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Off-Ramp Opportunities in Material Support Cases

Kelly A. Berkell

· Research Fellow at the Center on Terrorism, John Jay College of Criminal Justice, City University of New York. J.D., New York University School of Law; B.A, Barnard College. The author is a former National Security Fellow at Fordham Law School’s Center on National Security and practiced securities litigation. The author thanks Charles Strozier, Karen Greenberg, Devlin Barrett, Alon Ben-Meir, Douglas Cox, Joshua Dratel, Seamus Hughes, Daniel Koehler, Peter Margulies, David Phillips, and Robert Trestan for helpful insights and thought-provoking discussions. The views expressed are solely those of the author.

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Abstract

Strategies to counter violent extremism in the United States have centered around preventing violent extremism before it takes hold, with an emphasis on community partnerships and counter-messaging. The need for intervention, rehabilitation, and reintegration once individuals have already headed down extremist pathways—and intersected with the criminal justice system—receives less consideration, but policymakers and practitioners are increasingly taking note of this void. Factors favoring the development of innovative off-ramp approaches include: the public safety imperative of preventing future violence and recidivism; the increased volume of investigations, rendering prosecution or long-term surveillance in every case impossible or impractical; mitigating circumstances such as the non-violent nature of some material support crimes and the youth of many offenders; and the long-term value of building trust for community partnerships. Participation in intervention initiatives need not preclude prosecution, and rehabilitation programming may occur inside and outside of the prison setting. Program development should be evidence-based, relying upon a comprehensive international analysis, while tailored to incorporate U.S. constitutional requirements and cultural norms including protection of civil rights and civil liberties. This article explores the basis and opportunities for preventing future violence when charging and sentencing defendants who are either suspected or convicted of providing material support for terrorism.
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Introduction

Policymakers in the judicial and legislative arenas should consider aligning domestic criminal justice strategies with innovative approaches to preventing terrorism that are emerging outside the criminal context. The strategy of countering violent extremism (CVE) comprises a developing set of initiatives to identify and mitigate the factors that lead individuals to embrace and act upon violent ideologies, a process sometimes referred to as radicalization.1 Efforts in the United States center on preventing violent extremism before it takes hold, with an emphasis on community partnerships and counter-messaging.2 The need for intervention, rehabilitation, and reintegration once individuals have already headed down extremist pathways receives less consideration. Because of this programming gap, “individuals who have begun to radicalize are not turned around and those who have acted violently are not rehabilitated.”3 The “next frontier of America’s CVE efforts” may include both targeted interventions for those who have begun to radicalize4 and rehabilitation programs for those farther along the path.

1 Radicalization is a contentious concept, yet remains widely relied upon to describe the process of adopting an extremist ideology and supporting or engaging in violence consistent with that ideology. See, e.g., Peter R. Neumann, Prisons and Terrorism, INT’L CTR. FOR THE STUDY OF RADICALISATION & POL. VIOLENCE 12 (2010), http://icsr.info/wp-content/uploads/2012/10/1277699166PrisonsandTerrorismRadicalisationandDeradicalisationin15 Countries.pdf; Peter Romanuik, Does CVE Work? GLOBAL CTR. ON COOPERATIVE SEC. 7–8 (Sept. 2015), http://www.globalcenter.org/wp-content/uploads/2015/09/Does-CVE-Work_2015.pdf. This Article is rooted in the basic notion of radicalization as a phenomenon warranting study, but one that does not occur through a standardized or generic process. Neither a conveyor-belt theory of radicalization nor a one-size-fits-all model underlies the arguments herein. See Faiza Patel, Rethinking Radicalization, BRENNAH CTR. FOR JUSTICE (2011), http://brennan.3cdn.net/f737600b433d98d25e_6pm6beukt.pdf; Sophia Moskalenko & Clark McCauley, Measuring Political Mobilization, TERRORISM AND POL. VIOLENCE 239–260 (April 2009); but see, Mitchell D. Silber & Arvin Bhatt, Radicalization in the West, N.Y. CITY POLICE DEP’T (2007). Assessments of whether radicalization is fundamentally a cognitive or a behavioral process, or both, are beyond the scope of this discussion. See Peter R. Neumann, The Trouble with Radicalisation, 89 INT’L AFF. 873 (July 2013).


3 Khan, supra note 2. Humera Khan is the Executive Director of Muflehun, a think tank specializing in countering violent extremism. In 2012, she received the FBI Director’s Community Leadership Award for her work. See id.

The criminal justice system provides opportunities to begin filling this void. Currently, no coherent framework exists to facilitate intervention and rehabilitation at significant stages of the legal process, such as in prosecutorial charging decisions, plea agreements, and at sentencing. However, a growing body of prosecutions under the federal statutes prohibiting material support for terrorism points to critical opportunities for preventing future violence. Strategies in material support cases to avert future violence may include (1) the incorporation of intervention programs in appropriate instances, as alternative or parallel paths to prosecution, and (2) the implementation of post-conviction rehabilitation programs, to run independently from, concurrently with, or after imprisonment, depending upon the nature and severity of the crime. In some instances, such as when hardened extremists commit egregious, violent crimes, aggressive prosecutions and lengthy prison sentences are clearly warranted. Yet in cases involving material support grounded in non-violent conduct, where mitigating circumstances are present, opportunities to prevent future violence through intervention and rehabilitation should not be overlooked.

The following framework for countering violent extremism builds upon previous formulations but posits a holistic model that conceptualizes each pillar or category of initiatives in relation to criminal justice timelines:

1. **Prevention** of radicalization before it occurs. Priority is placed on identifying vulnerabilities and addressing them proactively through community engagement and partnerships. Countering violent extremist messaging is a crucial focus, with emphases on negating extremist propaganda on the one hand and promoting competing democratic ideals on the other. Although law enforcement has partnered in programs, the most promising prospects for prevention arise outside the criminal context, such as when communities and non-governmental organizations promote narratives of tolerance, spotlight positive role models, and facilitate opportunities for civic engagement.

2. **Intervention** after an individual has embarked on a path toward extremism, but prior to conviction for a terrorist crime or hate crime. Scholars and practitioners generally use intervention terminology to describe targeted approaches for individuals who demonstrate support for violent ideologies, but who have not acted violently. Communities

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5 See, e.g., Khan, supra note 2; Vidino, supra note 4, at 12–13; see also Lindsay Clutterbuck, Deradicalization Programs and Counterterrorism, MIDDLE EAST INST. (June 10, 2015), http://www.mei.edu/content/deradicalization-programs-and-counterterrorism-perspective-challenges-and-benefits (“The lack of clarity and consistency that characterize how we define radicalization, violent extremism, and terrorism also extends to the measures taken to counter them.”).


7 See, e.g., Vidino & Hughes, supra note 4, at 8–10; Simon Cottee, The Pre-Terrorists Among Us, THE ATLANTIC (Oct. 27, 2015),
and law enforcement each play a role. When an individual is suspected of conduct amounting to a crime, especially a non-violent or inchoate offense, and when other mitigating factors are present, law enforcement may determine whether to enlist intervention strategies instead of, or in addition to, prosecution.\footnote{See Caitlin Mastroe & Susan Szmania, Surveying CVE Metrics in Prevention, Disengagement and De-Radicalization Programs, Report to the Office of Univ. Programs, Science & Tech. Directorate, Dep’t of Homeland Sec., START 10 (Mar. 2016), https://www.start.umd.edu/pubs/START_SurveyingCVEMetrics_March2016.pdf (noting that programs that take place before an individual is charged with a crime or placed in jail are often referred to as interventions).}

- Intervention may include strategies for \textit{disengagement} (cessation of violent actions and affiliations) and \textit{deradicalization} (renunciation of belief in violent ideology).\footnote{See, e.g., Neumann, supra note 1, at 12 (“[W]hile de-radicalisation aims for substantive changes in individuals’ (or groups’) ideology and attitudes, disengagement concentrates on facilitating behavioural change, that is, the rejection of violent means.”); Naureen Chowdhury Fink & Ellie B. Hearne, \textit{Beyond Terrorism}, INT’L PEACE INST. 3 (Oct. 2008), https://www.ipinst.org/wp-content/uploads/publications/beter.pdf.} Some European and Muslim-majority nations have a longer history with disengagement and deradicalization approaches, while a new interest is emerging in the United States.\footnote{See Matt Apuzzo, \textit{Only Hard Choices for Parents Whose Children Flirt With Terror}, N. Y. TIMES (Apr. 9, 2016), http://www.nytimes.com/2016/04/10/us/parents-face-limited-options-to-keep-children-from-terrorism.html; Priyanka Boghani, “Deradicalization” is Coming to America, PBS FRONTLINE (Mar. 18, 2016), http://www.pbs.org/wgbh/frontline/article/deradicalization-is-coming-to-america-does-it-work/.}

3. \textbf{Rehabilitation} following conviction for terrorism or another violent extremist crime. Rehabilitation strives to enhance public safety by preventing recidivism.\footnote{For example, in a more general criminal justice context, the German prison system emphasizes rehabilitation over retribution, and has a recidivism rate of about half that of the U.S. \textit{Crime and Punishment}, CBS NEWS, 60 MINUTES (April 3, 2016), http://www.cbsnews.com/news/60-minutes-germany-prisons-crime-and-punishment/. See also Summarized Remarks of Matthew Levitt, \textit{Rehabilitation and Reintegration of Returning Foreign Terrorist Fighters}, WASH. INST. (Feb. 23, 2015), http://www.washingtoninstitute.org/policy-analysis/view/rehabilitation-and-reintegration-of-returning-foreign-terrorist-fighters (noting that because the vast majority of those convicted of terrorist crimes will eventually be released, it is “neither ‘soft’ nor ‘weak’ to be talking about how to rehabilitate them, especially in the prison context but elsewhere as well”).} Like intervention, rehabilitation encompasses \textit{disengagement} and \textit{deradicalization} objectives.\footnote{See Mastroe & Szmania, supra note 8; Humera Khan, Testimony to the House Committee on Foreign Affairs \textit{Women’s Education: Promoting Development and Countering Radicalism}, Hearing 4 (Apr. 3, 2014), http://docs.house.gov/meetings/FA/FA00/20140403/102065/HHRG-113-FA00-Wstate-KhanH-20140403.pdf.} It may occur inside or
outside the prison context, and terms of participation may be determined at sentencing.  

4. **Reintegration** after incarceration and release, to assist individuals in transitioning successfully into positive roles in society. The goal of reintegration is to make rehabilitation more sustainable by facilitating individuals’ assumption of productive roles in their communities.

The first pillar, prevention, has received the most substantial attention in the United States. This paper focuses on intervention and rehabilitation.

The development of initiatives for individuals suspected or convicted of material support crimes would make U.S. efforts to prevent future violence more systemic and would indicate recognition of the continuing value of countering extremism even after it has taken hold. Participants’ self-selection through demonstrated support for violent crime should allay some civil liberties concerns otherwise associated with CVE: participation would be triggered by conduct sufficient to support criminal prosecution, rather than by religious or other constitutionally protected activities or beliefs. Finally, the judicial system

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15 See Khan, supra note 2; see also Dana Hadra, *A How-To on Countering Violent Extremism*, BROOKINGS (Mar. 21, 2016), https://www.brookings.edu/blog/markaz/2016/03/21/a-how-to-on-countering-violent-extremism/. (Lorenzo Vidino noted that, unlike Europe, the U.S. lacks programs that deal with extremists or potential extremists one-on-one.)


17 See, e.g., Summarized Remarks of Matthew Levitt, supra note 11.

provides an arena in which CVE goals may be implemented narrowly and concretely—attributes that sometimes prove elusive in broad, community-based initiatives.

This Article explores the basis and opportunities for applying CVE principles when charging and sentencing defendants who are suspected or convicted of providing material support for terrorism. Part I traces the background and status of CVE initiatives in the United States and outlines associated civil liberties concerns. Part II discusses the background and range of U.S. prosecutions sounding in material support for terrorism, spotlighting the wide spectrum of conduct prosecuted under the same statutory prohibitions and with the same available penalties. Part III draws upon the material support context to illustrate how prospective developments in the criminal justice system could facilitate off-ramp opportunities from violent extremism. Specifically, Part III(A) outlines existing and previous models—including international programs for disengagement and deradicalization, and domestic programs to prevent gang violence—in order to roughly survey the evidence base for rigorous new approaches in the United States. Part III(B) identifies domestic opportunities for disengagement and deradicalization initiatives, evaluating how the availability of intervention programs could positively impact the charging context, while rehabilitation programs at the sentencing, incarceration, and post-release phases could promote public safety concurrently with benefits to communities and families. In conclusion, the Article argues that the criminal justice system provides vital opportunities to prevent future acts of violence by individuals who already have demonstrated support for violent extremist ideologies and groups. Practitioners, legislators, and other policymakers should jointly study these opportunities to determine how they can be realized in a rigorous and consistent manner that best protects civil liberties, engenders community support, and maximizes overall effectiveness.

I. Background and Status of CVE Initiatives

A. International Efforts and Foundational Concepts

As U.S. policymakers strive to prevent extremist violence through increasingly proactive strategies, they are grappling with tensions that European and other nations have confronted for years. Internationally, government programs to diminish violent extremism by addressing its root causes span back...
over a decade.\textsuperscript{20} For example, in its 2004 Plan of Action on Combating Terrorism\textsuperscript{21} and 2005 Counter-Terrorism Strategy,\textsuperscript{22} the European Union committed to preventing terrorism in part by tackling the underlying factors leading to radicalization and recruitment. The UN Global Counter-Terrorism Strategy of 2006 similarly incorporated “soft power” principles by outlining measures to address the conditions conducive to the spread of terrorism.\textsuperscript{23} European initiatives provide a crucial backdrop for consideration of CVE initiatives in the United States, inviting consideration by American policymakers of tailored versus broad approaches; the respective roles of law enforcement, public agencies and officials, and community organizations; and the tensions arising from the interplay of risk and vulnerability assessments with freedom of speech and expression.\textsuperscript{24}

Lorenzo Vidino and James Brandon, in a policy report published by the International Centre for the Study of Radicalisation and Political Violence, observed in 2012 that although most European countries employed some form of counter-radicalization, the only four countries with “a comprehensive, nationwide counter-radicalization strategy enshrined in an official, publicly available document,” were the United Kingdom, the Netherlands, Denmark, and Norway.\textsuperscript{25} Those nations were “the most advanced in the field, their initiatives predating and being more extensive than those of other European countries.”\textsuperscript{26} In contrast, Belgium was described, in the wake of the March 2016 terror attacks in Brussels, as lagging behind and “still in the discussion phase” of CVE\textsuperscript{27} but it is working to

\textsuperscript{20} See Romaniuk, \textit{supra} note 1, at 1–2.


\textsuperscript{24} See Vidino & Hughes, \textit{supra} note 4, at 1 (“CVE trends in various European countries, where authorities have implemented ambitious strategies for over a decade, offer useful pointers to U.S. officials.”); \textit{see also} \textit{WHITE HOUSE, STRATEGIC IMPLEMENTATION PLAN FOR EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES, 13} (Dec. 2011), https://www.whitehouse.gov/sites/default/files/sip-final.pdf (In early efforts toward building expertise, the “United States Government held regular exchanges of best practices with Australia, Canada, Denmark, Germany, the European Union, the Netherlands, the United Kingdom, and other partners to gain comparative insights about what might be effective in the Homeland.”). Part III(A) provides a review of global models that specifically target disengagement and deradicalization objectives, in contrast to the more general, instant overview of CVE programs provided in this Part.


\textsuperscript{26} Id.

develop a more effective program. Numerous other initiatives have sprung up around the globe, and continue in various stages of development.

The United Kingdom’s program to counter violent extremism has come under fire for alienating British Muslims through flawed implementation, and its initial approach provides cautionary lessons for other nations’ programs. Following the London bombings in 2005, the United Kingdom implemented Prevent, the counter-radicalization strand of its CONTEST counterterrorism strategy, which had been implemented in 2003. With the goal of stopping people from becoming terrorists or supporting terrorism, the laws of the United Kingdom impose a “Prevent duty” upon specified public-facing bodies, including local authorities and governments, criminal justice officials, educators, those responsible for health and social care, and police officials. This duty includes risk assessments; schools and childcare providers, for example, must “assess the risk of children being drawn into terrorism, including support for extremist ideas that are part of terrorist ideology.” Frequent criticism holds that the program


stigmatizes Muslims, shuts down open debate in schools, and provides insufficient guidance for educators and agencies who must implement the statutory requirements. 35 Additionally, some scholars argue that the framework Prevent uses to assess radicalization risks has not been subjected to proper scientific scrutiny and public critique. 36 The U.K.’s Independent Reviewer of Terrorism Legislation has suggested a government review of Prevent, which might lead to “a future strategy in which all can have confidence.” 37

In the United States, public focus similarly is sharpening on CVE as one component of a more comprehensive approach to preventing terrorism, and a corresponding new terminology is emerging. 38 The shift toward CVE stems from widening recognition that military campaigns to defeat violent extremists, while necessary at times, often provide incomplete and unsustainable solutions. 39 Law enforcement’s role in finding and prosecuting those who commit terrorist crimes


likewise is necessary but not sufficient to address contemporary threats.\textsuperscript{40} CVE therefore supplements traditional approaches with long-term measures to stop violent extremism’s spread.\textsuperscript{41}

Another basic tenet underlying current approaches to preventing extremist violence is that no single, standard path leads individuals to embrace and support violent ideologies.\textsuperscript{42} Rather, unique combinations of “push” and “pull” factors serve as motivators.\textsuperscript{43} Drivers of violent extremism display some common themes, but vary across geographic regions, communities, and individuals.\textsuperscript{44} Push factors include structural grievances such as marginalization, alienation, and social disaffection—and globally, they may include prolonged conflict, disenfranchisement, underdevelopment, weak governance, and human rights violations.\textsuperscript{45} Pull factors include features positively attracting adherents to an ideology, such as group bonds, social connections, excitement, cultural appeal, perceived glory, a sense of belonging, and a sense of purpose.\textsuperscript{46} Individual characteristics and circumstances, including family and social dynamics, also play a role.\textsuperscript{47} In the case of the so-called Islamic State (referred to herein as ISIS), European officials have noted a trend of “Islamized radicals” rather than “radical Islamists,” meaning that recruits drawn from society’s outer margins seek an “opportunity to justify their violence and criminality” through the adoption of a

\textsuperscript{40} See, e.g., Brian Michael Jenkins, \textit{Would-Be Warriors}, RAND CORP. 10 (2010), http://www.rand.org/content/dam/rand/pubs/occasional_papers/2010/RAND_OP292.pdf (“Traditional law enforcement, in which authorities attempt to identify and apprehend a perpetrator after a crime has been committed, is inadequate to deal with terrorists who are determined to cause many deaths and great destruction and who may not care whether they themselves survive.”).


\textsuperscript{42} See e.g., Jenkins, \textit{supra} note 40, at 7; STERN, \textit{supra} note 39, at 4; see also LORENZO VIDINO & SEAMUS HUGHES, GEO. WASH. U., ISIS IN AMERICA 5 (2015), https://chs.gwu.edu/sites/chs.gwu.edu/files/downloads/ISIS%20in%20America%20-%20Full%20Report.pdf (“Defying any cookie-cutter profile of the American ISIS supporter, these . . . individuals constitute an incredibly heterogeneous group.”).


violent ideology. Recognizing the singularity of each person’s “radicalization recipe,” counter-extremism efforts must achieve correspondingly high levels of individualization.

B. The Progress of CVE in the United States

In August 2011, President Barack Obama released the federal government’s first official domestic CVE strategy, Empowering Local Partners to Prevent Violent Extremism in the United States. The plan outlines pathways for the government to support communities in building resilience to violent extremist ideologies, including: sharing information about the threat of radicalization; strengthening cooperation with local law enforcement; and helping communities better protect themselves against extremist propaganda. The strategy envisions community leadership; government serves as a “facilitator, convener, and source of information.”

To implement these strategies, the White House released its Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States (“2011 SIP”), in December 2011. The 2011 SIP applies to all forms of violent extremism, but prioritizes the prevention of terrorism “inspired by al-Qaeda and its affiliates and adherents” and identifies disengagement from violent extremism as one priority among “gaps that need to be addressed through additional research and analysis.”

Violent extremism in the correctional setting provides another area for expanded research.

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51 Empowering Local Partners, supra note 50, at 5–7.

52 Id. at 3.


54 Id. at 2.

55 Id. at 13.

56 The SIP detailed future activities including continued DHS collaboration with the FBI, the Bureau of Prisons (BOP), and the National Counterterrorism Center (NCTC) to: (1) improve awareness of the risk of violent extremism in correctional systems; (2) enhance screening of new inmates to detect associations with violent extremist groups; (3) improve detection of recruitment
October 2016 (as this Article was being finalized), the White House released an updated version of the SIP that “responds to the current dynamics of violent extremism and reflects experiences and knowledge acquired” over the past five years.\textsuperscript{57} The 2016 SIP sets out new intervention goals, including support for local multidisciplinary intervention teams for those who have not yet engaged in criminal activity, and disengagement and rehabilitation programs for potential use by the criminal justice sector.\textsuperscript{58}

In September 2014, the Department of Justice (DOJ), in partnership with the Department of Homeland Security (DHS) and the National Counterterrorism Center (NCTC), launched CVE pilot programs in Boston, Los Angeles, and Minneapolis-St. Paul.\textsuperscript{59} The DOJ indicated these regions were selected “based on their existing achievements with community engagement.”\textsuperscript{60} The government selected the Twin Cities, describing them as home to the largest Somali population in North America, in particular because overseas terror organizations, including Al Shabaab and ISIS, have targeted their citizens with propaganda, and the community “expressed a desire to see this cycle of recruiting end.”\textsuperscript{61}

The three regions aim to develop intervention initiatives along with those for prevention, but progress in funding and rolling out programs has been slow.\textsuperscript{62}


\textsuperscript{58}See id. at 11–12.

\textsuperscript{59}See id. at 11–12.


\textsuperscript{60}Pilot Programs Are Key To Our Countering Violent Extremism Efforts, supra note 59.


\textsuperscript{61}See Philip Marcelo, \textit{A Federal Pilot Effort to Combat Extremist Recruitment in Boston, Los Angeles and Minneapolis Has Been Slow to Start Since It Was Announced Nearly Two Years Ago,}
The Twin Cities plan includes an intervention component in which community members and leaders work directly with families “before law enforcement is ever involved.”\(^{63}\) Planning materials for the Boston framework also indicate a commitment to intervention,\(^{64}\) including programs in which, “counselors or religious leaders try to steer people off a path to radicalization.”\(^{65}\) Strategies include specialized support for people convicted of hate crimes before and after release from prison.\(^{66}\) Similarly, the Los Angeles framework includes an intervention component emphasizing off-ramps for individuals moving down a path toward violent extremism.\(^{67}\) The program seeks to provide these individuals with needed care including access to social services, mental health, and faith-based services.\(^{68}\)

The programs have progressed slowly, as has their funding.\(^{69}\) Minneapolis has progressed farthest past the planning stage, perhaps in part because local programs have received additional federal and private funding.\(^{70}\) As of March 2016, the U.S. Attorney for Minnesota had reported that a prevention program was coming soon, while interventions were farther off.\(^{71}\)

The U.S. federal government and local governments also have engaged in complementary initiatives for international collaboration. The White House drew increased global attention to CVE in February 2015 by hosting a three-day...
summit for stakeholders from more than sixty countries. 72 Government ministers, law enforcement officials, community and faith leaders, educators, and private sector representatives attended. 73 In remarks at the summit, William Braniff, Executive Director of the National Consortium for the Study of Terrorism and Responses to Terrorism (START), acknowledged the now often-cited need for CVE practices to become more evidence-based, so that programs derive from a pragmatic understanding of what works. 74 U.S. municipalities are directly participating in CVE efforts by coordinating with cities on a global level through the Strong Cities Network to share best practices and maximize international learning at the local level. 75 On September 29, 2015, immediately following the UN Leaders’ Summit on Countering ISIL and Violent Extremism, the Strong Cities Network was launched at the UN to strengthen the resilience of communities internationally. 76 At least eight American cities and one county are currently participating, including Los Angeles, Minneapolis, and New York. 77

Although terrorism accounts for only a small fraction of violent crime in the United States, widespread concerns about attempts to inflict casualties on a

74 Williams Braniff, Dir. of Nat’l Consortium for the Study of Terrorism and Responses to Terrorism, U. of Maryland, Remarks at the White House Summit (Feb. 18, 2015), http://www.c-span.org/video/?c4528752/william-braniff-rising-superstar; see also Weine & Younis, supra note 69 (“Many of the new CVE programs being developed and piloted . . . are not being consistently monitored and evaluated, as is a common practice in other fields such as public health. Also of concern is that the current discourse among policymakers and practitioners focuses more on sharing best practices and less on formulating comprehensive prevention and intervention models based upon sound theory and empirical evidence.”); Romaniuk, supra note 1, at v–vi (“Contextualized assessments and stakeholder consultations are critical to effective programming but remain underutilized. Ongoing investments in gathering and analyzing data need to be sustained and increased.”).
77 Strong Cities Network Member Cities, INST. FOR STRATEGIC DIALOGUE, http://strongcitiesnetwork.org/strong-cities/member-cities/ (last visited Nov. 5, 2016). Participating American municipalities include Atlanta, Georgia; Aurora, Colorado; Chattanooga, Tennessee; Denver, Colorado; Los Angeles, California; Minneapolis, Minnesota; Montgomery County, Maryland; and New York, New York.
78 See Julia Jones & Eve Bower, American Deaths in Terrorism vs. Gun Violence in One Graph, CNN (Dec. 30, 2015), http://www.cnn.com/2015/10/02/us/oregon-shooting-terrorism-gun-violence/ (using data from the Centers for Disease Control and Prevention and determining that from 2001 to 2013, 406,496 people died by firearms on U.S. soil, while 3,030 people were killed in domestic acts of terrorism during the same period); see also M. Steven Fish, No, Islam Isn’t Inherently Violent, and the Math Proves It, THE DAILY BEAST (Feb. 15, 2015),
Since September 11, 2001, fifty people have been killed in attacks in the United States linked to far-right-wing extremists, according to data from the New America Foundation. In the same time period, ninety-four people in the U.S. were killed in violent Jihadist attacks. See Data from the International Security Program, New America http://www.newamerica.org/in-depth/terrorism-in-america/what-threat-united-states-today (last visited Dec. 13, 2016).

http://www.thedailybeast.com/articles/2015/02/15/no-islam-isn-t-inherently-violent-and-the-math-proves-it.html (“[T]he risk of an American being killed by any act of terrorism in a given year is roughly one in 3.5 million.”).

79 See, e.g., Rebecca Rifkin, Americans Name Terrorism as No. 1 U.S. Problem, GALLUP (Dec. 14, 2015), http://www.gallup.com/poll/187655/americans-name-terrorism-no-problem.aspx; see also Brian Michael Jenkins, U.S. More Able Than Ever to Combat Terrorism, THE RAND BLOG, (Sept. 26, 2016), http://www.rand.org/blog/2016/09/us-more-able-than-ever-to-combat-terrorism.html (observing that “today’s terrorist threat is different” from past threats because “[t]errorists are determined to kill in quantity and seemingly more willing to kill indiscriminately,” and Americans may be “more anxious”).

80 Romaniuk, supra note 1, at Exec. Summary, vi.

81 U.S. DEP’T OF JUSTICE OFFICE OF PUB. AFFAIRS & U.S. DEP’T OF HOMELAND SECURITY OFFICE OF PUB. AFFAIRS, Countering Violent Extremism Task Force (Jan. 8, 2016), https://www.dhs.gov/news/2016/01/08/countering-violent-extremism-task-force (noting that, as one of its major responsibilities, the Task Force “will work with CVE stakeholders to develop multidisciplinary intervention programs”).


83 See, e.g., Faiza Patel, Rethinking Radicalization, BRENNAN CTR. FOR JUSTICE 8 (Mar. 8 2011), https://www.brennancenter.org/sites/default/files/legacy/RethinkingRadicalization.pdf (“Despite the impetus to find a terrorist profile or hallmarks of radicalization to hone in on incipient terrorists, empirical research has emphatically and repeatedly concluded that there is no such profile and no such easily identifiable hallmarks.”).

84 Since September 11, 2001, fifty people have been killed in attacks in the United States linked to far-right-wing extremists, according to data from the New America Foundation. In the same time period, ninety-four people in the U.S. were killed in violent Jihadist attacks. See Data from the International Security Program, NEW AMERICA http://www.newamerica.org/in-depth/terrorism-in-america/what-threat-united-states-today (last visited Dec. 13, 2016).
targeting and stigmatizing American Muslim communities. Further, by blurring the boundaries between community engagement and intelligence-gathering, programs may degrade community relationships with law enforcement to a state of perpetual distrust. In the wake of the NYPD Intelligence Division’s post-9/11 covert surveillance program in Muslim neighborhoods, conducted with CIA input, the federal government’s role in CVE programs is perceived as counterproductive. Critics express concern that CVE guidelines may violate constitutional norms by rendering suspect political and religious expression protected under the First Amendment. To advocate for increased transparency and enforce requests under the Freedom of Information Act, the Brennan Center for Justice at New York University commenced an action for injunctive relief in January 2016 against the DOJ and DHS, seeking the release of agency records concerning CVE.

On the opposite side of the spectrum, some critics argue that initiatives to counter violent extremism should not focus more broadly on all extremist violence, but rather should concentrate more narrowly on countering “Islamic” or “Islamist” extremism, and should employ correspondingly specific terminology. This perspective holds that “countering violent extremism” is a euphemism premised in political correctness, which seeks to avoid stigmatizing or offending law-abiding Muslim individuals and constituencies at the cost of a more accurate

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description and targeted focus.\textsuperscript{91} Similarly, some argue that clear identification of the specific threat posed by violent Islamist extremism is crucial to countering it effectively.\textsuperscript{92}

While countering violent Islamist groups such as Al Qaeda and ISIS has been the major focus of CVE efforts in the United States to date,\textsuperscript{93} the more inclusive “violent extremist” terminology and focus are significant. In the domestic arena, a generalized mandate preserves flexibility to develop programming that counters various forms of violent extremism beyond jihadist-inspired ideologies. For example, far right wing extremists continue to pose a significant threat in the United States.\textsuperscript{94} Far right-wing extremist movements espouse racism and radical anti-government views, with ideological affiliations including white supremacy, the sovereign citizens movement, militias, the Ku Klux Klan, and neo-Nazis, among others. In Boston, CVE organizers reportedly brought in representatives from a program that emerged after a white supremacist killed six people at a Sikh temple in Wisconsin to counter perceptions that CVE only addresses Islamist extremism.\textsuperscript{95} A Chicago-based nonprofit, Life After Hate, is one example of an exit program supporting former white supremacists through disengagement and reintegration initiatives. While international events and high profile attacks have led to a sharp focus on jihadist-inspired extremist violence, a flexible CVE framework supporting more diverse initiatives such as Life After Hate and others would lead to expertise-sharing across arenas and increased


\textsuperscript{92} See, e.g., Lieberman, Collins React to Administration Strategy to Counter Violent Extremism, supra note 90.


\textsuperscript{95} Koumpilova, \textit{supra} note 65.
violence prevention overall.\textsuperscript{96} Internationally, broad terminology reduces the risk of alienating America’s Sunni Arab allies and impeding their abilities to collaborate on anti-terrorism initiatives.\textsuperscript{97} President Obama has expressed reluctance to use terms that reinforce the idea that America and other Western nations are at war with Islam, which can bolster terrorist recruitment and appear to grant terrorists “religious legitimacy,”\textsuperscript{98} while also exerting divisive effects domestically.\textsuperscript{99}

Because intervention and rehabilitation strategies focus on individuals who attract law enforcement’s attention through suspected criminal conduct, these approaches should trigger fewer concerns about discrimination than prevention models relying on predictive risk assessments.\textsuperscript{100} One commentator noted:

Counter-radicalization policies fail because they look for signs of radicalization that are in reality meaningless . . . They have helped to create more illiberal societies without challenging jihadism, nurturing a mind-set in which a 4-year-old child can be viewed as a potential jihadist, while real terrorists slip the net.\textsuperscript{101}


\textsuperscript{97} See Braniff, supra note 74.


\textsuperscript{99} See also Daniella Diaz, Obama: Why I Won’t Say ‘Islamic Terrorism,’ CNN POLITICS (Sept. 29, 2016), http://www.cnn.com/2016/09/28/politics/obama-radical-islamic-terrorism-cnn-town-hall/ (“I have been careful . . . to make sure that we do not lump these murderers into the billion Muslims that exist around the world, including in this country, who are peaceful, who are responsible, who, in this county, are fellow troops and police officers and fire fighters and teachers and neighbors and friends.”).

\textsuperscript{100} See Stephen Montemayor and Mila Koumpilova, Terror Suspects Will Test Deradicalization Program, STAR TRIB. (Mar. 2, 2016), http://www.startribune.com/judge-orders-de-radicalization-study-for-4-terror-defendants/370806141/ (quoting Faiza Patel of New York University’s Brennan Center for Justice as stating that she has “less problems with trying out approaches that are . . . untested when you are working with individuals that have already pleaded guilty to a crime,” but noting that Ms. Patel still doubts such evaluations can pinpoint how radical a person is or how likely they are to engage in future violence).

\textsuperscript{101} Kenan Malik, The Little We Know About the Jihadists in Our Midst, N.Y. TIMES (Mar. 30, 2016), http://www.nytimes.com/2016/03/31/opinion/the-little-we-know-about-the-jihadists-in-our-midst.html?r=0.
Off-ramp initiatives would avoid letting some violent extremists slip the net, and would not rely upon predictors of violent extremism, but rather, upon evidence of it. An inclusive scope and terminology for programming, with the flexibility to focus on all forms of violent extremism rather than only jihadist-inspired extremism, entails a diminished risk of violating constitutional protections, better opportunities to work cooperatively with allies and communities, and more pragmatic opportunities to prevent violence inspired by a range of ideologies.\textsuperscript{102}

II. Prohibiting Material Support for Terrorism: A Strategic Centerpiece

Two key federal statutes criminalize the provision of “material support or resources” for terrorists and acts of terrorism. First, 18 U.S.C. § 2339A outlaws the provision of material support for the preparation or commission of any designated terrorist offense. Second, 18 U.S.C. § 2339B disallows the provision of material support to any designated Foreign Terrorist Organization (FTO). Violating Sections 2339A or 2339B subjects the offender to a maximum prison term of 15 or 20 years for each count respectively, “and, if the death of any person results,” then to prison “for any term of years or for life.”\textsuperscript{103} Two related but less frequently employed statutes, 18 U.S.C. §§ 2339C and 2339D, prohibit fundraising for terrorism and receiving military-type training from a designated FTO, respectively.\textsuperscript{104} Finally, 18 U.S.C. § 2339 criminalizes the act of harboring or concealing a terrorist.\textsuperscript{105}

Prosecutors view the material support statutes as preventive in nature, and often rely upon these laws to charge defendants who have not engaged directly in the commission of terrorist violence.\textsuperscript{106} The statutes prohibit a broad range of conduct; at the lowest end of the spectrum, infractions may encompass non-

\textsuperscript{102} See Beinart, What Does Obama Really Mean by “Violent Extremism”?, supra note 38.
violent acts that provide little or no actual benefit to any terrorist organization or act. The preemptive nature of the prohibitions, coupled with the increased government reliance upon them in recent years to prosecute many youthful defendants, renders the realm of material support cases an appropriate context in which to explore the potential benefits of intervention and rehabilitation initiatives within the criminal justice system.  

The prominence of material support laws has increased dramatically in recent years. Federal prosecutors rarely charged defendants with providing material support for terrorism prior to the attacks of September 11, 2001. In the wake of those attacks, material support has become the most frequently charged terrorism offense and a valued cornerstone of counterterrorism policy. According to an analysis of jihadist-inspired terrorism cases by the Center on Law and Security at New York University, the government alleged material support in 11.6% of cases in 2007; that measure rose to 69.4% by 2010. During roughly  

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the first nine months of 2011, 87.5% of Jihadist-inspired terrorism cases included a material support charge. More recently, in an overview of ISIS-related cases in the U.S., the Center on National Security at Fordham Law (CNS) reviewed seventy-nine prosecutions between March 1, 2014 and February 12, 2016, finding seventy-one material support charges filed in those seventy-nine cases.\footnote{113}

The breadth of the material support prohibition in 18 U.S.C. §§ 2339A and 2339B has sparked litigation and debate. The laws expressly disallow the provision of: property, service, currency, lodging, training, expert advice or assistance, safehouses, false documentation, communications equipment, facilities, weapons, lethal substances, explosives, personnel (including oneself), and transportation.\footnote{114} In ISIS-related cases, one form of material support has involved attempting to join and fight alongside the terror group. In a highly publicized example, FBI agents arrested newlyweds Jaelyn Delshaun Young, 20, and Muhammad Oda Dakhlla, 22, at a Mississippi airport in August 2015, on their way to join ISIS in Syria, via Turkey. Prosecutors charged Young and Dakhlla with attempting and conspiring to knowingly provide material support and resources to ISIS, in the form of personnel; each defendant pleaded guilty in March 2016.\footnote{115} Other clear-cut cases of material support involve raising funds for, and sending funds to, a designated FTO.\footnote{116}

Federal courts have found that conduct may amount to material support even if it is non-violent and serves in part to further humanitarian goals. In United States v. El-Mezain, the Fifth Circuit upheld defendants’ convictions for raising funds through a corporate entity (the Holy Land Foundation) and funneling them to the charitable wing of Hamas.\footnote{117} In Holder v. Humanitarian Law Project (hereinafter “HLP”), plaintiffs challenged the material support prohibition because they sought to contribute to non-violent activities of two FTOs—the Kurdistan Workers’ Party (PKK) and Liberation Tigers of Tamil Eelam.\footnote{118}

Specifically, plaintiffs sought to train PKK members to use a Hamas’s
to a global jihadist ideology.” Id. at 7, n.1.
\footnote{113} This figure includes twelve charges under 18 U.S.C. § 2339A, fifty-eight charges under § 2339B, and one charge under § 2339D. ISIS Cases in the United States, CTR. ON NAT’L SEC. AT FORDHAM, http://static1.squarespace.com/static/55dc76f7e4b013c872183fea/t/56be4881b654f9af652ea926/1455310977496/ISIS+Statistical+Overview+%26+Names+02-12-16.pdf.
\footnote{117} 664 F.3d 467, 486 (5th Cir. 2011) (“[A]id to Hamas’s social wing critically assists Hamas’s goals while also freeing resources for Hamas to devote to its military and political activities.”).
international law to resolve disputes peacefully, to teach PKK members to petition the United Nations and other representative bodies for relief, and to engage in political advocacy on behalf of Kurds in Turkey and Tamils in Sri Lanka. The Supreme Court upheld the constitutionality of the material support prohibition as applied, rejecting arguments that the proscriptions on providing training, expert advice or assistance, service, and personnel violated plaintiffs’ First Amendment rights to free speech and association, and were impermissibly vague under the Fifth Amendment’s Due Process Clause. In part, the Court relied on Congress’s finding that foreign terrorist organizations “are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.” Yet the Court clarified that the statute “reaches only material support coordinated with or under the direction of a designated foreign terrorist organization”; independent advocacy is not covered.

The line between material support and independent advocacy was tested in United States v. Mehanna. The defendant, a Massachusetts pharmacist, translated jihadist materials including Al Qaeda recruitment videos and documents, and posted them on the extremist at-Tibyan website. Mehanna also traveled to Yemen in an unsuccessful attempt to obtain military-type training in support of Al Qaeda. A jury convicted Mehanna of conspiring to violate 18 U.S.C. § 2239B by providing material support to Al Qaeda, violating and attempting to violate 18 U.S.C. § 2239A by providing material support to terrorists, and conspiracy to do so. The First Circuit held that the lower court’s jury instructions “captured the essence of the controlling decision in HLP,” and observed, “[t]he court appropriately treated the question of whether enough coordination existed to criminalize the defendant’s translations as factbound and left that question to the jury.” The First Circuit did not determine whether defendant’s translation activities alone could have supported a conviction, because the “cluster of activities surrounding the defendant’s Yemen trip supplied an independently sufficient evidentiary predicate for the convictions . . . .” The Supreme Court denied certiorari in October 2015, leaving intact Mehanna’s conviction and seventeen and a half year sentence.

As preventive prosecutions, material support cases target a wide range or spectrum of conduct. “[T]he problem is that the defendants found at one end of

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119 Id. at 2716.
120 Id. at 2724–25.
121 See id. at 2726 (emphasis added); See also id. at 2721–23.
122 United States v. Mehanna 735 F.3d 32 (1st Cir. 2013).
123 Id. at 49 (finding the lower court “explained to the jury in no fewer than three different ways that independent advocacy for either an FTO or an FTO’s goals does not amount to coordination”).
124 Id. at 50.
126 See Holder v. Humanitarian Law Project, supra note 118, at 2727 (“The material-support statute is, on its face, a preventive measure—it criminalizes not terrorist attacks themselves, but aid that makes the attacks more likely to occur.”); see also Skinner, supra note 111, at 329 (indicating that the material support statutes codified a “preventative prosecutorial strategy”).
this spectrum will not have done all that much.” Training members of a terrorist organization in peaceful conflict resolution methods clearly constitutes material support after HLP. Moreover, Mehanna leaves open the possibility that translating and posting recruitment materials for a terrorist organization, with only tangential “coordination,” likewise may form a basis for a conviction. Material support charges reportedly have included conduct no more extensive than raising $300 for Al Shabaab. Other cases involve far more cooperation with terrorist groups, as well as conduct with more immediate links to violence, such as providing lethal substances or explosives directly to an FTO. In 2002, the government charged two Pakistani nationals and one U.S. citizen with material support, alleging that they had arranged to exchange 600 kilograms of heroin and five metric tons of hashish for cash and four Stinger anti-aircraft missiles, which in turn, defendants intended to sell to Al Qaeda in Afghanistan. In 2009, Ali Saleh Kahlal Al-Marri pleaded guilty to conspiracy to provide material support to Al Qaeda. Al-Marri was essentially a sleeper operative who researched the use of chemical weapons, potential targets and maximum casualties, and took direct instructions from Khalid Sheikh Mohammed. Addressing this wide range of culpability and conduct, courts have confronted challenges in imposing consistent sentences. It is precisely the sweeping scope of the material support statutes, and the non-violent and preparatory nature of the acts that fall at the lowest end of the spectrum, that demonstrate how strategies to counter violent extremism may contribute positively to the charging and sentencing phases of material support cases.

129 Terrorist Trial Report Card, supra note 112, at 20.
III. How CVE Applies in Cases of Material Support for Terrorism

A. Precedents for Disengagement and Deradicalization Programs

Once an individual embraces a violent extremist ideology, targeted programs to prevent him or her from committing or supporting acts of violence do not exist at any significant scale in the United States. Yet isolated efforts are beginning to attract attention, and the critical role for off-ramp initiatives is receiving new recognition. The borderless spread of ISIS’s ideology (notwithstanding its territorial losses) and increased numbers of ISIS-related cases in the United States suggest that these programs are likely to gain traction. Additional factors favoring the development of alternative criminal justice approaches include: the public safety imperative of preventing recidivism and future violent acts by those known to subscribe to violent extremist ideologies; the attenuated nature of some material support crimes; the youth of many offenders; and the long-term value of building trust for community partnerships with law enforcement.

1. Overview of International Approaches to Off-Ramp Programming

In considering the development of disengagement and deradicalization programs in the United States, similar initiatives around the globe provide useful starting points for analysis. There are as many as forty such programs worldwide, administered by NGOs, governments, or jointly by both. Intervention and rehabilitation programs for non-terrorist offenders in the United States, particularly programs to counter gang violence, also may provide useful data and insights. If American policymakers pursue an evidence-based

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137 See Fink & Hearne, supra note 12, at 11 (“With all the emphasis on radicalization, few have recognized the commonalities between the processes of deradicalization and disengagement across geographical boundaries or its impact on reducing the size of violent groups.”).


approach to these undeveloped areas of CVE, essential questions will include: (1) what criteria exist for judging a program’s success (generally linked to some measure of recidivism); (2) based on the specified criteria, what success rates have been recorded for existing and previous programs; and (3) whether identifiable, common characteristics differentiate successful programs from unsuccessful ones. While context and culture exert crucial influences over programs in their unique geopolitical settings, and some approaches may not be replicable or suitable in the United States, domestic efforts to advance evidence-based practices nonetheless stand to benefit from analysis of comparable programs. A comprehensive review of disengagement and deradicalization initiatives is beyond the scope of this paper. The summaries that follow outline a small selection of previously developed programs, highlighting major themes and challenges to date.

Several Muslim-majority countries have developed initiatives for deradicalization and disengagement, though approaches and commitment levels vary. For example, programs have emerged in Algeria, Bangladesh, Egypt, Indonesia, Jordan, Malaysia, Morocco, Pakistan, Saudi Arabia, and Yemen. Egypt pioneered a soft power, collective approach in the late 1990s. Saudi Arabia’s program is one of the most advanced in the international arena, and is discussed in detail below. While some components of the Saudi initiative are highly specific to that country, other aspects of the program may yield relevant models for study, such as the holistic approach program administrators apply to the life situation of each participant.

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141 See Mastroe & Szmania, supra note 8, at 9, 12 (finding direct outcome assessments tied to recidivism rates, while “metrics most often provided as program outputs for disengagement and de-radicalization” are participant numbers and, in some cases, completion rates); Marisa L. Porges, The Saudi Deradicalization Experiment, COUNCIL ON FOREIGN REL. (Jan. 22, 2010), http://www.cfr.org/radicalization-and-extremism/saudi-deradicalization-experiment/p21292 (Saudi officials used recidivism rates as indicator of success).


145 See, e.g., PORGES, supra note 39.

146 See, e.g., CHRISTOPHER BOUCEK, EXTREMIST RE-EDUCATION AND REHABILITATION IN SAUDI ARABIA in LEAVING TERRORISM BEHIND 223 (Tore Bjorgo & John Horgan eds., 2009) (This and
European initiatives in previous decades focused heavily on facilitating the transitions of right-wing violent extremists, such as neo-Nazis and nationalist extremists, out of those movements. Prominent examples include disengagement initiatives known as Exit programs in Norway, Sweden, and Germany.147 Recently, increased European programming also has developed for Jihadist-inspired extremists. French Prime Minister Manuel Valls announced in May 2016 that France will open a dozen de-radicalization centers.148 HAYAT-Germany (hereinafter “Hayat”) is one of several organizations partnering with Germany’s Federal Office for Migration and Refugees to counter violent Islamism extremism using a counseling approach.149 And the European Union is supporting Nigeria’s deradicalization program for former Boko Haram members.150 Many other programs warrant consideration, such as the UK’s Channel initiative, the Danish model in Aarhus, and in North America, the newly created Centre for the Prevention of Radicalization Leading to Violence in Montreal, Canada.151 Although the U.S. lacks comprehensive programs domestically,152 the American military pursued deradicalization strategies through Task Force 134 for detainee operations in Iraq under the leadership of Major General Douglas Stone.153

2. Programmatic Themes: Saudi and European Approaches

Disengagement and deradicalization programs share common priorities of enhancing public safety from terrorist acts, while also benefitting communities and families, by providing individuals with opportunities to to turn away from similar programs warrant greater attention in the West, and hold lessons for other nations struggling with extremism.).

147 See Fink & Hearne, supra note 9, at 4–5.
151 See generally Mastroe & Szmania, supra note 8; see also Hughes, supra note 134.
152 See Hughes, supra note 134; see also Mastroe & Szmania, supra note 8, at 11.
violence toward more positive, law-abiding paths. Programs may emphasize disengagement from violent groups and behavior, deradicalization from individually held extremist beliefs, or both. Experts who emphasize disengagement point out that many people who hold extremist beliefs do not act violently, and for those who do engage in violence, other powerful motivators may exist apart from ideology. Understanding individual motivators for engagement and disengagement from terrorism is crucial to recognizing the initiatives that are likely to reduce recidivism. With these conceptual frameworks in mind, researchers should examine existing programs through a common lens, considering challenges such as: (1) the extent to which each initiative is limited to its own cultural, legal, and geopolitical context, and the extent to which it offers transferable insights; (2) the programs’ metrics for success, and the rigor applied in implementing those metrics and collecting data; (3) who is interacting directly with participants, and the basis of their credibility with those participants; and (4) how the qualifications and reliability of program administrators, including former extremists, are assessed.

Saudi Arabia has garnered international attention for its well-funded and relatively long-running deradicalization initiative. Its program has reported success rates between eighty-seven and ninety percent, but it has also suffered high profile failures. Commencing in 2004 after a series of domestic terrorist

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154 See, e.g., Steven Weine & David Eisenman, How Public Health Can Provide Initiatives to Counter Violent Extremism, START CONSORTIUM (Apr. 5, 2016) (discussing “the kind of life saving help that public health can potentially provide for some persons on a path to violent extremism”).

155 See, e.g., Horgan & Altier, supra note 143, at 88.

156 See id.; but cf. ANNE SPECKHARD, SOCIAL SCIENCES SUPPORT TO MILITARY PERSONNEL ENGAGED IN COUNTER-INSURGENCY AND COUNTER-TERRORISM OPERATIONS: REPORT OF THE NATO RESEARCH AND TECHNOLOGY GROUP, PRISON AND COMMUNITY-BASED DE-ENLISTMENT AND DE-RADICALIZATION PROGRAMS FOR EXTREMISTS INVOLVED IN MILITANT JIHADI TERRORISM IDEOLOGIES AND ACTIVITIES 11–1 (Laurie Fenstermacher & Anne Speckhard eds., Jan. 2011) (“[W]ithout an ideological shift de-radicalization does not occur and those who have disengaged from terrorism appear to just as easily re-engage.”).

157 See Horgan & Altier, supra note 143.


159 Moreover, limited data is available to support the reported recidivism rate, but it is apparently “based on anecdotal evidence of individual cases of re-engagement” rather than a systematic, long-term follow-up effort. See Horgan & Altier, supra note 143, at 85; see also BOUC, supra note 146, at 222 (Saudi officials reported a failure rate of 20 percent when including those detainees who refused to participate in the program along with those who did not pass, and officials “admit . . . that there could be more individuals who have been released through the program who have yet to be discovered reoffending.”).
attacks, the program initially took the form of in-prison counseling and religious “reeducation.” Early successes led to growth, and a plan was adopted to open five centers countrywide. In Riyadh, the Mohammed bin Nayef Center for Advice, Counseling and Care has treated roughly 3,000 men since opening in 2007, including those released to Saudi custody from Guantanamo Bay. In-prison initiatives continue as well, tailored toward more than 5,000 inmates charged with terrorism offenses.

The Saudi program’s methodology is based upon a “presumption of benevolence” rather than vengeance or retribution. The Riyadh center is structured as a “halfway house” between prison and release, where psychologists, sociologists, and imams provide participants with social services as well as religious counseling and instruction. Clerics and respected Islamic scholars correct what they consider warped interpretations of Islam; the clerics’ religious status and that of Saudi Arabia more generally contribute to the perceived legitimacy of their messages in the eyes of some inmates. Program officials have reported that the vast majority of participants did not receive a religious education during their childhoods. In addition to marshaling the state’s own “considerable religious authority to confer legitimacy on the process,” the inclusion of a number of former militants on the program’s Advisory Committee “adds further legitimacy for some prisoners.” Participants engage in recreational activities such as art therapy, sports, and video games, and may receive vocational training. Program administrators enlist support from participants’ families and extended social networks. Among other requirements, successful completion of the program entails the graduate’s renunciation of violent extremist beliefs, as well as a similar renunciation from the head of the graduate’s family. After release, graduates receive assistance


161 See id. at 216.


164 See id. at 216.

165 See id. at 212.

166 See id. at 216; Mohammad, supra note 164.
reintegrating into society; this may include help with finding housing, employment, and even arranging a marriage.\(^{170}\)

The Saudi program has suffered significant setbacks including recidivism and an apparent failure to reach certain populations. Roughly 310\(^{171}\) to 390\(^{172}\) graduates have “relapsed” into extremism. In one infamous example, Said al-Shihri, who participated in and completed the program after his 2007 release from Guantanamo, subsequently became the deputy leader of Al Qaeda in the Arabian Peninsula. He played a direct role in the 2008 bombing of the American embassy in Sana’a, and reportedly was killed by a U.S. drone in 2012.\(^{173}\) Some participants who came from American detention in Guantanamo or Iraq, and others considered especially dangerous, may refuse to cooperate, remaining “beyond the reach of any deradicalization program.”\(^{174}\) Yet reports do not document differentiated approaches for hard core extremists with entrenched beliefs, and those who might be more reachable.

The religious reeducation component of the Saudi program would not be culturally viable in the United States or legally replicable under the First Amendment of the U.S. Constitution—most notably, the Establishment Clause.\(^{175}\) In addition to its inconsistencies with U.S. cultural norms and laws, the Saudi program sparks contention on its merits. Critics argue that participants are indoctrinated with Salafist ideas “only slightly less extreme” than the radical ideologies they held before.\(^{176}\) Relatedly, the Saudis are criticized for the radicalizing elements in their society and educational system that lead individuals


\(^{171}\) Luck, supra note 158.

\(^{172}\) ASSOCIATED PRESS, supra note 158.

\(^{173}\) Bill Roggio, AQAP Confirms Deputy Emir Killed in U.S. Drone Strike, LONG WAR J. (July 17, 2013), http://www.longwarjournal.org/archives/2013/07/aqap_confirms_deputy.php. Other examples include Yousef al-Sulaiman, a Saudi program graduate who blew himself up in August 2015 inside a mosque used by the security forces, killing at least fifteen people; examples also include forty-four of the seventy-seven suspects in a deadly attack on a Shiite mosque in 2014. See Hubbard, supra note 162.

\(^{174}\) See Casptack, supra note 164; see also, John Horgan & Kurt Braddock, Rehabilitating the Terrorists?, TERRORISM AND POLITICAL VIOLENCE, 22:267–91, 279 (Taylor and Francis Group, 2010) (preliminary study indicates higher rates of relapse and re-arrest among Guantanamo returnees); see also SPECKHARD, supra note 156, at 11.4.1 (indicating that when clerics from Saudi program were invited to speak with Saudi prisoners in Guantanamo and Iraq, their program was far less effective against “hard core” Al Qaeda prisoners).

\(^{175}\) See Rascoff, supra note 50, at 129–30 (“[O]f particular concern is the manner in which counter-radicalization may contribute to the ‘establishment’ of... ‘Official Islam’: a government-sponsored account of ‘mainstream Islam’ offered by the state in place of radical doctrinal alternatives.”) (footnote omitted).

\(^{176}\) See AFP, supra note 160 (quoting social scientist Khaled al-Dakheel); see also, Seifert, supra note 145 (noting that Wahhabism, the religious tradition followed by Saudi Arabia, is “arguably one of the most extreme versions” of Islam).
to turn toward extremism in the first place. Nonetheless, other elements of the Saudi program such as enlisting family support, post-release reintegration, and robust follow-up efforts, warrant further evaluation.

In Europe, disengagement and deradicalization programs were launched in the 1990s to help individuals transition out of violent, far right-wing and neo-Nazi groups. Tore Bjorgo and colleagues compiled an illuminating comparison of these Exit programs in Norway, Sweden, and Germany. Dr. Bjorgo, a professor of Police Science at the Norwegian Police University College, had initiated the Norwegian Exit project together with preventive police officers, and in close collaboration with a group of affected parents and youth. The program developed methods and strategies, and trained practitioners, rather than working individually with affected youth. Researchers found the Norwegian approach successful in integrating with ongoing activities of public agencies, so that when the allotted three years concluded, police and municipalities were equipped to continue the efforts independently. Exit-Norway also demonstrated that parental network groups proved highly effective in countering extremism by facilitating information sharing among affected families. In Exit-Sweden, the first program head and many staff members were former members of the Neo-Nazi or White Power movements. Shared backgrounds imbued staff with legitimacy in the eyes of participants, and made it easier to establish contact with individuals considering disengagement. Germany has struggled extensively with extreme right-wing groups, and developed an array of related programs. Co-founded by a former criminologist and a former neo-Nazi leader, EXIT-Germany is an NGO reporting a recidivism rate of approximately three percent since its founding in 2000.

In their holistic approaches and enlistment of family members, the European strategies exhibit similarities with the Saudi program. The programs in Norway, Sweden, and Germany holistically address “the general life situation of the clients, rather than giving priority to changing racist and extremist attitudes,” and involve family members in their efforts. For example, Exit-Sweden provides hands-on support for those seeking to separate from an extremist group

177 See ASSOCIATED PRESS, supra note 158 (quoting John Horgan and Mohammed al-Nimr).
179 See id. at 136.
180 See id. at 151. An American organization, Life After Hate, fosters relationships in which former members of far right-wing extremist groups work with individuals seeking disengagement. While the U.S. has not yet delved deeply into intervention and rehabilitation, its efforts in counter-messaging have endured criticism for the absence of credible messengers whose voices resonate with the target audience.
181 See id. at 151. An American organization, Life After Hate, fosters relationships in which former members of far right-wing extremist groups work with individuals seeking disengagement. While the U.S. has not yet delved deeply into intervention and rehabilitation, its efforts in counter-messaging have endured criticism for the absence of credible messengers whose voices resonate with the target audience.
182 See EXIT-DEUTSCHLAND, http://www.exit-deutschland.de/english (last visited Dec. 6, 2016); see also Mastroe & Szmania, supra note 8, at Appendix I, 17 (program claims to have supported 280 individuals including eight who returned to extremism).
183 Bjorgo, Donselaar & Grunenberg, supra note 178, at 150.
“by cooperating with various housing corporations, the police, social services, legal system and also with the client’s own family and friends.” Analyses of these programs should evaluate critically, however, whether sufficient controls are in place to address any irregularities, including misdeeds or recidivism by former extremists who assume active roles in the programs. The programs’ metrics for success and data collection methods also warrant analysis, particularly in light of high success rates such as the three percent recidivism reported by EXIT-Germany.

More recently, additional European programming has developed for individuals who have headed down pathways toward violent Islamist extremism. For example, Germany’s Federal Office for Migration and Refugees established a national hotline for radicalization counseling. The hotline accepts calls and directs them to non-governmental partners. One non-governmental partner, Hayat, has received international attention for its work counseling individuals on a path toward Jihadist-inspired violent extremism, but focuses especially on the personal networks of such individuals. Daniel Koehler, who participated in Hayat’s work and founded the German Institute on Radicalization and De-Radicalization Studies (GIRDS), draws parallels between extreme Islamists and the extreme right wing. Similarly, the U.K.’s Channel program targets all forms of violent extremism, including far right extremism. Individuals considered at risk for radicalization are assessed, and some are

185 See Mastroe & Szmania, supra note 8, at 11–14.
186 See id. at 11.
188 See NAT’L PUB. RADIO, supra note 49; see also Temple-Raston, supra note 149 (quoting Julia Berczyk and Quintan Wiktorowicz).
required to attend deradicalization sessions. In 2015, the program received referrals for nearly 4,000 people.\footnote{NAT’L POLICE CHIEFS’ COUNCIL (NPCC) (UK), publication in response to Freedom of Information Request (Mar. 7, 2016), http://www.npcc.police.uk/Publication/NPCC%20FOI/CT/02616ChannelReferrals.pdf; Halliday, \textit{supra} note 190.} For the West Midlands region, where the highest number of referrals reportedly originated,\footnote{See Ben Hurst & Mike Lockley, \textit{400 Children in West Midlands Sent to De-Radicalisation Programme}, \textit{BIRMINGHAM MAIL} (Jan. 21, 2016), http://www.birminghammail.co.uk/news/midlands-news/400-children-west-midlands-sent-10771443.} 293 out of 788 individuals referred that year were Muslims, and 354 of the 788 referrals were made by a school or educational establishment.\footnote{See id.; NPCC, \textit{supra} note 191 (Religion was not a mandatory field and not always completed, but Muslims represented the highest number of those with recorded religions, followed by 177 for “not known,” 41 recorded as Christian, eight as Sikh, one Hindu, and one Jewish).} The British practice of referring young children for deradicalization has proven controversial and damaging to public perceptions of the Channel program, which received criticism for referring 415 children age ten and under in the last four years.\footnote{Sima Kotecha, \textit{More than 400 Children Under 10 Referred for “Deradicalisation,”} BBC NEWS (Jan. 21, 2016), http://www.bbc.com/news/uk-35360375.} Monitoring students for signs of extremism falls outside the traditional role of educators, may impede open discussion in the classroom, and referrals are often perceived as stigmatizing and discriminatory.\footnote{See id.; Andy Burnham, \textit{Andy Burnham Calls for ‘Toxic’ Prevent Strategy to be Scrapped}, THE GUARDIAN (Jun. 9, 2016), https://www.theguardian.com/politics/2016/jun/09/andy-burnham-calls-for-toxic-prevent-strategy-to-be-scraped.} These concerns have been exacerbated by high profile instances of mistaken and unwarranted referrals based upon misinterpretations of children’s innocent statements.\footnote{See Hurst & Lockley, \textit{supra} note 192. In other cases, according to teachers’ unions, referrals were based upon indications that some young children had watched beheading videos with relatives.} Other weaknesses in European programs also warrant analysis, including concerns about effectiveness. In one egregious failure, a 16-year old participant in the German counter radicalization program, Wegweiser, was implicated in the bombing of a Sikh temple in Essen, in which three people were injured.\footnote{See Bender, \textit{supra} note 188; Derek Welch, \textit{Teenage Boys Arrested for Sikh Temple Bombing in Germany}, WORLD RELIGION NEWS (Apr. 30, 2016), http://www.worldreligionnews.com/religion-news/islam/teenage-boys-arrested-for-sikh-temple-bombing-in-germany; Chris Tomlinson, \textit{Sikh Temple Bomber Was Part of Anti-Radicalisation Program}, BREITBART (Apr. 29, 2016), http://www.breitbart.com/london/2016/04/29/sikh-temple-bomber-was-part-of-anti-radicalisation-program/}. Program analyses must account for such weaknesses, including: perceived discrimination and infringement upon speech rights, both of which also diminish community support; acts of violence committed concurrently with the perpetrator’s enrollment in an
intervention or rehabilitation program; and incidences of recidivism by individuals who have completed programs.\textsuperscript{198} Researchers have proposed several frameworks that may be appropriate for evaluating effectiveness; evaluations should incorporate measures to account for causality (i.e., whether the program or another factor is responsible for the change in a participant’s attitude or behavior).\textsuperscript{199}

3. Programmatic Themes: Gang Violence Prevention in the United States

In addition to international frameworks for disengagement and deradicalization, domestic approaches to preventing gang violence provide potential models from which to adapt CVE programs.\textsuperscript{200} Despite significant differences between gang violence and extremist violence, notably the lack of a political ideology to accompany the former,\textsuperscript{201} scholars have observed striking similarities in individual motivations for entry and exit.\textsuperscript{202} As in the case of terrorist radicalization, root causes of gang involvement have been attributed to “push” and “pull” factors,\textsuperscript{203} also called risk factors and attractions.\textsuperscript{204} Affiliative factors such as personal relationships, social networks, and a sense of community or belonging, play a significant role in individual decisions about participation in both terrorist organizations and gangs.\textsuperscript{205}

Since the 1980s, the DOJ’s Office of Juvenile Justice and Delinquency Prevention has developed, funded, and evaluated community-based anti-gang

\hspace{1em}\textsuperscript{198}See, e.g., Joanna Pliner, A Comparative Look at European and American Approaches to Counter Radicalization toward Violence, in UNDERSTANDING DERADICALIZATION: PATHWAYS TO ENHANCE TRANSATLANTIC COMMON PERCEPTIONS AND PRACTICES, MIDDLE EAST INSTITUTE (Jun. 10, 2015), http://www.mei.edu/sites/default/files/Pliner.pdf (arguing that programs must not infringe upon individual rights, both for legal and cultural reasons, and also because doing so can prove counterproductive to program goals).

\hspace{1em}\textsuperscript{199}See Mastroe & Szmania, supra note 8, at 13.


\hspace{1em}\textsuperscript{202}See, e.g., If ISIS Falls, Where Will Its Fights Flee, PBS NEWSHOUR (Oct. 13, 2016), http://www.pbs.org/newshour/bb/isis-falls-will-fighters-flee (comments of Peter Neumann) (“ISIS offers in many ways what gangs are offering, a strong sense of identity, power, a sense of strength . . . ”).


\hspace{1em}\textsuperscript{205}See MORRIS, supra note 153, at 2–3, 6–7.
programs that coordinate prevention, intervention, enforcement, and reentry strategies.\textsuperscript{206} The City of Los Angeles adopted a Gang Reduction Strategy in 2007 that may offer model components for a CVE framework.\textsuperscript{207} The comprehensive gang reduction strategy consists of prevention, intervention, re-entry, and suppression components.\textsuperscript{208} Like many disengagement and deradicalization initiatives to counter violent extremism, the Los Angeles gang reduction strategy relies upon former group members to bring credibility to its violence prevention efforts.\textsuperscript{209}

New York State has historically emphasized evidence-based interventions in combating violence committed by youth.\textsuperscript{210} A report by the Justice Policy Institute, contrasting approaches by different cities, described New York City’s soft-power approach as follows:

One city that never embraced the heavy-handed suppression tactics chosen elsewhere has experienced far less gang violence. In New York City, a variety of street work and gang intervention programs were fielded decades ago during a period when gang violence was on the rise. These strategies were solidly grounded in principles of effective social work practices that fall outside the realm of law enforcement, and they seem to have helped dissuade city policy makers and police officials from embracing most of the counterproductive gang suppression tactics adopted elsewhere.\textsuperscript{211}

The report details socially-based methods of preventing gang violence in New York dating back to the 1950s.\textsuperscript{212}

The literature comparing programs for disengagement and deradicalization from violent extremism with initiatives to counter gang violence is not extensive but suggests parallels in motivations for exit and entry.\textsuperscript{213}

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\textsuperscript{207} See Neumann, supra note 201, at 42.

\textsuperscript{208} See id.

\textsuperscript{209} See id. The organization Cure Violence offers another interesting model, employing a mix of prevention and intervention strategies to reduce violence using a public health approach. See Shannon Green, supra note 135.

\textsuperscript{210} George E. Pataki, Youth Violence Reduction Strategy, N. Y. STATE DIV. OF CRIM. JUSTICE SERV. 9 (Mar. 2004) (noting evidence-based interventions may not always be effective when replicated in new locations or for new populations, but the odds of success are increased by using previously successful models), http://www.criminaljustice.ny.gov/osp/downloads/guidingprinciplesfinalcombined2feb04.pdf.


\textsuperscript{212} See Greene & Pranis, supra note 211, at 15.

\textsuperscript{213} See Pliner, supra note 198.
prevention programs provide complementary insights to those derived from international deradicalization programs, because the gang prevention programs incorporate American cultural, political, and legal norms into the fabric of their operation.

4. Data Needed for Off-Ramp Programming in the United States

While terrorism and the fear it evokes trigger demands for immediate solutions, the gravity and durability of the threat militate toward data-driven approaches. A methodology should be developed to account for past successes and failures of intervention and rehabilitation programs globally, while incorporating the priorities and constraints of U.S. laws and culture. The foregoing overview suggests that policymakers should consider the following questions in shaping initiatives for intervention and rehabilitation:

- How can initial evaluations or assessments help identify appropriate candidates for disengagement and deradicalization programs?
- What levels of funding are required for success?
- What is the ideal role for government vis-à-vis grassroots groups and NGOs in designing and administering programs?
- Should programs be housed within correctional settings, independently, or both?
- To what extent should programs respond to specific ideologies and values, religious or otherwise?
- In what ways, if at all, should programs enlist involvement from participants’ personal support networks, such as family and friends?
- To what extent does messenger credibility affect success, and how can or should programs maximize the credibility of those who interact with participants?
- To what extent are strong follow-up efforts, including reintegration initiatives, critical to success?
- What are the optimal metrics for success?

Rigorous study of international and domestic precedents can offer guiding principles for an evidence-based approach to disengagement and deradicalization in the context of domestic material support cases.

B. Opportunities for Disengagement and Deradicalization in Domestic Material Support Cases

Material support cases provide an important, although non-exclusive, context in which to explore potential initiatives for intervention and rehabilitation. Considerations supporting alternative approaches in the material support context include: the volume of cases and investigations; the youth of many offenders; the attenuated nature of some material support crimes; the need to prevent future attacks, particularly by supporters of violent extremism already known to
authorities; and the long-term value of building community trust in partnerships with law enforcement.

The volume of ISIS prosecutions proceeding through the courts, and material support charges filed, have increased in tandem since 2014.\textsuperscript{214} FBI Director James Comey has described a heightened terrorism threat and law enforcement response as “the new normal.”\textsuperscript{215} By February 2015, investigations were ongoing in all fifty states into homegrown violent extremists at various stages of radicalizing.\textsuperscript{216} In October 2015, Director Comey estimated that the FBI was conducting 900 active investigations into homegrown violent extremists, with the majority believed to be ISIS-related.\textsuperscript{217} By May 2016, Comey reported over 1,000 active investigations, describing about 80 percent as ISIS-related.\textsuperscript{218} Federal prosecutors had filed ISIS-related charges against 94 men and women around the country as of June 30, 2016, with 80 percent of the subjects indicted on material support charges.\textsuperscript{219}

One subset of ISIS supporters eligible for material support prosecutions are those who seek to physically join the group in Syria or Iraq. By October 2015, roughly 250 Americans had traveled or attempted to travel to the conflict zone to participate in the conflict.\textsuperscript{220} Upon return, each of those individuals who sought to support a foreign terrorist organization would be subject to prosecution under 18 U.S.C. § 2339.

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\textsuperscript{214} While the total number of ISIS-related cases in the United States increased to 101 as of June 30, 2016, the rate of ISIS-related charges filed in federal court appears to have slowed from a peak in 2015, according to a report by CNS. See Case by Case: ISIS Prosecutions in the United States, CTR. ON NAT’L SECURITY AT FORDHAM LAW 2 (July 2016), https://static1.squarespace.com/static/55dc76f7e4b013c872183fae/t/577c5b43197aea832bd486c0/146776762315/ISIS+Report+-+Case+by+Case++July2016.pdf.


\textsuperscript{217} See Susman, supra note 215; VIDINO & HUGHES, supra note 42, at ix.

\textsuperscript{218} Director Comey Remarks During May 11 ‘Pen and Pad’ Briefing with Reporters, FBI NAT’L PRESS OFFICE (May 11, 2016), https://www.fbi.gov/news/pressrel/press-releases/director-comey-remarks-during-may-11-pen-and-pad-with-reporters (stating rate of American recruits traveling to fight with ISIS has declined from about six to ten per month, to one per month, since August 2015).

\textsuperscript{219} See CTR. ON NAT’L SECURITY AT FORDHAM LAW, supra note 214, at 2 (indicating that although there were 101 ISIS-related cases in total, no charges were filed in seven cases because the suspects were killed by law enforcement).

from the U.S. and internationally, has declined significantly in recent months.\textsuperscript{221} Recent statistics indicate that about one American per month travels to join ISIS or attempts to do so.\textsuperscript{222} Although the rate of Americans traveling to join ISIS has slowed, online recruitment and the potential for domestic attacks continue to pose threats. Director Comey stated in May 2016:

Their ability to motivate troubled souls, to inspire them, remains a persistent presence in the United States. We have north of a thousand cases where we're trying to evaluate where somebody is on the spectrum of consuming to acting. That number continues to tick up slowly . . . We have not seen the diminution that we see in the traveler world, in the radicalizing online world.\textsuperscript{223}

As ongoing prosecutions work their way through the U.S. court system, new material support cases continue to emerge. In this context, and with far right-wing and other forms of violent extremism continuing to pose threats as well, the need for disengagement and deradicalization initiatives for those headed down a path toward violence has assumed heightened urgency.

1. Intervention in the Pre-Conviction Context

Prosecutions in every material support investigation are neither practical nor preferable as a long-term counterterrorism strategy.\textsuperscript{224} While aggressive prosecutions are undoubtedly warranted in some instances, long-term security and societal benefits may be attained more effectively through intervention in others, particularly in cases where mitigating circumstances exist.\textsuperscript{225} In the light of the over 1,000 active investigations into potentially violent extremists, there are presumably many unreported instances in which law enforcement opts not to pursue material support charges. The alternative of long-term surveillance in every case strains FBI resources.\textsuperscript{226} If a network of specialized programs for


\textsuperscript{222} See Isikoff, supra note 221.

\textsuperscript{223} FBI NAT’L PRESS OFFICE, supra note 218.

\textsuperscript{224} See Hughes, supra note 107.


\textsuperscript{226} See Apuzzo, supra note 10; Devlin Barrett, FBI to Seek Counseling, Not Handcuffs, for Some Islamic State Suspects, WALL ST. J. (Aug. 5, 2015), http://www.wsj.com/articles/fbi-to-use-counseling-not-handcuffs-for-some-islamic-state-suspects-1438812264; Bender, supra note 188.
deradicalization and disengagement existed, and law enforcement could make official referrals while continuing to follow the case, authorities would have one more tool at their disposal when confronted with a borderline situation. Participation in such programs need not exclude prosecution, but could be offered as part of a non-prosecution agreement, deferred prosecution agreement, or plea agreement.227

The DOJ and DHS, as well as the FBI, appear to recognize the need for intervention approaches.228 But so far, the federal government has provided neither clarity on what shape these initiatives would take, nor transparency about its process in developing them. For example, the DOJ has considered off-ramp programs through its Alternative Dispositions Working Group, but there is a lack of available public information concerning the basic functions, composition, and mandate of this group.229 The CVE Task Force hosted by DHS identifies “multidisciplinary intervention programs” as one area for federal efforts.230 DHS also has acknowledged the importance of intervention approaches through its Office of Community Partnerships, by announcing a grant opportunity open to non-profit organizations allocating two million dollars for projects focused on managing intervention activities.231

The FBI’s intervention initiative reportedly contemplated and piloted the creation of Shared Responsibility Committees (SRCs), conceptualized as voluntary, local, interdisciplinary committees to which law enforcement may refer potential violent extremists for intervention.232 Committee members include individuals such as mental health professionals, social workers, religious and

(quoting Lorenzo Vidino: “Police can’t monitor them all so even if a program is successful in only 30% of the cases, it’s still better.”).

227 This would be a departure from current approaches to deferred prosecution agreements, which have been offered “relatively sparingly to individuals” of late. Judge Emmet Sullivan recently expressed disappointment that deferred prosecution agreements are not being used to provide opportunities to individual defendants “to demonstrate their rehabilitation without triggering the devastating collateral consequences of a criminal conviction.” See United States v. Saena Tech Corp., 140 F. Supp. 3d 11, 42 (D.D.C. 2015).

228 See CTR. ON NAT’L SECURITY AT FORDHAM LAW, supra note 214, at 4 (observing a small but discernible trend towards intervention, diversion, and rehabilitation).


community leaders, educators, and others. It is difficult to evaluate the potential of these committees, because the federal government itself has released little information about them. While the FBI has not disclosed an official intervention program for terrorism investigations, academic and media reports indicate that law enforcement has embraced intervention on an ad hoc basis. The New York Times reported in April 2016:

The F.B.I. has quietly and slowly embraced the notion of interventions. In a few cities, agents work with parents, mental health experts, community leaders and sometimes religious figures to help minors or mentally ill people who agents believe have the intent, but not the capability, to hurt people . . . Law enforcement officials said they have offered interventions to only about a dozen people, and they acknowledge that it is too soon to say whether they work.

More generally, CNS reported in 2015 that the FBI has tried “to follow a pattern of intervention rather than arrest” for some youthful foreign fighter aspirants. Further, the Wall Street Journal reported in August 2015 that the FBI is embarking on an intervention-oriented approach toward some terrorism suspects, which involves “putting them in counseling rather than handcuffs.” The updated October 2016 SIP most recently recognized that law enforcement personnel need “response options” when an individual is brought to their attention as at risk of being drawn into violent extremism, but they conclude the individual does not pose an immediate threat of violence. The federal government is looking to communities to lead multidisciplinary, local intervention teams in these situations.

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235 See, e.g., Written Testimony of Seamus Hughes Before the U.S. House of Representatives Committee on Homeland Security 4 (July 15, 2015), http://docs.house.gov/meetings/HM/HM00/20150715/103739/HHRG-114-HM00-Wstate-HughesS-20150715.pdf (“[T]argeted interventions so far have been deployed at the whim of local authorities, rather than via an articulated and tested methodology.”).

236 Apuzzo, supra note 10. The estimate that interventions had been offered to roughly a dozen people by April 2016 appears to be the most specific figure available.


238 Barrett, supra note 226.

239 See 2016 SIP, supra note 57, at 3.

240 See id. at 11.
One circumstance militating in favor of intervention approaches in appropriate circumstances is the youth of many individuals suspected of material support crimes in ISIS-related investigations. Suspects and offenders include minors, with an average age of twenty-six for all individuals indicted for ISIS-related crimes, and a most frequently occurring age of twenty among these individuals.\(^\text{241}\) New America has similarly reported, in connection with Syria-related violence, that the average age of American militants is twenty-five, with one-fifth still in their teens.\(^\text{242}\) Prosecuting very young defendants entails several drawbacks. Traditionally, responses to juvenile crime have focused more on rehabilitation and less on punishment than in the adult realm.\(^\text{243}\) Vulnerable youth recruited by terrorist organizations are often targeted with methods “similar to those employed by sexual predators: gaining trust and establishing rapport, fulfilling emotional needs, and then isolating a victim from family and friends.”\(^\text{244}\) And the “federal justice system is poorly equipped to prosecute minors.”\(^\text{245}\) As one law enforcement official aptly stated, “[n]obody wants to see a 15-year-old kid go to jail if they don’t have to.”\(^\text{246}\)

Aggressive prosecutions of young offenders, particularly for non-violent offenses, are also likely to trigger a backlash toward law enforcement officials, who rely upon the partnership of communities to root out extremism.\(^\text{247}\) In one pending case, Sal Shafi alerted authorities that his twenty-one-year-old son, Adam Shafi, may have been recruited and had been following extremist imams online. The elder Mr. Shafi initially cooperated with an FBI investigation, but felt that his son needed counseling and hoped for an intervention. Instead, Adam Shafi was charged with attempting to provide material support to al-Nusra Front and faces a prison sentence of up to twenty years.\(^\text{248}\) Adam is apparently awaiting trial in administrative segregation.\(^\text{249}\) His father’s current message to parents who face similar situations is not to even consider involving the authorities.\(^\text{250}\)

\(^{241}\) See CITR. ON NAT’L SECURITY AT FORDHAM LAW, supra note 214, at 3, 10.
\(^{242}\) Peter Bergen, Courtney Schuster & David Sterman, ISIS in the West: The New Faces of Extremism, NEW AMERICA 3 (Nov. 8, 2015), https://static.newamerica.org/attachments/11813-isis-in-the-west-2/ISP-ISIS-In-The-West-Final-Nov-16-Final.66241afa9dd4ea2be7afba9ec0a69e0.pdf.
\(^{245}\) Barrett, supra note 226.
\(^{246}\) Id.
\(^{247}\) See Hughes, supra note 107.
\(^{249}\) Defense counsel referred to Mr. Shafi’s conditions as solitary confinement. He is to be held separately, “to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal.” See United States v. Shafi, No. CR 15-0582 (N.D. Cal. Jan 5, 2016)
Two cases involving young women and girls in Colorado further exemplify the complex issues confronting law enforcement and communities when youth are suspected of supporting violent extremism. In the first case, Shannon Conley, a nineteen-year-old from Colorado, was arrested at a Denver Airport in April 2014 while attempting travel to Turkey, and then to join ISIS in Syria. Conley was charged, pleaded guilty to one count of conspiracy to provide material support to ISIS, and was sentenced to four years in prison followed by three years of supervised release and 100 hours of community service. In somewhat similar circumstances, the FBI declined to arrest three teenage girls from Colorado who attempted to join ISIS in Syria in October 2014. German authorities intercepted the girls—ages fifteen, sixteen, and seventeen—at a Frankfurt airport, en route to Turkey. The FBI questioned the girls and released them to their parents without charges. The girls’ school district took the position that they were victims of online predators, and not deeply motivated by a desire to fight with ISIS. Reports do not indicate the requirement of any intervention strategies in lieu of charges. In addition to being slightly older than these girls, Shannon Conley may have been more committed to extremist violence. Law enforcement agents had repeatedly warned her in meetings that her objectives of participating in terrorist activities were illegal, and suggested that she engage in humanitarian work instead. A coherent set of principles would clarify whether any of these young people should have received the opportunity to participate in an intervention program, and under what parameters.

Intervention initiatives also may advance CVE objectives when applied to returning foreign fighters in conjunction with prosecution. In particular, some individuals returning in disillusionment from conflict zones may have

(Detention Order), http://www.leagle.com/decision/In%20FDCO%2020160106873/U.S.%20v.%20SHAFI#.
250 See Apuzzo, supra note 10.
254 See id.
leverageable abilities to contribute to counter-messaging.258 Previous terrorist fighters and supporters would be perceived as highly credible—more so than “stodgy” government messengers259—and could lend powerful voices to dissuade others from following the same path.260 The power and perceived legitimacy of messaging by former extremists has been noted in the far-right-wing context as well. Prosecutors appear to be trialing this approach with a twenty-seven-year-old ISIS defector identified as “Mo,” who is in federal custody, but told his story in an NBC News television interview in May 2016.261 In contrast, there is no public indication that prosecutors will take this approach with Asher Abid Khan, who faces charges of conspiracy and attempting to provide material support and up to fifteen years in prison. Khan flew to Turkey to join ISIS when he was nineteen, but reversed course at the Istanbul airport and returned to Texas in response to messages from his family. Khan’s attorney advocated sending him “to the mosques [to] talk about redemption.”262

The most significant danger of intervention is that if it fails, the individual might go on to violently harm others. Fearing such a risk, law enforcement might pursue prosecutions in less clear instances as an “insurance” strategy.263 These concerns highlight the need for the development of consistent guidelines and best

259 See id.
260 See Koerner, supra note 258.
263 See Goldman, supra note 262.
practices for when and in what form to pursue intervention.\textsuperscript{264} Generally, two reasons the DOJ might decline to prosecute an individual in spite of sufficient evidence are that: (1) “[n]o substantial Federal interest would be served by prosecution” and (2) “[t]here exists an adequate non-criminal alternative to prosecution.”\textsuperscript{265} These standards could be refined further in the specific context of intervention, with a framework to incorporate evaluations by experts such as Daniel Koehler.\textsuperscript{266} An exploration of liability protections for interveners also would be necessary.\textsuperscript{267} Selecting candidates for intervention approaches will present complex challenges for which evidence-based guidance to assist law enforcement is critical.\textsuperscript{268}

2. Rehabilitation in the Post-Conviction Context

A criminal conviction for a material support offense by no means negates continuing the value of initiatives to counter violent extremism, but changes the mechanism and format for implementation.\textsuperscript{269} Indeed, some might argue that the post-conviction context is especially critical for CVE initiatives, particularly in cases of non-violent material support offenses. Individuals’ self-identification through criminal acts diminishes the potential for discriminatory or unwarranted enlistment in programs, and the individual may still be steered in a positive direction before committing more egregious crimes involving direct acts of violence.\textsuperscript{270} The emerging contexts for post-conviction CVE are threefold. First,

\textsuperscript{264} See Vidino & Hughes, Countering Violent Extremism in America, supra note 4, at 10 (noting that the use of targeted interventions has been “unsystematic and lacks a clear framework”).


\textsuperscript{266} Daniel Koehler, see infra Part III(B)(2), directs the German Institute on Radicalization and De-radicalization Studies in Berlin, and is engaged in pioneering work in the United States federal court system to provide expertise on policies related to community-based disengagement and de-radicalization programs.

\textsuperscript{267} See Vidino & Hughes, Countering Violent Extremism in America, supra note 4, at 2.

\textsuperscript{268} See Koerner, supra note 258 (“Determining which returnees are truly no longer threats will be tricky, but de-radicalization programs in Europe . . . are yielding data that can help U.S. build the right psychological assessment tools.”).

\textsuperscript{269} See Steve Karnowski, German Expert Says De-Radicalizing Radicals Can Work in US, AP THE BIG STORY (Sept. 21, 2016), http://bigstory.ap.org/article/8e5d3c1072784a8782d63d2d05eaa93/german-expert-says-de-radicalizing-radicals-can-work-us (attributing statement to Daniel Koehler that most terrorism offenders will get out of prison eventually, but without intervention in the meantime they will become more sophisticated about weapons and violence, radicalize others in prison, and emerge angrier and more committed to their cause).

specialized evaluations may help judges determine appropriate sentences based upon the defendant’s assessed potential for rehabilitation. Second, the conditions of rehabilitation may form part of the sentence itself and may be implemented concurrently with incarceration. Finally, programs may reduce the risk of recidivism by helping those convicted of terrorism offenses reintegrate into positive roles in society after release.

The statutory maximum penalty for an individual who provides material support to a foreign terrorist organization—or attempts or conspires to do so—is twenty years’ imprisonment (or life imprisonment, if the death of any person results) and a $250,000 fine. Courts look to the Federal Sentencing Guidelines (“Guidelines”) to arrive at an advisory sentencing range. Under the Guidelines, providing material support to an FTO entails a base offense level of twenty-six, which corresponds to a term of imprisonment of 63–78 months for a defendant in Criminal History Category I (the lowest category) and 120–150 months for a defendant in Criminal History Category VI (the highest category). However, the Guidelines contain a “terrorism enhancement” in Section 3A1.4, which “takes a wrecking ball to this carefully constructed edifice.” A judge, applying a preponderance-of-the-evidence standard, determines whether the terrorism enhancement applies. When applied, the enhancement requires an advisory sentence at or near the statutory maximum. It establishes a minimum offense level of 32 and an automatic Criminal History Category of VI, corresponding to a sentence of 210–262 months (or 17.5 to 21.8 years).

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272 See, e.g., 2016 SIP, supra note 57, at 12; Robert McKenzie, supra note 270 (asserting that the Bureau of Prisons should lead on design and implementation of a nationwide, comprehensive rehabilitation and reintegration program); see also Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders, 10–13, GLOBAL COUNTERTERRORISM FORUM, https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/A/GCTF-Rome-Memorandum-ENG.pdf.
275 U.S. SENTENCING GUIDELINES MANUAL § 2M5.3(a) (2015).
280 The terrorism enhancement has been described as a “blunt instrument,” and a “sort of nonbinding mandatory minimum.” Brown, supra note 277, at 521 (citing Transcript of Disposition at 69, United States v. Mehanna, No. 09-10017-GAO (D. Mass. 2012). Courts of appeals have reversed judges who refuse to apply it or dilute it substantially. See id. (citing United States v. Abu Ali, 528 F. 3d 210, 265 (4th Cir. 2008)).
In imposing a sentence, the court is required under 18 U.S.C. § 3553(a) to consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the four primary purposes of sentencing: retribution, deterrence, incapacitation, and rehabilitation; (3) the kinds of sentences available; (4) the sentencing range established through application of the sentencing guidelines; (5) any relevant policy statement promulgated by the Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution to any victims of the offense.

Regarding the four primary purposes of sentencing, DOJ guidelines indicate that in certain cases, “one of the purposes, or a combination of purposes, may be of overriding importance.” In terrorism cases, the interplay between the need to protect the public from future crimes, and the defendant’s rehabilitation, has assumed heightened significance. It is particularly challenging for judges to systematically evaluate the extent of defendant’s continuing commitment to violence. Judge Gerald Bruce Lee of U.S. District Court for the Eastern District of Virginia explained in a panel discussion concerning sentencing in terrorism cases:

The judge cares from the standpoint of making sure the sentence contains punishment and also takes into account forecasting. What will the future be when this person comes back home? Is he or she going to pose a risk or a danger to the public? . . . Reading about it is not the same as sitting there and seeing it and trying to decide, well, if this person is fifty years old, are they likely to come out and try to shoot up the Holocaust Museum? Are they likely to try to blow up Metro?

Karen Greenberg of CNS echoed these concerns: “...in terrorism cases, prosecutors often argue that if the defendant is released, then who knows what the stakes could be? What harm might ensue? Could there be another 9/11 . . . Accordingly, some assessment of terrorists’ state of mind may be ‘necessary to limit the risk that they will return to violence.’” Formalizing these assessments in the sentencing context could respond to judicial concerns about “forecasting” by involving experts in evaluating convicted individuals who committed to violent extremist ideologies.

3. The Minnesota Terrorism Cases: Breaking New Ground

Judge Michael Davis, a federal judge for the District of Minnesota, announced just such a pioneering program on March 2, 2016, with support from

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282 See U.S. ATTORNEY’S MANUAL, supra note 265.
284 See id. at 355.
285 See STERN, supra note 39, at 8.
the U.S. Attorney. The program’s mission is: to supply otherwise unavailable information to the court as a basis for sentencing terrorism defendants; to provide pre-trial and post-incarceration supervision that ensures public safety by monitoring defendants to verify that they have not reverted to terrorist activities; and to further disengagement and deradicalization, while rehabilitating defendants to become successful, law-abiding citizens. The court’s initiative to perform risk assessments and design rehabilitation programs for these individuals is not an alternative to incarceration.

Judge Davis initially applied the program to four men who pleaded guilty in a larger, alleged conspiracy to provide material support to ISIS, but said it could expand to other defendants in terrorism cases, including those reintegrating in society after release from prison. Indeed, as of September 2016, the chief U.S. probation officer for Minnesota indicated that probation officers have begun implementing training from Daniel Koehler of GIRDS as they work with supporters of al-Shabaab who are now on supervised release and will need to integrate back into the community. Judge Davis ordered the initial four defendants who pleaded guilty in the ISIS-related conspiracy to submit to a presentence “examination and study” to assess risk and recommend rehabilitation strategies. Defendants had the option to object if they did not wish to participate.

Judge Davis’s orders contemplated that the U.S. Probation Office for the District of Minnesota would conduct the required study and contract with Daniel Koehler of GIRDS to prepare a written report. The Court’s orders outlined the type of information to be provided in the report, concluding that the examination will “significantly aid the Court in applying the 18 U.S.C. § 3553(a) factors” for sentencing. The program also enlisted Mr. Koehler’s expertise to provide

287 U.S. DIST. CT., DISTRICT OF MINN., TERRORISM DISENGAGEMENT AND DERADICALIZATION PROGRAM (Mar. 7, 2016). This is a two-page document supplied to the author by Judge Michael J. Davis’s Judicial Assistant.
289 See Forliti, supra note 286; Montemayor & Koumpilova, supra note 286; Ibrahim & Yuen, supra note 288.
290 See Karnowski, supra note 269.
291 See Forliti, supra note 286.
deradicalization training for probation officers. Mr. Koehler stated that while there is no “100 percent guarantee” that his methods will work, it is “better than working blindfolded without any kind of assessment or structure or protocol.”

Following Judge Davis’s announcement, two additional defendants in the same ISIS-related conspiracy pleaded guilty, while three others proceeded to trial. After those remaining three defendants were convicted in May 2016, two requested to participate in the deradicalization program with Koehler. Judge Davis dismissed the motions as moot, ruling that Koehler need not conduct the additional evaluations because he had trained the probation office in his methods. Instead, the probation office would complete the evaluation as part of its presentencing investigation reports. Judge Davis was expected to proceed with sentencing in November 2016.

Judge Davis had previously taken the novel approach of sending one of the above-mentioned defendants to a halfway house pending trial on material support charges. In November 2014, prosecutors charged then eighteen-year-old Abdullahi Yusuf with conspiracy to provide material support for attempting to join ISIS. Yusuf was stopped the previous May at Minneapolis/St. Paul Airport while attempting to leave for Turkey. Yusuf spent the next six months working blindfolded without any kind of assessment or structure or protocol.

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294 See Forliti, supra note 286.
297 See Esme Murphy, Judge Denies Motion of Two Convicted of Trying to Join ISIS, CBS MINNESOTA (July 5, 2016), http://minnesota.cbslocal.com/2016/07/05/isis-convictions-motion-denied/.
298 Stephen Montemayor, Two Minneapolis Men Won’t be Seen by Deradicalization Expert, STAR TRIB. (July 5, 2016), http://www.startribune.com/judge-rules-that-three-convicted-of-isis-related-charges-will-also-undergo-deradicalization-study/385591301/.
299 See Karnowski, supra note 269.
and attending classes before his November arrest, and pleaded guilty in February 2015. At the halfway house, Yusuf met with personnel from Heartland Democracy, a civic engagement group. While Heartland did not have experience counseling those inspired by violent Islamist ideologies, its director proposed adapting the organization’s existing program for gangs to Yusuf. Judge Davis ordered Yusuf back into custody after authorities found a box cutter under his bed in April 2015, but Yusuf continued with rehabilitation in jail. His counselor is a local high school teacher of Somali origin. Recently, Yusuf testified as a prosecution witness in the trial of three of his alleged co-conspirators. Acknowledging this cooperation, prosecutors recommended a prison sentence of three and a half years for Yusuf.

Another terrorism prosecution highlighting the prospective role for disengagement and deradicalization programs is that of Mohammed Hamzah Khan, who attempted to join ISIS in Syria by traveling through Istanbul with his two younger siblings in 2014. Law enforcement stopped the three siblings at O’Hare International Airport, and questioned but did not charge the two younger siblings, who were then sixteen and seventeen years old, respectively. However, at nineteen, Mohammed was arrested and later pleaded guilty to one count of attempting to provide material support to a foreign terrorist organization. Media reports indicate that Mohammed’s younger siblings are receiving counseling. And one of the conditions of Mohammed’s plea agreement requires him to participate in “[p]sychological and violent extremism counseling.” The details of how Mohammed Khan’s counseling arrangements unfold, like the Minnesota program, may have implications for other material support cases around the country.

302 See Zavadski, supra note 140.
303 See id.
307 See id.
Authorities in other states and national experts and practitioners will continue to watch the progress of the Minnesota initiative closely. Judge Davis’s program is innovative in its incorporation of strategies to prevent violent extremism throughout the trajectory of each terrorism prosecution, from the pre-trial to post-conviction stages. Yet federal judges should not have to forge groundbreaking new policy pathways and programs in this area absent coordination and guidance. Rather, a comprehensive set of principles should be developed, incorporating insights derived rigorously from previous domestic and international initiatives, together with input from stakeholders and experts such as judges, defense attorneys, non-profit and community organizations, social service providers, academic experts, and government and law enforcement officials.

Conclusion

As domestic CVE efforts take shape, the role of the criminal justice system warrants substantial and immediate consideration. Innovative forms of criminal justice should comprise a crucial component of the counterterrorism equation rather than an afterthought applied on an ad hoc basis. As CVE frameworks evolve and become more holistic, their interactions with criminal law are likely to acquire greater precision and intentionality. Prosecution under the material support laws has provided a powerful but blunt counterterrorism tool. In light of the wide variation among material support crimes, nuanced approaches for prosecutors and judges to employ at charging and sentencing would better promote counterterrorism goals. In particular, material support cases present circumstances in which the American public, law enforcement organizations, defendants, families, and communities all stand to benefit from the introduction of intervention and rehabilitation initiatives tailored to appropriate cases.

The U.S. government’s sharpening focus on non-coercive measures to prevent the spread of extremist violence represents a conceptual step forward for national security, even as metrics for CVE’s success and its very definition remain unsettled. It is illogical to pour resources into CVE measures designed in part to identify the violent extremists in our midst, yet abandon efforts to prevent violence once these individuals have self-identified by engaging in some degree of actual or suspected criminal conduct. Through data-driven study of comparable international and domestic initiatives, U.S. policymakers can begin to address this gap in countering violent extremism by developing innovative standards and programs.

Efforts to curtail the spread of extremist violence in the United States must be more holistic if they are to succeed, with increased focus on intervention, rehabilitation, and reintegration. The U.S. government reportedly is helping to

309 See e.g., Case by Case: ISIS Prosecutions in the United States, supra note 104, at 4–5; Forliti, supra note 286 (quoting Karen Greenberg); see also Temple-Raston, supra note 304; Karnowski, supra note 269.
310 See generally Baltes et. al, Convicted Terrorists, supra note 283.
311 See Khan, supra note 2.
fund foreign governments’ efforts to deradicalize and reintegrate captured foreign fighters.\footnote{See John Hudson, *Growth of Islamic State Forces State Department Overhaul*, FOREIGN POLICY (Feb. 1, 2016), http://foreignpolicy.com/2016/02/01/growth-of-islamic-state-forces-state-department-overhaul/} Worthwhile programs are needed investments not only abroad, but also at home. The criminal justice system, and cases involving material support for terrorism in particular, provide opportunities to counter violent extremism with full respect for civil rights and civil liberties. Such programs may continue to develop organically, as in the example of Judge Davis’s program in Minnesota. Increased support for a rigorous, consistent, and transparent approach nationwide, driven by policy and data, would bolster the likelihood of success.