., *supra* note 93, at 8.

<sup>104</sup> *Id.*

<sup>105</sup> SHAPOVAL, *supra* note 102, at 7–8.

<sup>106</sup> FARRELL ET AL., *supra* note 93, at 7.

<sup>107</sup> *Id.* at 8.

<sup>108</sup> *Id.* at 8.

<sup>109</sup> *See id.* at 9.

<sup>110</sup> *See* Embassy of the Republic of Kaz. in the U.S., *supra* note 97.

<sup>111</sup> FARRELL ET AL., *supra* note 93, at 9.

<sup>112</sup> *Id.* at 10.

<sup>113</sup> *See* Embassy of the Republic of Kaz. in the U.S., *supra* note 97.

<sup>114</sup> FARRELL ET AL., *supra* note 93, at 10.

<sup>115</sup> *Id.* at 11.

will minimize both the stigmatization and glorification of repatriates in a Muslim majority society.<sup>116</sup>

Despite the criticisms presented by the USIP report, Kazakhstan's practical approach to repatriation and societal reintegration has exemplified that

[a]ll levels of government in Kazakhstan are engaged in a continuous dialogue to find the optimum approach to address the challenges related to returning its foreign fighters and their families. The country has demonstrated how to optimize partnerships with other countries and international entities in tracing, identifying[,] and delivering the practical means to extract individuals from territories under the control of non-state actors and ensure their safe return to home countries.<sup>117</sup>

Ultimately, Kazakhstan's repatriation policies should be used as a model for the International Community.<sup>118</sup> Kazakhstan's repatriation policy focuses on the deradicalization and societal reintegration of repatriates.<sup>119</sup> The nation sets forth a clearly delineated repatriation plan for Kazakh-ISIS brides and their families: (1) adaptation, (2) rehabilitation, and (3) reintegration.<sup>120</sup> This process protects global and national security, dignifies repatriates, and resolves the risk of re-radicalization. Unfortunately, when Kazakhstan welcomes Kazakh-ISIS brides and their families, the nation only enters them into deradicalization programs rather than arresting them.<sup>121</sup> When male repatriates return to Kazakhstan, "they face immediate arrest and the prospect of a 10-year prison term."<sup>122</sup>

### B. *No Repatriation*

Although many countries are slowly beginning to repatriate ISIS affiliates, others remain reluctant to open their borders to such citizens, citing national security concerns.<sup>123</sup> The subsections below provide an overview of the non-repatriation policies of Great Britain and Jordan.<sup>124</sup>

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<sup>116</sup> *Id.*

<sup>117</sup> Aoláin, *supra* note 91.

<sup>118</sup> See Press Release, Embassy of the Republic of Kaz. in the U.S., *supra* note 97.

<sup>119</sup> See FARRELL ET AL., *supra* note 93, at 1, 5.

<sup>120</sup> *Id.* at 7.

<sup>121</sup> Kramer, *supra* note 38.

<sup>122</sup> *Id.*

<sup>123</sup> See H.J. Mai, *Why European Countries Are Reluctant to Repatriate Citizens Who Are ISIS Fighters*, NPR (Dec. 10, 2019, 4:58 PM), <https://www.npr.org/2019/12/10/783369673/europe-remains-reluctant-to-repatriate-its-isis-fighters-here-s-why>.

<sup>124</sup> See Efraim Benmelech & Esteban F. Klor, *What Explains the Flow of Foreign Fighters to ISIS?* 4 (Nat'l Bureau of Econ. Rsch., Working Paper No. 22190, 2016).



## 1. Great Britain

Unlike the United States and Kazakhstan, Great Britain has denied its responsibility to repatriate its citizens who traveled to join ISIS in Syria.<sup>125</sup> In doing so, Great Britain has adopted a policy that strips British citizens of their citizenship, leaving them “stateless and vulnerable to frequent desperation in overcrowded camps.”<sup>126</sup> According to a publication by the Soufan Center, founded by former FBI special agent and counterterrorism expert Ali Soufan,<sup>127</sup> “[t]he denial of citizenship . . . will bolster [a] sense of being . . . citizens of the Islamic State, potentially preparing them to form the core of a future resurgence.”<sup>128</sup> Despite this warning, Great Britain and most of the International Community continue to refuse to repatriate their citizens.<sup>129</sup> According to the International Centre for the Study of Radicalisation, of the 425 foreign fighters who have returned to the United Kingdom, only two women and four children have been successfully repatriated.<sup>130</sup> In order to best understand Great Britain’s policy of non-repatriation, it is essential to possess a comprehensive understanding of the facts and law behind *Begum v. Home Secretary*.<sup>131</sup>

### i. SHAMIMA BEGUM

The case of Shamima Begum stands in contrast to that of Samantha Elhassani. According to the factual background provided in *Begum v. Home Secretary*, Begum was born in the United Kingdom but had dual citizenship in the United Kingdom and Bangladesh.<sup>132</sup> In early 2015, Begum left the United Kingdom with two of her friends to travel to Syria

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<sup>125</sup> *U.K.’s Refusal to Repatriate Citizens from Syria ‘Morally Reprehensible’*, TRT WORLD (Feb. 10, 2022), <https://www.trtworld.com/magazine/uk-s-refusal-to-repatriate-citizens-from-syria-morally-reprehensible-54590>. This Note was completed December 31, 2021. Any changes to repatriation conducted by Great Britain in the months and years since the time of this writing have not been included.

<sup>126</sup> Chris Bosley, *To End ISIS, We Must Find Futures for Its Survivors*, U.S. INST. PEACE (Sept. 2, 2020), <https://www.usip.org/publications/2020/09/end-isis-we-must-find-futures-its-survivors>.

<sup>127</sup> *About*, SOUFAN CTR., <https://thesoufancenter.org/about/> (last visited Dec. 23, 2021).

<sup>128</sup> Javed Ali et al., *Open Letter from National Security Professionals to Western Governments: Unless We Act Now, the Islamic State Will Rise Again*, SOUFAN CTR. (Sept. 11, 2019), <https://thesoufancenter.org/open-letter-from-national-security-professionals-to-western-governments-unless-we-act-now-the-islamic-state-will-rise-again/>.

<sup>129</sup> TRT WORLD, *supra* note 125; ADAM HOFFMAN & MARTA FURLAN, CHALLENGES POSED BY RETURNING FOREIGN FIGHTERS 3 (2020).

<sup>130</sup> COOK & VALE, *supra* note 86.

<sup>131</sup> *Begum v. Secretary of State for the Home Department* [2021] UKSC (appeal taken from [2020] EWCA Civ 918).

<sup>132</sup> *Id.*

and join ISIS.<sup>133</sup> The case record indicates that Begum married an ISIS fighter and subsequently had three children, all of whom died.<sup>134</sup> As of February 2019, Begum was “located” in al-Hol Refugee Camp.<sup>135</sup>

On February 19, 2019, the Home Secretary, serving as the Secretary of State, notified Begum that her British citizenship was effectively deprived pursuant to Sections 40(5) and 40(2) of the British Nationality Act of 1981.<sup>136</sup> The Secretary noted that Begum’s deprivation of citizenship occurred because her affiliation with the Islamic State in the Levant (“ISIL”) made her a national security threat to the United Kingdom.<sup>137</sup> Under British law, a person’s citizenship can be legally deprived for three reasons: (1) “[i]t is for the public good and would not make them stateless;” (2) “the person obtained citizenship through fraud;” and (3) their actions could harm the interests of the United Kingdom, and they can claim citizenship elsewhere.<sup>138</sup> The British Government’s revocation of Begum’s citizenship is legal under British law because it was done to protect the public good.<sup>139</sup>

Pursuant to British law, the deprivation of Begum’s British citizenship on security grounds is an appealable decision.<sup>140</sup> Accordingly, Begum appealed the Home Secretary’s decision to deprive her of her citizenship.<sup>141</sup> At the Court of Appeals, it was decided that Begum should be allowed to return to the United Kingdom to present her case.<sup>142</sup> However, the Home Office forbade her return due to the perceived national security risks that would accompany her homecoming.<sup>143</sup> Ultimately, a special tribunal affirmed the Home Secretary’s decision to revoke Begum’s citizenship because of her dual citizenship in Bangladesh by descent.<sup>144</sup> However, Bangladesh denied Begum’s Bangladeshi

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<sup>133</sup> Josh Baker, *Shamima Begum: Spy for Canada Smuggled Schoolgirl to Syria*, BBC NEWS (Aug. 31, 2022), <https://www.bbc.com/news/uk-62726954>.

<sup>134</sup> *Begum*, [2021] UKSC 7.

<sup>135</sup> Elian Peltier, *Shamima Begum, Who Joined ISIS in Syria, Can Return to U.K., Court Says*, N.Y. TIMES (Feb. 26, 2021), <https://www.nytimes.com/2020/07/16/world/europe/shamima-begum-isis-uk.html>.

<sup>136</sup> *Begum*, [2021] UKSC 1.

<sup>137</sup> *Id.* at 16.

<sup>138</sup> *Shamima Begum: How Can You Lose Your Citizenship?*, BBC NEWS (Jan. 11, 2023), <https://www.bbc.com/news/explainers-53428191>.

<sup>139</sup> *Begum*, [2021] UKSC 1.

<sup>140</sup> British Nationality Act 1981, c. 61, § 40(5)(c) (UK).

<sup>141</sup> *IS Bride Shamima Begum’s Appeal to Restore UK Citizenship to Begin in London Court*, SKY NEWS (Nov. 21, 2022, 5:38 AM), <https://news.sky.com/story/is-bride-shamima-begums-appeal-to-restore-uk-citizenship-to-begin-in-london-court-12752158>.

<sup>142</sup> *Shamima Begum Cannot Return to UK, Supreme Court Rules*, BBC NEWS (Feb. 26, 2021), <https://www.bbc.com/news/uk-56209007>.

<sup>143</sup> *Id.*

<sup>144</sup> Peltier, *supra* note 135.

citizenship, and claimed that Begum would not be allowed to enter the country.<sup>145</sup>

In February 2021, the British Supreme Court ruled on the question of whether the Government was entitled to prevent Begum's return to the United Kingdom to advocate for her case.<sup>146</sup> Ultimately, the Court held that Begum's rights were not breached when her application for permission to return to the United Kingdom to fight her case was denied.<sup>147</sup> Specifically, Lord Reed argued that the Court of Appeals was mistaken in its belief that "when an individual's right to have a fair hearing . . . c[o]me[s] into conflict with the requirements of national security, her right to a fair hearing must prevail."<sup>148</sup> Instead, Lord Reed suggested that "the right to a fair hearing did 'not trump all other considerations such as the safety of the public.'"<sup>149</sup>

With this decision, the British Supreme Court has forced the debate over the revocation of Begum's citizenship to be paused until she can return to the United Kingdom,<sup>150</sup> which is unlikely to occur. As a result, Shamima Begum lives in a state of legal limbo with no right to return to her home under British law. As noted by Liberty, the human rights group which intervened in Begum's case, "[t]he right to a fair trial is not something democratic governments should take away on a whim, and nor is someone's British citizenship. If a government is allowed to wield extreme powers like banishment without the basic safeguards of a fair trial[,] it sets an extremely dangerous precedent."<sup>151</sup>

## ii. NICOLE JACK

While not as widely known as Shamima Begum, the case of Nicole Jack is also representative of Great Britain's policy of non-repatriation. In 2015, Jack and her husband left Great Britain to join ISIS in Syria.<sup>152</sup> Stranded in Syria and inspired by Begum's plea for the British public's forgiveness, Jack issued an appeal to be allowed to return to the United Kingdom because "there was 'no evidence' she was a key player in preparing terrorist acts."<sup>153</sup> Jack and her three daughters are currently

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<sup>145</sup> *Id.*

<sup>146</sup> BBC NEWS, *supra* note 138.

<sup>147</sup> BBC NEWS, *supra* note 142.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *ISIS Bride Who Fled as Teen to Syria Loses Bid to Return to U.K.*, CBS NEWS (Feb. 26, 2021, 9:16 AM), <https://www.cbsnews.com/news/shamima-begum-isis-bride-loses-bid-return-uk-supreme-court/>.

<sup>152</sup> Tom Batchelor, *ISIS Mother Stranded in Syria with Her Children Pleads for Return to UK*, INDEP. (Oct. 7, 2021, 1:48 PM), <https://www.independent.co.uk/news/uk/home-news/isis-syria-camp-uk-nicole-jack-b1934033.html>.

<sup>153</sup> *Id.*

detained at the same Syrian camp as Shamima Begum.<sup>154</sup> Jack's mother has demanded her daughter's return and claims that her grandchildren "are 'languishing' in their Kurdish-run Syrian detention camp."<sup>155</sup>

According to a report published by the Independent, a spokesperson for the British Government commented on the nation's stance on repatriating Western-born women and children, stating, "[t]hose who remain in Syria include dangerous individuals who chose to . . . support a group that committed atrocious crimes including butchering and beheading innocent civilians. It is important that we do not make judgments about the national security risk someone poses based on their gender or age."<sup>156</sup> Ultimately, while the British Government has not issued a decision regarding whether Jack and her children will be repatriated, this statement and Great Britain's history of non-repatriation seems to indicate that their repatriation from al-Hol is unlikely.

### iii. TAREENA SHAKIL

In addition to the cases of Shamima Begum and Nicole Jack, it is also essential to understand Tareena Shakil's criminal liability for her role in the Islamic State. In 2014, Shakil and her son left Great Britain and flew to Turkey before crossing the Syrian border.<sup>157</sup> Three months after her arrival in Syria, Shakil returned to Great Britain.<sup>158</sup> While the details of her arrest are not readily available, Shakil was sentenced to six years in prison for traveling to Syria with the intention of living under the Caliphate's rule.<sup>159</sup>

Great Britain's policies should not be used as a model for the International Community because it poses a significant risk of re-radicalization, which threatens global stability. Radicalization and re-radicalization frequently occur in camps like al-Hol because refugees are often "prohibited from working outside the camps and . . . become

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<sup>154</sup> David Rose, *Nicole Jack, an ISIS Bride Being Held in a Syrian Detention Camp, Pleads for Return to Britain*, TIMES (Oct. 7, 2021, 10:45 AM), <https://www.thetimes.co.uk/article/nicole-jack-an-isis-bride-being-held-in-a-syrian-detention-camp-pleads-for-return-to-britain-pgk702v0k>.

<sup>155</sup> Chris Hughes & Ryan Fahey, *Mum of ISIS Bride Who Worked at Pizza Hut Wants Her Back in UK to 'Face Consequences'*, MIRROR (Oct. 7, 2021, 5:47 PM), <https://www.mirror.co.uk/news/uk-news/mum-isis-bride-who-worked-25162102>.

<sup>156</sup> Batchelor, *supra* note 152.

<sup>157</sup> *U.K. Woman Jailed for Bringing Son to Live Under ISIS Rule*, CBS NEWS (Feb. 3, 2016, 12:50 PM), <https://www.cbsnews.com/news/uk-tareena-shakil-isis-syria-toddler-son-sentenced-to-prison/>.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*; see Asma Afsaruddin, *Caliphate*, ENCYC. BRITANNICA, <https://www.britannica.com/summary/Caliphate> (Dec. 10, 2022) (defining caliphate as a "political-religious state comprising the Muslim community and the lands and peoples under its dominion in the centuries following the death . . . of the Prophet Muhammad").

dependent on relief aid for their daily needs.”<sup>160</sup> Unfortunately, “[w]here armed militants control the flow of both aid and information[,] . . . refugees fall prey to radicalizers”<sup>161</sup> for the benefit of their families. Great Britain’s policies also fail to provide justice to the victims of terrorist attacks planned, organized, and supported by foreign-born ISIS brides.

## 2. Jordan

The final country analyzed in this Note is the Kingdom of Jordan. Sharing a 225 mile-long border with Syria, approximately 2,000 to 2,500 Jordanians traveled to Syria to join ISIS.<sup>162</sup> Due to the high number of Jordanians that joined ISIS, the Center for American Progress has identified Jordan as the largest source of ISIS foreign fighters per capita.<sup>163</sup> In an attempt to protect Jordan’s national security, the Jordanian Government instituted a strict closure of the Jordan-Syria border and refused to accept refugees and repatriates.<sup>164</sup> According to Saud Al-Sharafat, the official public position in Jordan categorizes repatriates as a security and military matter rather than a humanitarian one.<sup>165</sup> Generally, this antagonism toward repatriating and prosecuting Jordanians is rooted in a strong national conviction arising from Jordan’s rocky history with terrorism. Many Jordanians fear that the “rebirth” of terrorist organizations in Jordan would be “inevitable” should these fighters return.<sup>166</sup> Al-Sharafat also notes that foreign fighters who choose to return to Jordan of their own volition can only return through specific legal channels and are generally directed to the State Security Court to be prosecuted for their crimes.<sup>167</sup>

Thus, while Jordan does not repatriate its citizens, it allows them to voluntarily return and holds them criminally liable for their support and organization of terror-related activities.<sup>168</sup> Voluntary return and the subsequent prosecution of such returnees are required by Jordan’s leading

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<sup>160</sup> Barbara H. Sude, *Prevention of Radicalization to Terrorism in Refugee Camps and Asylum Centers*, in HANDBOOK OF TERRORISM PREVENTION AND PREPAREDNESS 238, 243 (Alex P. Schmid ed., 2021).

<sup>161</sup> *Id.*

<sup>162</sup> HARDIN LANG & MUATH AL WARI, CTR. FOR AM. PROGRESS, THE FLOW OF FOREIGN FIGHTERS TO THE ISLAMIC STATE 11 (2016); see Nabih Bulos, *Jordan’s Military Kills 27 Suspected Drug Smugglers in Border Shootout*, CHRONICLE (Jan. 27, 2022, 12:31 PM), <https://www.chronline.com/stories/jordans-military-kills-27-suspected-drug-smugglers-in-border-shootout,283435>.

<sup>163</sup> LANG & WARI, *supra* note 162.

<sup>164</sup> *See id.*

<sup>165</sup> Saud Al-Sharafat, *How Jordan Can Deal with Jordanian ISIS Fighters Still in Syria*, WASH. INST. FOR NEAR E. POL’Y: FIKRA F. (Aug. 9, 2019), <https://www.washingtoninstitute.org/policy-analysis/how-jordan-can-deal-jordanian-isis-fighters-still-syria>.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> Hassan, *supra* note 36.

antiterrorism policy—Counterterrorism Law No. 18 of 2014.<sup>169</sup> Counterterrorism Law No. 18 ensures the voluntary returnee’s deradicalization and entry into a reintegration program upon their conviction by the State Security Court.<sup>170</sup> Unfortunately, this law is riddled with issues. First, the law does not provide a framework through which Jordanian-ISIS members and their families can be repatriated together and subsequently held criminally liable for their actions, when necessary.<sup>171</sup> Second, many figures in the International Community, including King Abdullah II of Jordan, argue that the Counterterrorism Law threatens freedom of expression.<sup>172</sup> A report published by Freedom House in 2015 notes that “[s]ince the passage of the amended antiterrorism law in 2014, a growing number of citizens have faced charges before the military-dominated State Security Court for their online activities, particularly on Facebook.”<sup>173</sup> This has been the unfortunate result of an amendment that broadened the definition of terrorism to include speech-related offenses.<sup>174</sup>

It should be noted that Jordan’s policy of non-repatriation is unfortunately ironic. While the Jordanian Government will not repatriate Jordanian-ISIS fighters and their families from Syrian refugee camps, the nation is home to Zaatari Refugee Camp—the largest Syrian refugee camp in the world.<sup>175</sup> Including the refugees living at Zaatari, approximately 1.4 million Syrian refugees are living in Jordan.<sup>176</sup> While Jordan has refused to repatriate its citizens from camps like al-Hol on account of national security and counterterrorism concerns, the Jordanian Government has not taken measures to facilitate the repatriation and rehabilitation of the Syrian refugees at Zaatari, even though Zaatari is known as a hub of radicalization for ISIS.<sup>177</sup> Though Jordan “has publicly announced that it

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<sup>169</sup> Al-Sharafat, *supra* note 165.

<sup>170</sup> *See id.*

<sup>171</sup> *Id.*

<sup>172</sup> *See* Comm’r for Hum. Rts., *Misuse of Anti-Terror Legislation Threatens Freedom of Expression*, COUNCIL OF EUR. (Apr. 12, 2018), <https://www.coe.int/en/web/commissioner/-/misuse-of-anti-terror-legislation-threatens-freedom-of-expression>; *see also* *Jordan: Terrorism Amendments Threaten Rights*, HUM. RTS. WATCH (May 17, 2014, 11:50 PM), <https://www.hrw.org/node/253697/printable/print>; *see also* *Jordan: Government Crushes Civic Space*, HUM. RTS. WATCH (Sept. 18, 2022, 12:01 AM), <https://www.hrw.org/node/382262/printable/print>.

<sup>173</sup> FREEDOM HOUSE, JORDAN 9 (2015).

<sup>174</sup> U.S. DEP’T OF STATE, BUREAU OF COUNTERTERRORISM, COUNTRY REPS. ON TERRORISM 2016 (2017).

<sup>175</sup> Julia Morris, *The Politics of Return from Jordan to Syria*, FORCED MIGRATION REV., Oct. 2019, at 31, 32; Lilly Carlisle, *Jordan’s Za’atari Refugee Camp: 10 Facts at 10 Years*, U.N. REFUGEE AGENCY (July 29, 2022), <https://www.unhcr.org/en-us/news/stories/2022/7/62e2a95d4/jordans-zaatari-refugee-camp-10-facts-10-years.html>.

<sup>176</sup> Morris, *supra* note 175.

<sup>177</sup> *See* Al-Sharafat, *supra* note 165; *see also* Natalia Paszkiewicz, *Syrian Refugees in Jordan’s Camps Should Live in Dignity No Matter How Long They Stay*, MIDDLE E. EYE

does not support Syrians returning at the present time,”<sup>178</sup> it is, in effect, welcoming the same risk of terrorism into its borders that its national policies claim to stand against. Here, it is essential to note that the risks associated with the volitional return of Syrian refugees to Syria are well-understood.<sup>179</sup> However, as previously noted, although the Jordanian Government classifies the repatriation of Jordanians affiliated with ISIS as a military and security matter,<sup>180</sup> it views Zaatari and its Syrian residents as a humanitarian matter. In reality, *both* situations should be classified as a security *and* humanitarian concern. Security and humanitarian matters are not mutually exclusive.

Regarding the Jordanians who traveled to join ISIS in Syria, the Jordanian Government only offers “hard security approaches” to resolve the issue and fails to consider that detainees at camps like al-Hol cannot return to Jordan on their own volition without acquiring sponsorship and undergoing security clearance by the SDF.<sup>181</sup> As a result, the volitional return of Jordanians from Syria is nearly non-existent.<sup>182</sup> This is especially true for the families of Jordanian ISIS fighters because Jordan does not have a clear approach for the wives and children who return.<sup>183</sup> Thus, Jordanian ISIS affiliates, their wives, and children are left to languish, and Jordanian victims are denied justice. Ultimately, Jordan cannot respond to the threat of radical Islamization through hard approaches alone. As Professor Beverley Milton-Edwards writes, “[m]ight is not right,” and it can spur radicalization and terror attacks against a nation rather than successfully discouraging them.<sup>184</sup>

Thus, Jordan’s policies should not be used as a model for the International Community because it poses a threat of re-radicalization, refuses to grant potential repatriates dignity, and denies the repatriates’ victims the opportunity to have their day in court. While Jordan allows for the voluntary return of Jordanians who traveled to join ISIS in Syria, the nation’s national security laws do not provide a pathway through which Jordanian ISIS brides and their children can be repatriated.

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(Jan. 2, 2018, 2:21 PM), <https://www.middleeasteye.net/opinion/syrian-refugees-jordans-camps-should-live-dignity-no-matter-how-long-they-stay>; Salim Abbadi, *Jordan in the Shadow of ISIS*, 7 COUNTER TERRORIST TRENDS & ANALYSIS 8, 10 (2015).

<sup>178</sup> Morris, *supra* note 175.

<sup>179</sup> “Our Lives Are Like Death”: Syrian Refugee Returns from Lebanon and Jordan, HUM. RTS. WATCH (Oct. 20, 2021), <https://www.hrw.org/report/2021/10/20/our-lives-are-death/syrian-refugee-returns-lebanon-and-jordan>.

<sup>180</sup> Al-Sharafat, *supra* note 165.

<sup>181</sup> BEVERLEY MILTON-EDWARDS, GRAPPLING WITH ISLAMISM: ASSESSING JORDAN’S EVOLVING APPROACH 22 (2017).

<sup>182</sup> See Omer Karasapan, *Syrian Refugees in Jordan: A Decade and Counting*, BROOKINGS INST. (Jan. 27, 2022), <https://www.brookings.edu/blog/future-development/2022/01/27/syrian-refugees-in-jordan-a-decade-and-counting/>.

<sup>183</sup> Al-Sharafat, *supra* note 165.

<sup>184</sup> MILTON-EDWARDS, *supra* note 181.

## V. SOLUTION

With many conflicting approaches to repatriation around the world, it is of tremendous importance to determine which policy is the best to protect global security, ensure justice, and maintain the dignity of repatriates. The goal of the International Community should be to preserve global stability and prosecute those held criminally liable for their involvement in, and support of, terrorism-related activities. As such, the International Community should adopt a two-fold repatriation policy. However, before detailing the repatriation policy proposed by this Note, it should be noted that none of the repatriation policies analyzed above are wholly sufficient to achieve international security, justice, and dignity. Ultimately, to achieve a repatriation policy that attains these global goals, two steps must be taken. First, the repatriation policies of the United States and Kazakhstan must be combined so that upon their successful repatriation, returnees are prosecuted and given the resources necessary to reintegrate into society. Second, an international criminal tribunal should be created that focuses on the repatriation and prosecution of ISIS affiliates and their families.

In executing these policies, the nations and organizations involved must ensure that the return of repatriates to their home countries is volitional according to the 1951 Convention Relating to the Status of Refugees.<sup>185</sup> Volitional repatriation occurs when two components are present: (1) freedom of choice and (2) informed decision-making.<sup>186</sup> Additionally, nations and organizations involved in implementing these policies must remain cognizant of a given State's sovereignty in decision-making. Just as a refugee cannot be forced to return to his home, a given nation cannot be forced to receive its citizens back, especially in the presence of national security concerns. It is for the preservation of state sovereignty and a recognition of the disproportionality of access to justice around the world that this Note proposes the formation of an international criminal tribunal to investigate and prosecute the cases of individual repatriates.

### A. *Repatriation, Prosecution, and Rehabilitation*

A combination of the repatriation policies of the United States and Kazakhstan results in a policy that welcomes repatriation, prosecutes repatriates for crimes conducted as a result of their affiliation with the Islamic State, and mandates rehabilitation of repatriates before they are

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<sup>185</sup> Convention and Protocol Relating to the Status of Refugees, Apr. 22, 1954, art. I, 189 U.N.T.S. 137; see MEDECINS SANS FRONTIERES, <https://guide-humanitarian-law.org/content/article/3/repatriation/> (last visited Nov. 5, 2021).

<sup>186</sup> Daniel Mathew, *Voluntary Repatriation and State Sovereignty: Seeking an Acceptable Balance*, 8 ISIL Y.B. INT'L HUMANITARIAN & REFUGEE L. 144, 153 (2008).



permitted to re-enter society. As stated by United States Marine Corps General Kenneth McKenzie, “[n]ations need to bring back their citizens, reintegrate them, de-radicalize them if necessary and make them productive elements of society.”<sup>187</sup>

For this repatriation policy to succeed, it must be implemented at the domestic level of countries that have adequate judicial systems—in other words, where the court system is not biased and overwhelmed by its caseload. Countries that implement this policy must have sufficient resources to ensure that justice is achievable. Additionally, such resources must enable national judiciaries to accomplish the investigation and prosecution of repatriates “in a manner consistent with judiciary core values.”<sup>188</sup> However, the prosecution of repatriates is only half of the necessary repatriation process.

During a given national judiciary’s investigation into allegations of war crimes committed by a particular repatriate, the repatriate should be placed in a state-run rehabilitation program like that implemented by the Government of Kazakhstan. Through this program, domestic governments will be able to “offer [repatriates] mental health care, family support, housing, education[,] and job opportunities.”<sup>189</sup> Additionally, national governments should provide immigration assistance to repatriated children born in ISIS territories so that they can become naturalized citizens in nations where *jus sanguinis*, the legal principle that citizenship is determined by the nationality of one or both of the child’s parents,<sup>190</sup> is not the law. It should be noted that according to the Convention on the Rights of the Child, children cannot be repatriated without their mothers.<sup>191</sup> However, if a given child is a known orphan, the child *must* be repatriated alone.<sup>192</sup> In all instances, non-radicalized family members must be an essential part of reintegrating repatriates into society.

In addition to re-establishing familial ties, the rehabilitation process in countries like Kazakhstan is made possible through the support of other

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<sup>187</sup> Luis Martinez, *Repatriating Refugees at Syrian Camp Could Stem ISIS Resurgence: U.S. General*, ABC NEWS (May 22, 2021, 6:39 PM), <https://abcnews.go.com/Politics/repatriating-refugees-syrian-camp-stem-isis-resurgence-us/story?id=77811334>.

<sup>188</sup> JUD. CONF. OF THE U.S., STRATEGIC PLAN FOR THE FEDERAL JUDICIARY 6 (2020).

<sup>189</sup> Talgat Kaliyev, *Kazakh Efforts to Repatriate ISIL Fighters Should Be Replicated*, AL-JAZEERA (July 7, 2021), <https://www.aljazeera.com/opinions/2021/7/7/kazakh-efforts-to-repatriate-isil-fighters-should-be-replicated>.

<sup>190</sup> *Jus Sanguinis*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/jus-sanguinis> (last visited Mar. 4, 2023).

<sup>191</sup> See generally Convention on the Rights of the Child, art. IX, ¶ 1, Sept. 2, 1990, 1577 U.N.T.S. 3.

<sup>192</sup> See Anne Speckhard & Molly Ellenberg, *Rescued American Girl, 8, Says She Was Beaten and Abused in ISIS Camp*, DAILY BEAST (Aug. 5, 2021, 10:26 AM), <https://www.the-dailybeast.com/rescued-american-girl-8-says-she-was-beaten-in-isis-camp>.

repatriating nations and partnerships with organizations, including UNICEF and the International Committee of the Red Cross.<sup>193</sup> Ultimately, this repatriation policy obligates the volitional return of foreign-born ISIS brides and their children, and it is the most efficient means of balancing the interests of dignity and national security. Furthermore, unlike policies of non-repatriation and policies that only implement criminalization or rehabilitation, the policy proposed here reduces the risk for a potential ISIS resurgence due to its deradicalization efforts. Additionally, this policy provides children born to ISIS fighters with an opportunity to have a normal and safe childhood and ensures that victims are given the justice they deserve. Finally, if the International Community adopts this repatriation policy, the strain placed on countries that host some of the world's largest refugee camps will be drastically alleviated.

### B. *Formation of an International Tribunal*

As aforementioned, nations that have the resources to repatriate, prosecute, and rehabilitate foreign-born ISIS brides and their children should do so to demonstrate their compliance with the policy proposed above. Currently, however, many nations are reluctant to repatriate citizens for a host of reasons, including, but certainly not limited to, domestic unpopularity, insufficient evidence to support convictions, and a perception that rehabilitation efforts have a poor rate of success.<sup>194</sup> Additionally, many nations that are home to the largest number of foreign fighters do not have adequate resources to prosecute and reintegrate those individuals back into society.<sup>195</sup> Thus, as of 2019, the International Community has circulated the idea of establishing an international criminal tribunal, like those in Rwanda and the Former Yugoslavia, to prosecute ISIS fighters.<sup>196</sup> Unfortunately, as noted by Roger Lu Phillips, the Legal Director for the Syria Justice and Accountability Centre, the formation of an *ad hoc* tribunal for Syria may experience some turbulence given Russia's propensity to veto the creation of similar tribunals proposed to the United Nations Security Council.<sup>197</sup> Ultimately, how and where the tribunal should be established—whether through a

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<sup>193</sup> Kaliyev, *supra* note 189.

<sup>194</sup> Roger Lu Phillips, *A Tribunal for ISIS Fighters—A National Security and Human Rights Emergency*, JUST SEC. (Mar. 30, 2021), <https://www.justsecurity.org/75544/a-tribunal-for-isis-fighters-a-national-security-and-human-rights-emergency/>.

<sup>195</sup> Tanya Mehra & Christophe Paulussen, *The Repatriation of Foreign Fighters and Their Families: Options, Obligations, Morality, and Long-Term Thinking*, INT'L CTR. FOR COUNTER-TERRORISM (Mar. 6, 2019), <https://www.icct.nl/publication/repatriation-foreign-fighters-and-their-families-options-obligations-morality-and-long>.

<sup>196</sup> Phillips, *supra* note 194.

<sup>197</sup> *Id.*

multilateral treaty or UNSC vote—is outside the scope of this Note.<sup>198</sup> Instead, this Note seeks to describe how the tribunal should function. However, it should be noted that the proposal of an international criminal tribunal to address ISIS-related crimes and repatriation is not unique to this Note. Rather, international organizations, including the United Nations, have said that “countries should take responsibility for their own citizens unless they are to be prosecuted in Syria [or Iraq] in accordance with international standards.”<sup>199</sup>

At the time of this writing, the International Community has acted irresponsibly in its failure to prosecute known ISIS members for their war crimes.<sup>200</sup> For example, until November 30, 2021, not a single ISIS member had been convicted of genocide against the Yazidis.<sup>201</sup> While many trials are underway or in the investigatory stage, it is likely that most have yet to occur because of the large number of nations that have either refused to, or do not have sufficient resources to, repatriate foreign-born ISIS affiliates. Thus, an international criminal tribunal should be created to focus on the criminal prosecution of ISIS members, including foreign-born ISIS fighters and their wives. For example, though Great Britain and Jordan have the resources to repatriate, both nations have strong national security policies that forbid such action from occurring. Upon the formation of an international criminal tribunal for ISIS fighters, such nations would be able to preserve their policies of non-repatriation while simultaneously ensuring that justice is done.

However, nations that either (1) do not have the resources to repatriate and prosecute or (2) are unwilling to repatriate for fear of the counterterrorism risks associated with such an action will be required to send a minimum of one legal expert to assist in the investigation and prosecution of its citizens. Specifically, such legal experts will help establish the tribunal, hear cases, and help gather evidence relevant to cases involving their fellow citizens. If a nation fails to repatriate its citizens and refuses to send a legal expert to assist the tribunal with its proceedings, the nation will be deemed complicit in the ongoing humanitarian crisis and unlawful detention of ISIS affiliates and their families. For example, suppose a country like Great Britain refuses to repatriate its citizens who left the country to join ISIS in Syria and does

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<sup>198</sup> For more information about how and where an international tribunal for the prosecution of ISIS-related war crimes should be established, see *id.*

<sup>199</sup> Reality Check, *Islamic State: Who Is Taking Back Foreigners Who Joined?*, BBC NEWS (Oct. 10, 2019), <https://www.bbc.com/news/world-middle-east-49959338>.

<sup>200</sup> See Seth J. Frantzman, *Global Irresponsibility: The Lack of ISIS War Crimes Trials*, JERUSALEM POST (Aug. 23, 2019, 3:53 PM), <https://www.jpost.com/middle-east/global-irresponsibility-the-lack-of-isis-war-crimes-trials-599453>.

<sup>201</sup> *Yazidi Genocide: IS Member Found Guilty in German Landmark Trial*, BBC NEWS (Nov. 30, 2021), <https://www.bbc.com/news/world-europe-59474616>.

not send a legal expert to help the tribunal investigate and prosecute the citizens that it does not repatriate. In that case, it will be deemed by the tribunal and the International Community as exacerbating the ongoing humanitarian crisis and detention of British citizens. Additionally, upon the tribunal's reasonable determination that a given country's citizen did not commit crimes during his or her affiliation with ISIS and is not a security risk, the State of Origin will be asked to reconsider repatriating the individual because the risk to national security no longer outweighs the individual's right to return.

### C. *Policy Rationales*

#### 1. Global Security

The proposed policy solutions presented in this Note ensure the preservation of global and national security. When foreign-born ISIS brides and their children are not repatriated from camps like al-Hol, they statistically become more likely to be radicalized or re-radicalized. Unfortunately, al-Hol and similar refugee camps are known as fertile soil for the radicalization of children.<sup>202</sup> In fact, as of March 2021, the Danish Security and Intelligence Services reported that ISIS militants kidnapped at least thirty children from such camps with the intention of training them to commit terrorist attacks against their home countries.<sup>203</sup> However, children are not the only ones susceptible to radicalization during their detainment at SDF-operated refugee camps. Publications by news outlets like the Wall Street Journal have addressed the role of female ISIS leaders and their nurturing of radical Islamist ideology, which helps to keep the insurgency alive.<sup>204</sup>

Unfortunately, the risk of radicalization at al-Hol is comparable to that exhibited by Abu Ghraib, one of the most infamous prisons in the world. Initially, Saddam Hussein used Abu Gharib as a torture chamber.<sup>205</sup> Then, the brutal prison “was a U.S. Army detention center for

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<sup>202</sup> See John Saleh, *The Women of ISIS and the Al-Hol Camp*, WASH. INST. FOR NEAR E. POL'Y: FIKRA F. (Aug. 2, 2021), <https://www.washingtoninstitute.org/policy-analysis/women-isis-and-al-hol-camp>.

<sup>203</sup> Beatrice Eriksson, *A Visit to Northeast Syria Shows the Urgency for Governments to Repatriate Their Citizens, Many of Them Children, to Thwart ISIS*, JUST SEC. (Sept. 2, 2021), <https://www.justsecurity.org/78064/a-visit-to-northeast-syria-shows-the-urgency-for-governments-to-repatriate-their-citizens-many-of-them-children-to-thwart-isis/>.

<sup>204</sup> Isabel Coles & Benoit Faucon, *Refugee Camp for Families of Islamic State Fighters Nourishes Insurgency*, WALL ST. J. (June 9, 2021, 12:06 PM), <https://www.wsj.com/articles/refugee-camp-for-families-of-islamic-state-fighters-nourishes-insurgency-11623254778>.

<sup>205</sup> *Chronology of Abu Ghraib*, WASH. POST (Feb. 17, 2006), <https://www.washingtonpost.com/wp-srv/world/iraq/abughraib/timeline.html>.

captured Iraqis from 2003 to 2006.”<sup>206</sup> Abu Ghraib served as “a prime breeding ground[] for radical[ization], where militants could expand their networks with other terror groups.”<sup>207</sup> Further, Abu Ghraib, a place where due process seemed like a child’s fairytale, is the place where an Iraqi—who was a religious scholar and soccer fan—became radicalized and founded ISIS.<sup>208</sup> That man was none other than Abu Bakr-al Baghdadi. Ultimately, the longer that foreign fighters are required to lay in wait in camps like al-Hol, the greater the risk posed to global security in the future. Fortunately, the two policy solutions proposed in the subsections listed above aim to preserve international and national security in ensuring that detainees are deradicalized and become productive members of society upon satisfaction of their prison sentences.

## 2. Need for Due Process

Additionally, the repatriation policies proposed here will ensure that those foreign-born ISIS brides whose cases are prosecuted by the Kurdish and Iraqi Governments are granted due process. According to the Louisiana Second Circuit Court of Appeal in *Pettit v. Penn*, due process means that “[n]o person shall be deprived of life, liberty, property, or of any right granted him by statute, unless the matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings.”<sup>209</sup> At the time of this writing, cases tried in Iraq and Syria are not conducted in accordance with established standards that regulate international legal proceedings.<sup>210</sup> Instead, those affiliated with ISIS are convicted for allegedly aiding the terrorist group without proper evidentiary support to prove such claims beyond a reasonable doubt.<sup>211</sup> For example, in Iraq, Westerners alleged to be ISIS fighters have been sentenced to death without due process.<sup>212</sup> Additionally, the Syrian and Iraqi Governments struggle to administer

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<sup>206</sup> *Iraq Prison Abuse Scandal Fast Facts*, CNN, <https://www.cnn.com/2013/10/30/world/meast/iraq-prison-abuse-scandal-fast-facts/index.html> (Mar. 10, 2021, 3:23 PM).

<sup>207</sup> Janine Di Giovanni, *The Case for Repatriating ISIS Families in Syrian Camps*, NAT’L NEWS, <https://www.thenationalnews.com/opinion/comment/the-case-for-repatriating-isis-families-in-syrian-camps-1.1237331> (last visited Nov. 30, 2022).

<sup>208</sup> *Id.*

<sup>209</sup> *Pettit v. Penn*, 180 So. 2d 66, 69 (La. Ct. App. 1965) (emphasis added) (citing *Dupuy v. Tedora*, 15 So. 2d 886, 890 (La. 1943)).

<sup>210</sup> Tanya Mehra & Matthew Wentworth, *New Kid on the Block: Prosecution of ISIS Fighters by the Autonomous Administration of North and East Syria*, INT’L CTR. FOR COUNTER-TERRORISM (Mar. 16, 2021), <https://www.icct.nl/publication/new-kid-block-prosecution-isis-fighters-autonomous-administration-north-and-east-syria>.

<sup>211</sup> See ERIC OEHLERICH ET AL., *JANNAH OR JAHANNAM OPTIONS FOR DEALING WITH ISIS DETAINEES* 7 (2020).

<sup>212</sup> Jane Arraf, *Iraq Sentences 4 French ISIS Fighters to Death*, NPR (May 28, 2019, 5:00 AM), <https://www.npr.org/2019/05/28/727460028/iraq-sentences-4-french-isis-fighters-to-death>.

justice to foreign ISIS fighters and their families due to the number of cases faced by the Kurds.<sup>213</sup>

The repatriation policies proposed in this Note promote due process and provide access to justice for victims and perpetrators alike. For example, the proposed policies ensure that repatriating nations have adequate court facilities and judiciaries that are free of judicial bias. If a nation does not have sufficient resources to repatriate its citizens who traveled to join ISIS in Syria, that nation's citizens will have access to the international criminal tribunal through which their crimes can be investigated and prosecuted, when necessary.

### 3. Preservation of Dignity

Furthermore, the policy solutions proposed by this Note preserve the dignity of those living in camps like al-Hol in ways that existing repatriation policies do not. First, repatriation from al-Hol protects detainees from malnutrition, accidental fires, and illnesses arising from exposure to the elements.<sup>214</sup> Repatriation from al-Hol also protects foreign-born ISIS brides and their children by removing them from an environment known for extreme violence, including robberies, murders, and beheadings.<sup>215</sup> Further, the repatriation, prosecution, and rehabilitation of ISIS brides from al-Hol Refugee Camp protects and preserves the dignity of the sex-trafficked Yazidis, like those abused by Samantha Elhassani.<sup>216</sup> Only when their captors are successfully repatriated to, and prosecuted in, their States of Origin will survivors of ISIS's human trafficking operations have complete access to justice and restoration.

## VI. CONCLUSION

The purpose of this Note was to determine whether repatriation laws that obligate the return of foreign ISIS fighters, wives, and children are the best and most efficient means of balancing the interests of dignity and

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<sup>213</sup> Mehra & Wentworth, *supra* note 210.

<sup>214</sup> FIONNUALA NÍ AOLÁIN, ABANDONED TO TORTURE: DEHUMANISING RIGHTS VIOLATIONS AGAINST CHILDREN AND WOMEN IN NORTHEAST SYRIA 5–6 (2021).

<sup>215</sup> Wladimir van Wilgenburg, *20 People Killed in Northeastern Syria's al-Hol Camp in January: RIC Report*, KURDISTAN 24 (Feb. 8, 2021, 2:08 PM), <https://www.kurdistan24.net/en/story/23908-20-people-killed-in-northeastern-syria's-al-hol-camp-in-january-ric-report>.

<sup>216</sup> *Al-Hol Camp is Hell for Yazidi Women: There Is an International Agreement to Dismantle the Al-Hol Camp in Syria*, YAZIDIS.INFO (Oct. 5, 2022, 12:30 PM), <https://yazidis.info/en/news/4222/al-hol-camp-is-hell-for-yazidi-women-there-is-an-international-agreement-to-dismantle-the-al-hol-camp-in-syria>; see FREE YEZIDI FOUND., THE CASE OF SAMANTHA ELHASSANI AKA UM YUSUF 6 (2019). *Yazidi* may alternatively be spelled as *Yezidi*. *Yazidi*, DICTIONARY.COM, <https://www.dictionary.com/browse/yazidi> (emphasis added) (last visited Apr. 3, 2023).

national security. To determine this question, this Note examined the repatriation policies of the United States, Great Britain, Kazakhstan, and Jordan. Ultimately, case studies from these nations reveal several lessons that the International Community must take away. Specifically, the International Community must recognize that the willingness of countries like the United States and Kazakhstan to repatriate and prosecute foreign-born ISIS brides ensures justice for their victims, lowers the risk of re-radicalization, and reaffirms human dignity. Additionally, repatriation policies that involve adaptation, rehabilitation, and reintegration ensure that repatriated ISIS brides can return to a normal life after serving their prison sentences.

The policies of Great Britain and Jordan stand in contrast to those proposed by this Note. Unfortunately, the approaches employed by the British and Jordanian Governments illustrate the potential dangers of non-repatriation—victims of foreign terrorism are denied justice, and ISIS affiliates and their families endure squalid conditions in foreign camps while remaining susceptible to re-radicalization. Thus, to protect international security, grant due process, and preserve the dignity of repatriates and their victims, the International Community should consider adopting the repatriation policies proposed in this Note.

Ultimately, repatriation laws that obligate the repatriation, prosecution, and rehabilitation of foreign-born ISIS brides and their children are the best and most efficient means of balancing the interests of justice, dignity, and national security.

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\* J.D., Regent University School of Law, Class of 2023. Special thanks to Professor Lynne Marie Kohm and Professor Jeffrey Brauch for their insights and encouragement; their impact on my personal and professional life means more than words can explain. Also, special thanks to my husband, Elijah, for whose helpfulness, kindness, and love I thank the Lord.