

8-2023

Trends in the Return and Prosecution of ISIS Foreign Terrorist Fighters in the United States

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Recommended Citation

Mehra, Tanya; Herbach, Merlina; Margolin, Devorah; and Doctor, Austin C., "Trends in the Return and Prosecution of ISIS Foreign Terrorist Fighters in the United States" (2023). *Reports, Projects, and Research*. 47.

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ICCT/NCITE Report

August 2023

This report was conducted under grant number 21STFRG00013-01-00: “Reintegrating the returning spouses and children of foreign terrorist fighters” from the U.S. Department of Homeland Security (DHS) Science and Technology Directorate (S&T). Any opinions or conclusions contained herein are those of the authors and do not necessarily reflect those of DHS S&T.

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ICCT / NCITE Report
August 2023
DOI: 10.19165/2023.3.04
ISSN: 2468-0486



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Counter-Terrorism**

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Introduction

Approximately 300 Americans are estimated to have traveled or attempted to join the Islamic State (ISIS) as part of the group's campaign in Syria and Iraq between 2013 and 2019. These individuals joined more than 53,000 men, women, and minors from roughly 80 countries. Often referred to as foreign (terrorist) fighters (FTF), these are individuals from third countries who travel to join a terrorist group to support its activities. In the United States (U.S.) context, the FTF designation does not denote the act of fighting itself, but rather the support of a designated foreign terrorist organization (FTO). While many of these radicalized individuals traveled alone to the conflict zone, others brought their families or formed new ones in-theater. As ISIS' self-declared caliphate collapsed, many were killed, some fled to other locations, and many were captured and held by Kurdish forces. Men and some teenage boys were primarily placed in prisons, while women and minors were often moved into detention camps.

Today, an estimated 10,000 male FTFs remain held in northeastern Syria including 2,000 men and boys from 60 countries outside Syria and Iraq (third country nationals, or TCNs). In addition, local camps hold close to 55,000 female FTF and FTF-affiliated family members, including roughly 10,000 TCN women and children. Some of these individuals have now been in detention for four years or more.

The indefinite detention of FTF and FTF-affiliated families in northeastern Syria is not a tenable solution. In addition to clear humanitarian concerns, there is a significant security risk that the facilities' inhabitants provide a groundswell of recruits to the still active ISIS campaign in the region. [A 2022 U.S. military report](#) puts it bluntly, "These children in the camp are prime targets for ISIS radicalization. The international community must work together to remove these children from this environment by repatriating them to their countries or communities of origin while improving conditions in the camp." In lockstep, U.S. diplomatic leaders have made repatriation a policy priority empowered by a general domestic partisan consensus that the repatriation of FTF and FTF-affiliated families from northeastern Syria should be done expediently.

Progress has been slow, while many Western nations were strongly resistant to bringing their detained citizens home, there is recent evidence for cautious optimism. Approximately 9,200 persons – including [2,700 TCNs](#) and [6,500 Iraqis](#) repatriated since 2019. This year, 13 countries have repatriated roughly 2,300 persons, including more than 350 TCNs. However, more work remains to be done.

As of July 15, 2023, 39 U.S. persons have been officially repatriated, including both adults and minors. At least 11 additional U.S. persons have returned on their own accord, ten of whom remained in the U.S. following their return. Furthermore, the U.S. has made the decision to bring several non-U.S. persons to the U.S. to stand trial.

Informal Processes of Return and Limitations

Travelers returned to the U.S. through different pathways, sometimes outside of formal processes. In these cases some individuals left before the final territorial collapse of the caliphate in 2019 and voluntarily returned to the U.S. In other cases, individuals who were not captured by the Syrian Democratic Forces (SDF) following the territorial collapse of ISIS could also return on their own accord. There are at least 11 known such cases in the U.S. including nine adult men and two adult women. Two of these individuals have not faced charges. One of them returned to the U.S. before travelling back abroad and dying in Syria 2014. Another man admitted in a guilty plea that

he had been in Syria for a few months in 2012. However, he was only charged and sentenced for his attempt to leave the U.S. again a few months after his return in order to support al-Qaeda in Pakistan.

In addition, three of the 11 individuals have faced charges solely relating to providing false statements to U.S. immigration and border authorities, but were not charged with terrorism related conduct. After traveling to Syria, another traveler contacted U.S. authorities stating he was stranded without documentation and indicating his willingness to cooperate with U.S. law enforcement in investigations. After reaching Turkey and contacting the U.S. consulate there, a deportation order was filed against him and he was arrested upon his return in the U.S. where he later entered a plea- and cooperation agreement, as to why details about his case remain sealed. The verdict in at least one other case of an individual who reportedly spent time fighting in Syria with the Free Syrian Army (FSA) also remains under seal after charges relating to his alleged support of Jabhat al-Nusra were dropped. Two of the 11 individuals who returned voluntarily have faced terrorism charges followed by public accounts of their verdict and sentencing. One of these individuals was indicted in March 2016 and entered a guilty plea admitting attempted material support of an FTO, and providing false statements to U.S. authorities in October 2018. The other also entered a guilty plea in June 2017, following an indictment including counts of providing and attempting to provide material support to terrorists and a foreign terrorist organization.

These cases of individuals who have voluntarily returned to the U.S. illustrate some challenges in the U.S. approach to accountability for returning FTFs. Nonetheless, partially due to the specific approaches taken in these cases, detailed information about these cases remains publicly unknown. An integration of classification-related rudimentary data on these cases would distort the findings made through the quantitative analysis carried out as part of this paper, given the already small number of returned FTFs in the U.S. Therefore, these cases will not be considered as part of the quantitative analysis.

This brief report provides an updated overview of the nature of U.S. formal return and repatriation policy, trends in criminal prosecution, and case management.

U.S. Repatriation and Return: Policy and Practice

Across two presidential administrations, the U.S. has actively promoted repatriating and returning its citizens from Syria and Iraq and held them accountable for joining ISIS when appropriate. Moreover, the U.S. has also assisted other countries in repatriating their citizens.

This report focuses on adult FTFs who upon their return from Syria or Iraq through formal channels have faced terrorism-related charges in the U.S., including U.S.-persons as well as three non-U.S. persons brought to the U.S. to face trial, and their experiences in return and accountability. Relative to other nations, including Canada and many in Western Europe, the proportion of FTF set in the U.S. is quite small. Roughly 300 adult travelers from the U.S. traveled or attempted to join ISIS in Iraq and Syria from 2011-2017. While this number does not include minors or children born abroad to U.S.-based parent(s), it can be reasonably anticipated that the number of U.S. FTFs and family members in the region is lower as many adult travelers were killed in action. Indeed, some experts estimate that the casualty rate for Islamic State foreign combatants ranged from 40 to as much as 74 percent. Others will have since traveled to other theaters and regions, are otherwise missing, or have already returned to the U.S. on their own initiative through informal channels.

Cases and Methods of Return

This report focuses on the population of adult FTFs who have returned or been brought to the U.S. through formal processes and analyzes their patterns in return, repatriation, and accountability. It draws on publicly available sources, including U.S. court documents, to describe initiatives overseen in this sector by the U.S. military, diplomatic corps, federal law enforcement, and judiciary. Four main methods of return to the United States by FTFs have been identified with three of these methods being formal processes. In using the three methods of formal return, 11 individuals have been formally repatriated from Syria and Iraq, two persons have been deported from other countries, and three people have been brought from third countries. In total, 16 cases will be examined in this paper.

Main Process of Return

As mentioned earlier, there are three main processes of formal return to the U.S.. First, is the formal repatriation process. For example, the U.S. brought back individuals this way from northeastern Syria. The SDF a non-state actor operating in northeastern Syria, is administering camps and prisons holding more than 60,000 alleged ISIS affiliates from different countries around the world. However, the SDF as a non-state actor is unable to enter into extradition agreements with other States. Therefore, ISIS affiliates in SDF captivity have been transferred to U.S. military or federal custody. The process of formal repatriations by the U.S. began in 2019 and is ongoing. As of January 2023, the U.S. State Department had formally repatriated 39 U.S. persons. At least three adult returnees were minors at the initial time of their travel to Iraq and/or Syria; only one, Jihad Ali, has faced charges. Nevertheless, none of the minor children have been prosecuted.

To-date, 11 adults allegedly affiliated with ISIS have been formally repatriated from the conflict in Syria and Iraq to the U.S. and faced charges for terrorism related crimes. While ten of these 11 individuals were repatriated from Syria, one individual, Mohamad Jamal Khweis, was repatriated from Iraq. The individuals in our dataset are:

1. Emraan Ali
2. Jihad Ali
3. Ruslan Maratovich Asainov
4. Warren Christopher Clark
5. Samantha Marie Elhassani
6. Allison Fluke-Ekren
7. Mohamad Jamal Khweis
8. Omer Kuzu
9. Abdelhamid Al-Madioum
10. Ibraheem Izzy Musaibli
11. Lirim Sylejmani

The second formal process of FTF return is extradition or deportation. These individuals could have been arrested in a third country at any point in time and extradited back to the U.S. before or after being put on trial. This includes two cases in the dataset, [Mirsad Kandic](#) and [Mirsad Hariz Adem Ramic](#).

The third process, is not a form of repatriation, rather the U.S. has made the decision to bring third country nationals and non-U.S. persons to the U.S. to face trial. To date, this includes the cases of [El Shafee Elsheikh](#) and [Alexanda Amon Kotey](#), both U.K. citizens who were deprived of their citizenship in 2018. They were captured in early 2018 by SDF and transferred to U.S. custody. Similarly, [Mohammed Khalifa](#), a Saudi-born Canadian citizen captured by the SDF in January 2019 was transferred to U.S. custody. These few cases are often high profile cases documenting some of the most heinous crimes committed by ISIS.

To date, it is unclear how many American FTFs and FTF-affiliated families remain held in detention abroad. In 2020, John C. Demers, Assistant Attorney General for National Security [stated](#), “With this week’s repatriations, the United States has brought back every American supporter of ISIS known to be held by the Syrian Democratic Forces against whom we have charges.” This language does not preclude that additional Americans against whom no charges existed at the time were still held in detention abroad. Since then additional cases have emerged such as that of Allison Fluke-Ekren in 2022.

In total, this paper looks at the 16 adult FTFs who have been repatriated, returned, or brought to the U.S. through different formal methods as listed in Table 1, and faced criminal prosecution for terrorism charges committed abroad upon their return.

Method of Return	Number of Prosecuted FTFs
Repatriated from Syria	10
Repatriated from Iraq	1
Deported from Turkey	1
Extradited from Bosnia and Herzegovina	1
Transferred to U.S. custody	3
TOTAL	16

Table 1: Method of Return of FTFs Prosecuted in the U.S. (July 15, 2023).

Concerning approaches to hold returning FTFs accountable, the dataset shows that as of July 15, 2023, all 16 adult FTFs who returned to the U.S. through formal processes are either indicted, convicted, or awaiting sentencing for terrorism related conduct. These numbers are further broken down in Table 2, showing that as of July 15, 2023, three persons are indicted and in pre-trial phase, while three people have been convicted and are awaiting sentencing. The remaining ten individuals have been sentenced.

Case Status	Number of Individuals
Indicted	3
Convicted and awaiting sentencing	3
Criminal proceedings completed	10
TOTAL	16

Table 2: Case Status of Returned FTF Prosecutions in the U.S. (July 15, 2023).

To complete the overview of accountability pathways, one must also consider the use of guilty pleas which is relatively common in the U.S.. If the defendant enters a guilty plea at any point before a trial, including immediately after the unsealing of the indictment, they will not stand trial. Out of the 16 cases against FTFs in the U.S., eight persons have entered a guilty plea, as can be seen from the overview in Table 3 below.

	Awaiting Trial	Verdict Awaiting Sentence	Completed Cases	Total Cases
Guilty Plea	0	2	6	8
Trial Proceedings	3	1	4	8
TOTAL	3	3	10	16

Table 3: Case Status Divided by Guilty Plea and Common Trial Proceedings of Returned FTF Prosecutions in the U.S. (July 15, 2023).

Administrative Measures

Pursuant to Section 219 of the [Immigration and Nationality Act of 1965](#), the U.S. Department of State's Bureau of Counterterrorism is monitoring activities of various groups across the globe in order to identify terrorist groups eligible for designation. If such a foreign organization is engaging, capable or willing to engage in terrorist activities which threaten U.S. national security, the group is designated as an FTO. Once designated, the group is listed on the Department of State's list of [Designated Foreign Terrorist Organizations](#) which compiles all non-U.S. based groups that the department deems to be engaging in terrorist activities. Designation is followed by financial sanctions for members of the relevant groups. Additionally, non-U.S.-citizen members of a designated FTO are prohibited from entering the U.S. and subjected to removal if present in the U.S.

FTO designations can be challenged by the relevant group under the [Intelligence Reform and Terrorism Prevention Act of 2004](#), which states that the group can apply for revocation of the designation two years after the initial designation date. The group must submit evidence demonstrating the circumstances that have led to the designation have changed, and are no longer applicable. Designations are also subject to regular review by the Secretary of State every five years. Additionally, the Secretary of State can revoke a designation at any time if sufficient evidence demonstrates that the current circumstances are different to those at the time of designation, demanding a revocation. Independent of that, a designation as FTO can be revoked by a court order or through an act of congress. As of July 2023, [68 groups](#) are designated as FTOs by the U.S., 32 of which were designated after March 2011, four of which involved in the

conflict in Syria and Iraq, including ISIS, Nusra Front, Hay'at Tahrir al-Sham, and al-Qaeda.

Once a group is designated as an FTO, many administrative measures can be applied to individuals affiliated with that group. The U.S. has several administrative measures at hand to mitigate the threat posed by suspected (returning) FTFs, which inhibit individuals' movement and privacy. However, due to the confidential nature of surveillance measures, it is difficult to determine how frequently these measures are being applied.

Detention Without Criminal Charges

The U.S. legal framework allows for the use of administrative measures restricting individuals' freedom of movement in the context of suspected affiliated foreign terrorist activities. One such measure is detention outside the context of criminal prosecution. In relation to non-citizens, Section 412 of the PATRIOT Act enables the U.S. Attorney General to detain any individual suspected of terrorism without criminal charges until their removal from U.S. soil. However, this measure is only applicable in cases where there is reasonable ground to believe that the individual in question has entered the U.S. with the purpose of violation or sabotage of espionage laws, opposition of the U.S. government, engagement in terrorist activity, or the posing of danger to the U.S.'s national security. Within seven days of detention the Attorney General has to decide whether to file criminal charges, initiate expulsion proceedings, or refrain from both, and release the individual. Nonetheless, the Attorney General has discretion in the prolonging of detention for up to six months, even in cases when the removal of the individual from U.S. soil is unlikely in the foreseeable future. This extension can be renewed indefinitely. Any individual detained under Section 412 can challenge the measure in court by filing a habeas petition with the relevant federal district court. So far, there is no public record detailing whether, and if, this measure has been applied to any FTF related cases.

No-Fly Lists

Maintained by the FBI's Terrorist Screening Center as a subsection of the U.S. government's Terrorist Screening Database, the so-called No Fly List includes all identifying information of known or suspected terrorists. Every individual on this list is prohibited from flying to, from, or over the U.S. and will be prevented from boarding an aircraft in an attempt to do so. For example, Mirsad Kandic, was only able to leave the U.S. to join ISIS in Syria by taking a bus across the Mexican border. Before he finally was able to successfully travel to Syria, he was twice prevented from boarding a plane to leave the United States. Kandic was convicted for conspiracy to provide and provision of material support to a terrorist organization in May 2022 and sentenced to life in prison in July 2023.

Withdrawal of Passport

Another means to prevent individuals from traveling, thereby restricting their freedom of movement, is the withdrawal of passports or refusal to issue a passport. In the U.S., the Code of Federal Regulations Title 22 § 51.60 empowers the Department of State to revoke or refuse to issue a passport in cases when the Secretary of State has determined that a person in question has pursued activities abroad that are likely to undermine U.S. national security or its foreign policy. The individual in question must be informed of this procedure by the Department of State in writing, and can subsequently request a hearing in order to review the basis of the revocation or refusal order. Such a request must also be filed in writing and addressed to the Department of State within 60 days after receipt of the notice. Failure to comply with this deadline leads to the revocation or refusal notice becoming final.

Deprivation of Citizenship

Section 340(a) of the [Immigration and Nationality Act 1952](#) governs the deprivation of citizenship for naturalized U.S. citizens. However, it is not applicable to persons who acquired their U.S. citizenship at birth. In practice, to date, this measure has not been applied in the case of returning ISIS affiliated persons. For example, [Abdelhamid Al-Madioum](#), is a Moroccan-born citizen who became a naturalized U.S. citizen in 2008. Al-Madioum traveled to join ISIS, where he received military training, before being assigned to the Tariq Bin-Ziyad Battalion of the Abu Mutaz al-Qurashi Division of ISIS, where he served as a soldier for ISIS until 2016. Following an injury, Al-Madioum remained a member of ISIS and continued to receive a stipend until his surrender to the SDF in or near Baghouz, Syria, in March of 2019. He has pled guilty and is currently awaiting sentencing, however, Al-Madioum's citizenship has not been revoked.

Seizing Assets

[Executive Order 13224](#) on terrorist financing provides a list of designated terrorist entities and individuals eligible to have their assets frozen. It also allows for the U.S. Secretary of State in cooperation with the Secretary of Treasury and the Attorney General, to block assets of foreigners determined to have committed or likely to commit acts of terrorism, as well as assets owned or controlled by a person or organization on the list or acting on their behalf.

In addition, the U.S. Department of Treasury has worked to disrupt ISIS and other FTO's abilities to finance their operations both in the U.S. and abroad. For example, the U.S. Office of Foreign Assets Control maintains and publishes a [Specially Designated Nationals And Blocked Persons List](#). Individuals on this list have their assets blocked, and U.S. citizens are prohibited from engaging with them. It includes beneficiaries of foreign states and people connected to organized crime such as drug traffickers as well as foreign designated terrorists. Since 2014, 130 individuals and entities supporting ISIS have been designated by Treasury. The individuals on this list are predominantly foreigners, but can also include U.S. citizens such as the late Anwar al-Awlaki. In practice, to date, this measure has not been applied in the case of returning ISIS-affiliated persons.

In addition, the Department of Justice and the Department of Treasury contribute to an effort funded by the Department of State's Bureau of International Narcotics and Law Enforcement Affairs to enable the United Nations Development Program to expand efforts to disrupt ISIS money-laundering and other illicit finance activity.

U.S. Accountability and Criminal Prosecution: Policy and Practice

The rise of ISIS has led to the adoption of a plethora of international, regional, and domestic measures ranging from enhancing bordering security, international cooperation, information sharing, criminalizing conduct such as travel, giving and receiving training, or membership of a terrorist organization. States can prosecute FTFs based on standard criminal offences, terrorist offences, or potentially war crimes, crimes against humanity, or genocide also referred to as core international crimes.

All 16 cases of terrorism-related prosecution of formally returned FTFs in the U.S. included in

the dataset are based on material support for terrorism offenses, as can also be seen from the *List of U.S. Terrorism Prosecutions of returned FTFs*. All cases brought against the 16 FTFs were individuals above the age of 18. However, one case included in the dataset is - Jihad Ali - who traveled as a minor but was an adult at the time of his return and charged for his crimes. When looking at the age of the returned FTFs prosecuted in the U.S., one can see that the average age was 30 years old at the time of commission of the terrorist offenses. One must, however, take into account that out of the 16 FTFs returned to the U.S., only two are women. Therefore, the average age at the commission of crimes mostly corresponds with the relevant average age of the male suspects and defendants. The female FTFs, however, were between 30 and 39 years old when they committed terrorism offenses.

To date, in 13 of the 16 cases in which individuals returning FTFs have faced terrorism-related charges in the U.S., the defendants have been sentenced following conviction verdicts. Looking at these 13 cases in which FTFs have been convicted for terrorism offenses in U.S. courts, one can see that the only charges that were dropped from the indictment throughout the proceedings were criminal charges. In two cases, criminal charges of possessing, using and carrying firearms during and in relation to a crime of violence, and possessing and discharging a machine gun in furtherance of a crime of violence were dropped. The first such case is the case of Mohamad Jamal Khweis, who was of conspiracy to provide and providing material support to a terrorist organization and subsequently sentenced to 20 years in prison. Similarly, Ibraheem Izzy Musaibli was convicted in January 2023 for conspiracy to provide, attempt to provide, and providing material support to a terrorist organization as well as providing military type training to a designated terrorist organization.

	Number of Terrorism Counts	Number of Criminal Counts	Number of Total Counts
Indictment Followed by Verdict	24	13	37
Verdict	24	11	35

Table 4: Status of Charges in Criminal Prosecution of Returned FTFs in the U.S. (n=13 cases incl. verdict; as of July 15, 2023).

The indictment period in a criminal proceeding describes the time frame during which the charged crimes were allegedly committed. When looking at these periods in the 16 cases of returned FTFs in the U.S., one can see that the U.S. has prosecuted terrorism offenses committed between September 2011 and May 2019.

Jurisdiction

Out of the 16 cases of FTFs that are or have been prosecuted in the U.S., 13 of them are based on an active personality principle. This means that the prosecutions are initiated based on the nationality or permanent residence status of the perpetrator in the U.S. This includes U.S. citizens, naturalized U.S. citizens, dual nationals, and permanent residents. An example of a returned FTF prosecuted based on nationality due to having a legal residence in the U.S., is Mirsad Kandic. Prior to joining ISIS, Kandic was born in Kosovo and emigrated to the U.S. in 2003, eventually becoming a legal resident who lived for nearly ten years in the Bronx and Brooklyn.

Alternatively, three of the 16 FTFs were prosecuted not on the active personality principle, but rather passive personality principle. This means that they were tried in U.S. courts not because

they themselves were U.S. citizens, but because their victims were U.S. citizens. The most notable example of this is perhaps the prosecution of the so-called *ISIS Beatles*. The infamous cell included four members, among them Mohammed Emwazi (also known as [Jihadi John](#)), who was filmed beheading Western hostages and was killed in a U.S. drone strike. The second member, Aine Davis, was convicted in 2017 in Turkey for membership of a terrorist organization. After having spent seven and a half years in Turkish prisons, he returned to the U.K. in mid-2022 where he was arrested upon arrival and [charged](#) with additional terrorism offenses. The final two members, [El Shafee Elsheikh](#) and [Alexanda Amon Kotey](#), both UK citizens deprived of their citizenship in 2018, were captured in early 2018 by SDF and transferred to U.S. custody, which has led to many [legal dilemmas](#). The parents of U.S. victims, including James Foley, pleaded in an op-ed in the Washington Post to the U.S. to hold the remaining members of the *ISIS Beatles* accountable. Elsheikh and Kotey were actively involved in hostage taking, resulting in the death of four American citizens, as well as the deaths of British and Japanese citizens. They physically and mentally abused the hostages over a prolonged period of time and forcibly exposed the hostages to the murder of other hostages held by ISIS. They were both convicted for one count of conspiring to commit hostage taking resulting in death; four counts of hostage taking resulting in death; one count of conspiracy to murder U.S. citizens outside of the U.S.; one count of conspiring to provide material support to terrorists; one count of conspiring to provide material support to a designated FTO.

Charges

FTFs who return or are brought to the U.S. can face several different types of charges, including terrorism charges, criminal charges, and core international crimes.

Terrorism Charges

Out of the 13 individuals who have been charged with terrorism offenses and been convicted, most of them were found guilty of conspiracy to provide, attempting to provide, aiding and abetting to provide, or directly providing material support to a designated FTO. A further analysis of the cases demonstrates that the FTFs prosecuted in the U.S. have been engaged in the following activities:

- Fighting and participating in terrorist activity
- Providing or receiving training
- Supporting FTO recruitment efforts
- Providing financial support

Type of Charge	Mode of Liability	Number of Indictments	Number of Verdicts
Providing Material Support to a Designated Foreign Terrorist Organization	Aiding and Abetting	1	1
	Conspiracy	9	9
	Conspiracy resulting in Death	1	1
	Direct Commission	6	6
Providing Material Support to Terrorist Individuals	Conspiracy	2	2
	Direct Commission	1	1
Receiving Military-Type Training from a Designated Foreign Terrorist Organization	Conspiracy	2	2
Terrorist Murder of U.S. Citizens Outside the U.S.	Direct Commission	1	1

Table 5: Terrorism Charges filed in trials of returned FTFs in the U.S. – Comparison between Indictment and subsequent Verdict (based on 13 cases including verdict; July 15, 2023).

Material Support

In the U.S., the definition of providing material support to a designated terrorist organization is very broad. Unlike many other countries which have specific offenses, such as membership offenses, incitement, recruitment, or training, most of the activities that FTF and other terrorists are engaged with can be prosecuted in the U.S. under the catch-all offenses of material support. One of the few terrorist offences addressed in a specific section – [18 U.S. Code § 2339C](#) – is financing of terrorism. Material support offenses can be seen as part of a preventive [approach](#). Nonetheless, criticism regarding the vast scope of these norms, in particular in relation to attempted offences remain. Although it goes beyond the scope of this paper to weigh in on the advantages and concerns regarding material support charges, the following will provide a short overview of how the relevant norms are applied in practice in relation to returning FTFs.

The two primary material support statutes are [18 U.S. Code § 2339A](#) (providing material support to terrorists) and [18 U.S. Code § 2339B](#) (providing material support or resources to designated foreign terrorist organizations). Material support is defined as “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel [...], and transportation, except medicine or religious materials.” Additionally, [Section 2339B of Title 18 of the U.S. Code](#) makes it an offense to harbor or conceal a terrorist.

In the U.S., participation in a terrorist organization falls within the scope of material support offenses. Specifically, [Section 2339A of Title 18 of the U.S. Code](#) criminalizes providing material

support or resources to terrorists, which includes the provision of personnel “who may be or include oneself” (paragraph (b)(1)). Section 2339B of Title 18 of the U.S. Code criminalizes providing material support to designated FTOs. It also provides further clarification of the term personnel in the context of FTOs. In particular, subsection (h) states that a person can only be prosecuted as personnel if they have knowingly provided themselves or another person “to work under [a] terrorist organization’s direction or control,” or if they have engaged in organizing, managing, supervising, or directing its operations. Although as aforementioned membership is not a separate offense in the U.S., there needs to be a clear connection between an individual and an FTO for individuals to be prosecuted as personnel. Subsection (h) further adds that persons who independently work in furtherance of an FTO’s objectives shall not be considered to be acting under its control, essentially limiting such prosecutions to people who are or have been active ‘members’ of an FTO.

Receiving and providing training for terrorist purposes are also covered as part of material support in [Section 2339A](#) and [Section 2339B of Title 18](#) of the U.S. Code, which specifically include providing training for terrorism purposes. In addition, receiving military-type training from or on behalf of an FTO, within or outside of the territory of the U.S. is criminalized in Section 2339D. Subsection 2339A subsection (b)(2) states that training means “instruction or teaching designed to impart a specific skill, as opposed to general knowledge.” For example, Omer Kuzu is a U.S. citizen from Dallas, Texas who was captured by SDF forces and handed over to the U.S. In Mosul, he underwent five days of physical and weapons training together with 40 other FTFs. Shortly after pledging allegiance to ISIS leader Abu Bakr al-Baghdadi and the Islamic Caliphate, he was given a monthly stipend, a weapon, and married an ‘ISIS bride’. Kuzu held different communication functions in the group. He was found guilty of one count of conspiring to provide material support to a designated terrorist organization, and is now awaiting sentencing. Another interesting case is that of Ruslan Maratovich Asainov, who received training, engaged in fighting numerous times, and acted as a sniper trainer or emir for ISIS. He provided sniper training to approximately 100 individuals. He has been convicted of multiple counts of providing material support to a designated FTO and is also awaiting sentencing.

Recruitment is considered to fall under the scope of material support, specifically under the provisions relating to personnel. Similar to the prosecution of participation in a designated FTO, in the form of providing one’s self as personnel, recruiting others for the same purpose requires that there is a clear link between the recruits and the FTO (Section 2339B subsection h). Accordingly, prosecution under Section 2339B is possible if individuals are specifically recruited to work under the directions and control of the FTO, not merely in furtherance of its objectives. For example, Kandic, whose case was already discussed above, was a high ranking ISIS member with many responsibilities, including the recruitment and trafficking of FTFs. Kandic traveled across six countries before joining ISIS in Syria where he was in charge of a highly sophisticated recruitment strategy. Kandic recruited thousands of Western FTFs, among them Asainov, who became a sniper for ISIS and is also being prosecuted by U.S. courts. Kandic himself was convicted for one count of conspiring to provide material support to an FTO; five counts of providing material support to an FTO, and sentenced in July 2023 to life in prison.

Other Criminal Charges

Terrorism offenses are often prosecuted alongside non-terrorism related criminal charges, which could lead to higher sentences. One such offense is providing false statements, criminalized under [Section 1001 of Title 18 of the U.S. Code](#), which states that “whoever knowingly and willingly” falsifies material facts, makes materially false statements, or provides false documents within the jurisdiction of the U.S. is liable to be fined and imprisoned up to a maximum of five years. If the offense is related to international or domestic terrorism the maximum term of imprisonment

is increased to eight years. Samantha Elhassani was initially only charged for providing false statements, but later received a superseding indictment which included one count of conspiring to provide material support to a designated terrorist organization, and one count of aiding and abetting individuals in providing material support to a designated terrorist organization. Elhassani pled guilty to financing terrorism, and was sentenced to six years and six months imprisonment, and three years supervised release on November 9, 2020. Apart from this case, as of July 2023, the charge of providing false statements to U.S. authorities has only been filed against individuals who voluntarily returned to the U.S. and in the process of re-entering the U.S. had lied to border and immigration services.

Obstruction of justice is another offense that has been used to convict FTFs in the U.S. Section 1512(b) of Title 18 of the U.S. Code criminalizes intimidating or threatening another person to prevent them from testifying or forcing them to alter or destroy evidence. Asainov was convicted of providing and conspiring to provide material support to a designated FTO, receiving training from an FTO, and obstruction of justice in the form of tampering with witnesses and evidence. Asainov was convicted for threatening another person to withhold testimony and tampering with evidence in the proceedings regarding the other charges brought against him before a federal grand jury in the Eastern District of New York.

Hostage taking is criminalized under Section 1203 of Title 18 of the U.S. Code, which states that whoever, irrespective of the location, detains and threatens a person in order to coerce another person or governmental organization is punishable by imprisonment for any term of years or life. If the offense results in the death of the victim, the sentence is life imprisonment or the death penalty. When committed outside U.S. territory, this offense can be prosecuted if the victim or the perpetrator is U.S. national, if the offender is arrested in the U.S., or if the U.S. government is being coerced through the hostage situation. In the U.S., only two FTFs have been prosecuted for hostage taking resulting in death, Elsheikh and Kotey, members of the infamous *ISIS Beatles*.

Type of Charge	Mode of Liability	Number of Indictments	Number of Verdicts
Hostage taking resulting in death	Conspiracy	2	2
	Direct Commission	2	2
Possessing, using and carrying firearms during and in relation to a crime of violence	Direct Commission	2	2
Possessing and discharging a machine gun in furtherance of a crime of violence	Direct Commission	1	0
Obstruction of justice	Direct Commission	1	1

Table 6: Other Criminal Charges filed in trials of returned FTFs in the U.S. – Comparison between Indictment and subsequent Verdict (July 15, 2023).

Core International Crimes

In the U.S., to date, there have been no cases of FTFs prosecuted for core international crimes. In 2022, the war crimes legislation from 1996 was strengthened and now also allows for the prosecution against persons present in the U.S. for war crimes committed abroad even if the perpetrators nor the victims possess U.S. nationality. Although the [Justice for Victims of War Crimes Act](#) cannot be applied retrospectively, it could be used to prosecute FTFs who travel abroad and commit war crimes in Syria and Iraq, as well as future possible foreign terrorist travel conflicts. As of July 2023, only two individuals, [Taha Al-J.](#) and [Jalda A.](#) have been successfully prosecuted by German authorities for their involvement in ISIS' genocide of the Yazidi minority. Another woman, [Nadine K.](#), was found guilty of among others, aiding and abetting genocide by eradication by a German court of first instance in June 2023. Three more FTF suspects are under investigation in Denmark, France, and Sweden, among others for suspicions of involvement in genocide committed in Iraq and Syria.

Female Foreign Terrorist Fighters

Out of the 16 returned FTFs charged with terrorism-related conduct in the U.S., two were women, [Samantha Marie Elhassani](#) and [Allison Fluke-Ekren](#). In November 2014, Elhassani traveled abroad and deposited over \$30,000 in cash and gold in Hong Kong for her husband and brother-in-law who intended to join ISIS. She melted down the gold to look like jewelry and did not disclose

the cash and gold on customs declaration forms. Elhassani violated Section 2339C of Title 18 of the U.S. Code and pled guilty to financing to terrorism, followed by a 78 months imprisonment sentence with three years of supervised release.

After 2008, Fluke-Ekren moved to Egypt with her second husband who was a member of the terrorist organization Ansar al-Sharia. Fluke-Ekren then traveled to Libya, Turkey, and ultimately went to Syria where her second husband held a high function in ISIS. Fluke-Ekren became a leader of women brigade, known as the Khatiba Nusaybah, where she trained women on the use of rifles, grenades and suicide belts. Fluke-Ekren provided military training to over 100 women and young girls. She was convicted for conspiracy to provide material support to an FTO and sentenced to 20 years prison and 25 years supervised release after release from prison. In this case, her son and daughter both living in the U.S. made victim impact statements regarding the physical and mental abuse inflicted upon them by their mother in the U.S. and abroad.

Evidence

To secure convictions, the U.S. relies on different types of evidence. In at least four cases, the prosecutors have relied on information collected from the conflict zone in either to obtain an indictment or as evidence in court proceedings, also referred to as battlefield evidence. Ibraheem Izzy Musaibli traveled to Yemen and after a 6 months stay entered Syria in 2015 to join ISIS, where he participated in a military training camp. Musaibli supported ISIS until he was captured by the SDF in 2018. During a pre-trial hearing the court had to assess whether documents the government wanted to use as evidence were admissible. These documents were obtained from the battlefield and included brigade roster, payrolls records, a treasury administration, hospital records, etc. An expert from the United Nations Investigative Team to Promote Accountability for the Crimes of Daesh (UNITAD) also testified in court regarding a spreadsheet and a roster of foreign fighters for ISIS which derive from the UNITAD repository. While the government was able to prove that several of the documents were authentic, the government failed to prove the documents were not-hearsay or that any of the exceptions to the rule of hearsay are applicable. As a result, the court ruled the documents obtained from the battlefield were not admissible as evidence in court, though this ruling was overturned by appeal, and thus eventually successfully used in the conviction. Musaibli was convicted of providing material support to a designated terrorist organization, conspiracy to provide material support to an FTO and receiving military-type training from an FTO, and was sentenced to 14 years imprisonment in June 2023.

Other examples of battlefield evidence include, in the case against Elsheikh, statements of three SDF officials with authority over prisons where the SDF held ISIS detainees as well as biometric data obtained by the U.S. from ISIS detainees. The SDF permitted the U.S. to collect fingerprints and photos from detainees which were uploaded to a government database which led to identification and admission of Elsheik who had given a false identity.

According to the affidavit in support of the criminal complaint and arrest warrant of Fluke-Ekren, the prosecutor relied on several witness statements including her own children, which were taken in the conflict zone. In addition to documents recovered from the battlefield, at least two witness statements were obtained from foreigners who were detained a foreign prison camp for former ISIS members in Syria collaborating that Fluke-Ekren was indeed the leader and a trainer of the Khatiba Nusaybah brigade.

Finally, in the case against Mohammed Jamal Khweis, the prosecutor also relied on documents obtained from the battlefield which included his intake form and ISIS roster with his name. Khweis had concealed his travel to Syria and communicated with ISIS through secured channels. Khweis spent time in several safe houses, participated in training and agreed to become a suicide

bomber.

The use of cooperative witnesses who are themselves also on trial for terrorist offenses is also not uncommon in the prosecution of FTFs. Omer Kuzu testified in the case of Elsheikh and received sentence reduction for cooperation with the government. [Mohimanul Bhuiya](#) who returned to the U.S. through Turkey and already signaled his willingness to cooperate with U.S. authorities in investigations eventually also entered a cooperation agreement with the prosecution authorities upon which all documents relating to the terrorism-related criminal case against him were sealed. The prosecution also relied on cooperative witnesses in the case of [Fluke-Ekren](#).

In one case, a self-incriminating statement was taken from an FTF, Jihad Ali, by FBI agents while he was still detained in Syria. According to the affidavit in support of the criminal complaint, Ali has given numerous statements explaining how at the age of approximately 15 years, he took part in military training in Syria and was assigned to Anwar al-Awlaki battalion consisting mainly of English speaking fighters. In addition, the U.S. obtained several documents and hard drives from the battlefield that corroborated that Ali was a member of ISIS.

Sentencing

As of July 2023, of the 16 cases, three individuals are only indicted, three individuals are convicted and awaiting sentencing, and ten FTFs have been convicted and received sentences (Table 2). The shortest sentence is five years imprisonment and three years supervised release against Jihad Ali, who was found guilty of one count of conspiring to provide material support to an FTO. The longest sentences against FTFs in the U.S. were rendered against two members of the *ISIS Beatles* who received eight concurrent life sentences, among others for their involvement in the hostage taking of American, British, and Japanese citizens.

The average duration of all prison sentences (excluding the four cases leading to life sentences) is 14.25 years with an average duration of supervised release of 12.5 years, meaning that the duration of supervised release is usually 87.72 percent of the preceding prison sentence.

Looking Ahead

This report analyzes the pattern of formal return and accountability which have characterized the return, prosecution, and sentencing of ISIS-affiliated FTFs in the U.S. The authors specifically focus on the track record of U.S. practice with regards to those adult returnees who faced criminal charges. As of July 2023, 16 individuals returned or brought to the U.S. through formal processes, all adults have faced charges for the support of a designated foreign terrorist organization, namely, the Islamic State in Iraq and Syria. The analysis of these cases indicates that all FTFs thus far prosecuted in the United States were charged based on material support offenses. Moreover, all cases brought against these FTFs were against individuals above the age of 18, with an average age of 30 years old at the time that they were found guilty of committing the above listed terrorism offenses.

When looking ahead, there are several important points that require additional research and attention. For example, the U.S.' approach to formal return and accountability of ISIS-affiliated FTFs and their families from northeastern Syria has differed from that of multiple European countries. Additional research is needed to compare these trends cross-nationally and even regionally within Europe. These would benefit from focused attention to issues of gender and age.

As explored above, the scope of the issue of FTFs and returnees to the U.S. is relatively small compared to other countries, including many in Europe. Across two administrations, the U.S. government has seen a bipartisan effort to repatriate not only U.S. persons, but also to encourage and aid countries around the world to follow suit. As noted by State Department counter-terrorism official Ian Moss in July 2022, “We cannot artificially separate our concern about the displacement and detention issues from the broader political context in northeast Syria for the simple fact that the more financial resources and room to operate [ISIS] enjoys, the more complex and/or frequent their efforts to free detainees and recruit in displaced persons camps will be.” The U.S. has understood the important connection between repatriation and regional security, as U.S. Secretary of State [Blinken](#) reminded the Coalition in June 2023, “We know that repatriation is the only durable solution.” This policy effort has resulted in the official repatriation of 39 U.S. persons back to the U.S. as of June 2023. Of these, the majority of adults have faced prosecution for terrorism-related crimes.

The State Department is not alone in these repatriation efforts. They work alongside the Department of Defense, who carries out its “advise, assist, and enable” mission alongside the SDF in northeastern Syria, as well as leads the transfer of individuals back into U.S. custody. Once repatriated or returned, the Department of Justice leads U.S. efforts on prosecutions. Relatedly, U.S. Senators Jeanne Shaheen and Lindsay Graham recently [introduced a bill](#) that would direct the White House to appoint a senior coordinator for U.S. repatriation.

As these policy initiatives continue, several *known unknowns* remain. These factors should be considered when examining the future of return and accountability of FTF-affiliated individuals to the U.S. First and foremost, is the informal return process of FTF-affiliated individuals. This paper addressed that there are at least 11 known adults who traveled and returned to the U.S. through informal means. While this paper did not examine these cases, future research may need to address these cases and the impact they have on the scope of the issue of FTF returnees in the U.S., as well as the impact on U.S. accountability measures.

Second, this paper did not address minors or related family issues. While the analysis focuses on adults, one cannot discount the connection the FTF phenomenon has had on minor travelers as well as those born in-theater. As a baseline, minors should be treated as victims with far less agency than their parents and adult counterparts. Future research will need to focus on this much understudied aspect of the FTF process to better inform prevention, reintegration, and rehabilitation initiatives.

Third, to date, the U.S. has not made public its post-accountability reintegration efforts. There is a lack of transparency both in the implementation and evaluation of such programming. However, the Department of Homeland Security has taken the lead in seeking to find best practices that could drive this effort. A [recently published NCITE report](#) finds that this includes sharing best practices on gathering evidence, holding responsible parties accountable, adapting risk assessments to the needs of each individual and the state, operating a clear dual communication strategy for both civil society and those being repatriated, and creating a trauma-informed care approach to those reintegrating. The different methods of return and the time spent in camps administered by the SDF must also be taken into account in any reintegration efforts as it has direct implications for the effectiveness of reintegration into society for FTFs and their families.

Finally, while this paper addressed U.S. accountability and criminal prosecution practices, one needs to think ahead to the release and parole of returned FTFs in the U.S. Future research needs to focus on the conditions of parole, threat assessments that are used as part of this process, and synchronization with family reintegration, which includes understanding that parents and children may go through reintegration programming at different points in time.

Through the analysis of these 16 cases, this paper shines a light on U.S. trends and policy related to the return of adult ISIS-affiliated FTFs formally returned and prosecuted with terrorism offenses in the U.S. While there is still work to be done, this paper clearly presents the U.S. approach. In doing so, the paper also points at best practices as well as gaps and challenges in the U.S.' approach to returning FTFs.

Appendix 1: List of U.S. Terrorism Prosecutions of Returned FTFs

1. **Emraan Ali:** Male, New York, charged with providing and attempting- to provide material support to ISIS. He plead guilty to all charges and was sentenced to 20 years imprisonment and 20 years of supervised release on March 31, 2023.
2. **Jihad Ali:** Male, New York, charged with conspiracy to provide material support to ISIS. Jihad Ali was a minor when he traveled together with his father, Emraan Ali. Jihad Ali plead guilty and was sentenced to five years imprisonment and three years supervised release on September 30, 2021.
3. **Ruslan Maratovich Asainov:** Male, New York, charged with conspiracy to provide material support to ISIS; providing material support to ISIS in the form of personnel, training, expert advice, and assistance; receipt of military-type training from ISIS; and obstruction of justice. The jury also found that the defendant's provision of material support to ISIS resulted in the death of one or more persons. He was found guilty on February 27, 2023. As of July 15, 2023 he is awaiting sentencing.
4. **Warren Christopher Clark:** Male, Texas, arrested and detained for attempting to provide material support to ISIS. He was captured by SDF forces in Syria and given to U.S. law enforcement where he was brought back to the U.S. for prosecution in early January 2023. Clark was charged on January 25, 2019. As of July 15, 2023, this case is ongoing.
5. **Samantha Marie Elhassani:** Female, Indiana, pled guilty to financing terrorism. In July of 2018, Elhassani and her two children were transferred from the custody of the SDF to U.S. law enforcement custody. She was sentenced to six years and six months imprisonment and three years supervised release on November 9, 2020.
6. **El Shafee Elsheikh:** Male, former British citizen, member of the so-called *ISIS Beatles*, a group of four British FTFs that were given their nickname by hostages due to their accents. Elsheikh was charged with conspiring to provide material support to terrorists and to a foreign terrorist organization, as well as with committing and conspiring to commit hostage taking resulting in death, and conspiracy to murder U.S. citizens outside the U.S. He was involved in the hostage taking of four U.S., one Italian, one Danish, one German, four French, three Spanish, one Russian citizen, and one New Zealander citizens. Elsheikh was found guilty of all charges in April 2022, and sentenced to eight concurrent life sentences on August 19, 2022.
7. **Allison Fluke-Ekren:** Female, Kansas, arrested and detained for organizing and leading an all-female military battalion in Syria on behalf of ISIS. Fluke-Ekren was reportedly located outside the U.S. from around January 8, 2011, until she was transferred in custody to the Eastern District of Virginia on January 28, 2022. She was sentenced to 20 years imprisonment on November 1, 2022 after being found guilty of providing and conspiring to provide material support to ISIS including the above-mentioned activities.
8. **Mirsad Kandic:** Male, New York, charged with providing and attempting to provide material support to a foreign terrorist organization. Kandic had several responsibilities for ISIS, including recruitment, managing transfers of money as well as obtaining weapons and false documentation. He was found guilty of all counts on May 24, 2022, and was sentenced to life imprisonment on July 14, 2023.
9. **Mohammed Khalifa:** Male, Saudi-born Canadian citizen and so-called English voice of ISIS was charged with conspiring to provide material support to ISIS resulting in death. Khalifa plead guilty in December 2021, and was sentenced to life imprisonment on July 29, 2022.
10. **Mohamad Jamal Khweis:** Male, Virginia, was sentenced to 20 years in prison for providing material support to ISIS. He was captured by Kurdish Peshmerga forces in March 2016 and

was eventually handed over to U.S. custody from Iraq. Khweis was found guilty of providing and conspiring to provide material support to ISIS and sentenced to 20 years imprisonment on October 27, 2017.

11. **Alexanda Amon Kotey:** Male, former British citizen, member of the so-called *ISIS Beatles*. Kotey was charged with conspiring to provide material support to terrorists and to a foreign terrorist organization, as well as with committing and conspiring to commit hostage taking resulting in death, and conspiracy to murder U.S. citizens outside the U.S. He was involved in the hostage taking of four U.S., one Italian, one Danish, one German, four French, three Spanish, one Russian citizen, and one New Zealander. Kotey pled guilty to all charges in September 2021, and was sentenced to eight concurring life sentences on April 29, 2022.
12. **Omer Kuzu:** Male, Texas, charged with conspiring to provide material support to ISIS. In March 2019 he was captured by SDF forces and was transferred to FBI custody and taken back to the U.S. Kuzu pled guilty to providing and conspiring to provide material support to ISIS, receiving military-type training from a designated foreign terrorist organization and one count of obstruction of justice on February 7, 2023. As of July 15, 2023 he is awaiting sentencing.
13. **Abdelhamid Al-Madioum:** Male, Minnesota, charged with one count of providing material support and resources, namely personnel and services, to ISIS. After surrendering to SDF forces in or around Baghouz, Syria in March 2019, he was returned to the U.S. in September 2020. Al-Madioum entered a guilty plea on January 13, 2021. As of July 15, 2023 he is awaiting sentencing.
14. **Ibraheem Izzy Musabli:** Male, Michigan, previously indicted in July 2018, with providing and attempting to provide material support to ISIS, was charged with additional offenses of conspiring to provide material support to ISIS, possessing and discharging a machine gun in furtherance of a crime of violence, and receiving military-type training from ISIS. He was found guilty on January 31, 2023, and was sentenced to 14 years imprisonment on June 15, 2023.
15. **Mirsad Hariz Adem Ramic:** Male, Kentucky, charged with providing and conspiring to provide material support to ISIS as well as receiving military-type training from a designated foreign terrorist organization on December 20, 2021. As of July 15, 2023, this case is ongoing.
16. **Lirim Sylejmani:** Male, Illinois, charged with conspiring to provide, providing, and attempting to provide material support to ISIS and receiving training from ISIS. Sylejmani was charged on July 7, 2020. As of July 15, 2023, this case is ongoing.

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