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Trisha Scott

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FEMALE TERRORISTS: A DANGEROUS BLIND SPOT FOR THE UNITED STATES GOVERNMENT

Trisha Scott*

INTRODUCTION

In December 2015, a wife and husband killed fourteen people and injured twenty-one at a work holiday party in San Bernardino, California.¹ Tashfeen Malik, a Pakistani woman who entered the U.S. on a fiancée visa in 2014, reportedly pledged allegiance to the Islamic State on Facebook around the time of the attack.² Investigations into Malik reveal she had a desire to participate in violent jihad³ and had radicalized separately from her husband in as early as 2011.⁴ Tashfeen Malik is unfortunately only one of the latest females to commit an act of terror in the United States, and may not hold that title for very long.⁵

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* J.D. Candidate, 2017, University of Maryland Francis King Carey School of Law. The author wishes to thank all of her editors from the Journal of Race, Religion, Gender, and Class for their support. She would like to dedicate this Comment to her parents, Bryan and Laura Scott, for their endless encouragement, support, and love, as she would not be where she is today without them.

¹ *San Bernardino Shooting Updates*, L.A. TIMES (Dec. 9, 2015, 11:00 AM), <http://www.latimes.com/local/lanow/la-me-ln-san-bernardino-shooting-live-updates-htmlstory.html>.

² Michael S. Schmidt & Richard Pérez-Peña, *F.B.I. Treating San Bernardino Attack as Terrorism Case*, N.Y. TIMES (Dec. 4, 2015), http://www.nytimes.com/2015/12/05/us/tashfeen-malik-islamic-state.html?_r=1. The Islamic State also took credit for the terrorism, stating two of its followers had committed the attack. *Id.* The American K-1 visa is a visa that allows persons to come to the U.S. to marry American citizens, that is also referred to as a “fiancée visa.” See Brian Bennett & Richard A. Serrano, *Scrutiny of Tashfeen Malik’s Fiancée Visa Fell Short, Congressional Investigators Say*, L.A. TIMES (Dec. 18, 2015, 6:58 PM), <http://www.latimes.com/nation/la-na-tashfeen-malik-visa-application-20151218-story.html>.

³ *San Bernardino Shooter “Expressed Desire” for Jihad Among Facebook Friends – Feds*, RT (Dec. 16, 2015, 3:36 AM), <https://www.rt.com/usa/326066-san-bernardino-shooter-facebook-jihad>.

⁴ See *id.* (quoting FBI Director James Comey to the Senate Judiciary Committee during a hearing on December 9: “Our investigation to date shows that they were radicalized before they started courting or dating each other online”).

⁵ See Peter Sullivan, *Terror Attack at Hotel in Burkina Faso Kills 23*, THE HILL (Jan. 16, 2016, 9:39 AM), <http://thehill.com/policy/international/266143-terrorists-attack-hotel-in-burkina-faso>. On January 15, 2016, two female jihadists participated in an

The United States has made tremendous progress in increasing gender equality over the past century, including the recent inclusion of women in combat.⁶ However, government officials still underestimate the ability women have to participate in and carry out terrorism, which leaves the United States in a vulnerable position for attacks.⁷ Part I of this Comment will generally explore female terrorists, and particularly, their reasons for joining terrorist organizations, the roles they perform, and why they are so dangerous.⁸ Part II will review and discuss the federal government's current strategies to combat terrorism.⁹ Part III will argue that the federal government must stop gender profiling and instead view women and men as equals in their capacity and potential to participate in terrorism.¹⁰

I. UNDERSTANDING FEMALE TERRORISTS

The female terrorist is not a new phenomenon. Women have joined, and even led, violent extremism since the early twentieth century.¹¹ Yet, many officials and members of the public refuse to look past the outdated notion that women are the weaker, "gentler" sex.¹² The cognitive dissonance felt when confronted by the idea of female terrorists has led the general public, mass media, and even some experts, to propagate stereotypical rationalizations for their violent actions and involvement.¹³ Accurately understanding female

attack of a hotel in Burkina Faso and killed twenty-three. *Id.* While the attack did not occur in the United States, it is evident that female terrorist attacks are a very real and present danger. *Id.*

⁶ Cheryl Pellerin, *Carter Opens All Military Occupations, Positions to Women*, DEP'T OF DEFENSE NEWS (Dec. 3, 2015), <http://www.defense.gov/News-Article-View/Article/632536/carter-opens-all-military-occupations-positions-to-women>.

⁷ See Jayne Huckerby, *When Women Become Terrorists*, N.Y. TIMES (Jan. 21, 2015), http://www.nytimes.com/2015/01/22/opinion/when-women-become-terrorists.html?_r=0 (noting terrorist organizations are deploying female suicide bombers who can more easily evade detection because of gender stereotypes).

⁸ See *infra* Part I.

⁹ See *infra* Part II.

¹⁰ See *infra* Part III.

¹¹ Christopher C. Harmon & Paula Holmes-Eber, *Women in Terrorist Undergrounds*, 4 COMBATING TERRORISM EXCHANGE J. (Nov. 2014), <https://globalecco.org/women-in-terrorist-undergrounds>.

¹² *Id.*

¹³ Brigitte L. Nacos, *The Portrayal of Female Terrorists in the Media: Similar Framing Patterns in the News Coverage of Women in Politics and in Terrorism*, in

terrorism is imperative to effectively protect this country from terroristic threats.

A. *Why Women Become Terrorists*

Despite popular misconceptions, women are driven to engage in terrorism by many of the same factors that motivate their male counterparts. Those factors include, but are not limited to, political and religious beliefs¹⁴; a desire for revenge¹⁵, redemption, or honor¹⁶; an aspiration to spur societal change¹⁷; a drive for power or adventure¹⁸; and simply, sadism¹⁹. Many women, like men, join terrorist organizations for the “pull of the cause.”²⁰ These individuals feel their political, religious, or societal beliefs align with a particular terrorist organization and want to support the cause.²¹ Some have grievances about sociopolitical conditions or “fanatical commitments to religious or ideological beliefs.”²² Feelings of political and spiritual liberation

FEMALE TERRORISM AND MILITANCY: AGENCY, UTILITY, AND ORGANIZATION 217, 220 (Cindy D. Ness ed., 2008).

¹⁴ Harmon & Holmes-Eber, *supra* note 11.

¹⁵ Alexandra Phelan, “White Widow”, “Black Widow”: *Why Do Female Terrorists Perplex Us?*, THE CONVERSATION (Sept. 25, 2013, 10:13 PM), <http://theconversation.com/white-widow-black-widow-why-do-female-terrorists-perplex-us-18616>. The “Black Widows,” for example, are said to commit suicide bombings to avenge the death of their husbands, fathers, or sons lost in the Russian-Chechen war. *Id.* However, it should be noted some argue that such a moniker and categorization ignores the fact that some women joined for political grievances, not personal. Nacos, *supra* note 13, at 223.

¹⁶ Harmon & Holmes-Eber, *supra* note 11 (“[T]he quest for redemption and honor following a disgrace or marginalization motivates some women to conduct terrorist acts”).

¹⁷ See Nacos, *supra* note 13, at 227 (noting recent media accounts explained female terrorism in male-dominated countries as expressions of gender equality).

¹⁸ Harmon & Holmes-Eber, *supra* note 8.

¹⁹ See *id.* (providing the examples of female neo-Nazis, Chechen “black widows” and female morality brigades of ISIS).

²⁰ Huckerby, *supra* note 7.

²¹ *Id.*

²² NAUREEN CHOWDHURY FINK ET AL., THE ROLES OF WOMEN IN TERRORISM, CONFLICT, AND VIOLENT EXTREMISM: LESSONS FOR THE UNITED NATIONS AND INTERNATIONAL ACTORS, CENTER ON GLOBAL COUNTERTERRORISM COOPERATION 3 (2013), http://www.globalcenter.org/wp-content/uploads/2013/04/NCF_RB_LS_policybrief_1320.pdf.

after acts of violence are not limited by one's gender.²³ A "real or perceived humiliation on a physical, psychological, or political level" can also persuade an individual to participate in terrorism.²⁴

There are, however, motivating factors that are unique to women.²⁵ Particularly, in countries with a history of oppression and gender inequality, some women look to terrorist organizations to "break out of traditional female roles" and access societal positions typically reserved for men.²⁶ Some organizations offer opportunities for women to climb the ranks and reach positions of power and leadership they could not otherwise attain in a "closed or sexist society."²⁷ Although poverty has been identified as a motivator to engage in terrorism regardless of gender,²⁸ it can be even more powerful for women who are denied economic opportunities because of their sex.²⁹ Both alienation and restrictions on religious practices have been cited as motivating European women to join the Islamic State.³⁰

There is a small minority of women that participate in terrorism to follow in the footsteps of their boyfriends or husbands.³¹ These women join voluntarily, as opposed to those who are forced to

²³ Karla Cunningham, *Terror's "Invisible Women"*, L.A. TIMES (Apr. 4, 2012), <http://articles.latimes.com/2012/apr/04/opinion/la-oe-cunningham-women-jihadists-20120404> (noting that a new generation of female jihadists enjoy the liberating feeling acts of violence can provide).

²⁴ Kemi Okenyodo, *The Role of Women in Preventing, Mitigating and Responding to Violence and Violent Extremism in Nigeria*, in *A MAN'S WORLD?: EXPLORING THE ROLES OF WOMEN IN COUNTERING TERRORISM AND VIOLENT EXTREMISM* 100, 107 (Naureen Chowdhury Fink et al. eds., 2016).

²⁵ See notes 26–30 and accompanying text.

²⁶ Harmon & Holmes-Eber, *supra* note 11.

²⁷ *Id.*

²⁸ David Sterman, *Don't Dismiss Poverty's Role in Terrorism Yet*, TIME (Feb. 4, 2015), <http://time.com/3694305/poverty-terrorism>. See also Keith Stanski, *Terrorism, Gender, and Ideology: A Case Study of Women Who Join the Revolutionary Armed Forces of Colombia (FARC)*, in *THE MAKING OF A TERRORIST: RECRUITMENT, TRAINING, AND ROOT CAUSES* 136, 140 (James J.F. Forest ed., 2006). ("FARC offered [women] . . . a sense of gender equality (in both training and the enforcement of discipline), that could not be found in civilian society.")

²⁹ Harmon & Holmes-Eber, *supra* note 11.

³⁰ Huckerby, *supra* note 7. One such religious restriction in particular was France's ban on wearing burqas in public. *Id.*

³¹ Harmon & Holmes-Eber, *supra* note 11.

join an organization by abusive significant others or family members.³² The mass media often emphasizes the “stereotype of the female terrorist for the sake of love,”³³ or assumes the female must be “depressed, crazy, suicidal, or psychopathic.”³⁴ The myth that women only participate in terrorism “because of their blind obedience” to men is a dangerous “oversimplification of complex gender relations” in many parts of the world.³⁵

Terrorist organizations have also begun targeting recruitment efforts at women.³⁶ Women are inspired and enlisted by relatives, friends, and acquaintances as often as men.³⁷ With the increasing use of technology across the globe, many individuals are lured to groups such as ISIS “through social media and instant messaging.”³⁸ In 2011, al-Qaeda released an online magazine in Arabic, *al-Shamikha*, exclusively targeting a female jihadi audience in an effort to entice women to join their cause.³⁹ Viewed as the “al-Qaeda version of *Cosmopolitan*,” the magazine combined beauty tips, relationship advice, and articles promoting terrorism.⁴⁰ Al-Qaeda also publishes *Inspire*, a jihadist magazine originally created for men, which “now has a ‘Sister’s Corner’” containing stories intended to encourage Muslim women to “join the fight.”⁴¹ When terrorist groups market themselves as political activists, vehicles out of poverty, or crusaders

³² *Id.* (“The cases of ‘terror for love’ are markedly separable from a much larger group, in which girls are forcibly recruited into guerrilla undergrounds and then expected to cook and nurse and be sexual partners to the male officers.”).

³³ Nacos, *supra* note 13, at 225. “There remains a misleading, but popular Patty Hearst image of female terrorists.” *Id.*

³⁴ Mia M. Bloom, *Death Becomes Her: The Changing Nature of Women’s Role in Terror*, 11 *GEO. J. INT’L AFF.* 91, 92 (2010).

³⁵ Nino Kemoklidze, *Victimisation of Female Suicide Bombers: The Case of Chechnya*, 181 *CAUCASIAN REV. INT’L AFF.* 181, 188 (2009).

³⁶ See Cunningham, *supra* note 23.

³⁷ Nacos, *supra* note 13, at 225.

³⁸ Huckerby, *supra* note 7.

³⁹ Esther Solis Al-Tabaa, *Targeting a Female Audience: American Muslim Women’s Perceptions of al-Qaida Propaganda*, 6 *J. STRATEGIC SECURITY* 10, 10–11 (2013). Al-Qaeda also publishes *Inspire*, a print magazine, in English to target young male jihadists with European or American citizenship. *Id.* (citations omitted).

⁴⁰ *Id.* at 12.

⁴¹ Harmon & Holmes-Eber, *supra* note 11.

for freedom and equality, both men and women can be persuaded to join the cause.⁴²

B. The Roles of Women in Terrorist Organizations

Neither the media nor policymakers have fully grasped the depth of female involvement in terrorist organizations, especially jihadist groups.⁴³ Observers have “historically focused on men at war” and often view female terrorists as exceptions.⁴⁴ However, women have participated in, coordinated, and carried out terrorist attacks in a variety of roles and countries.⁴⁵

The media tends to focus on and highlight female terrorists when they conduct violent attacks, which actually perpetuates the misconception that violent female terrorists are random and isolated occurrences.⁴⁶ This misconception puts the public in a dangerous position, as women are increasingly volunteering and being recruited for violent attacks.⁴⁷ For example, female terrorists have been responsible for twenty-five percent of all fatal attacks in the Middle East, and since 2002 they have carried out fifty percent of suicide attacks in Sri Lanka, Turkey, and Chechnya.⁴⁸ Women conduct seventy percent of Chechen suicide bombings; many of them being “Black Widows.”⁴⁹ By the late 2000s, “women had acted as suicide bombers 21 times in Iraq’s markets and other civilian venues patronized by Shiites.”⁵⁰

⁴² See generally Solis Al-Tabaa, *supra* note 39 (describing the use of propaganda to target both male and female prospects).

⁴³ Huckerby, *supra* note 7.

⁴⁴ Cunningham, *supra* note 23.

⁴⁵ Harmon & Holmes-Eber, *supra* note 11.

⁴⁶ See generally Stanski, *supra* note 28, at 136.

⁴⁷ Cunningham, *supra* note 23.

⁴⁸ *Id.*

⁴⁹ MARGARET GONZALEZ-PEREZ, WOMEN AND TERRORISM: FEMALE ACTIVITY IN DOMESTIC AND INTERNATIONAL TERROR GROUPS 109 (2008). In an instance from October 2002, “41 Chechen terrorists, including 19 women, stormed a Moscow theatre, holding 800 hostages for 57 hours.” *Id.* A witness even noted that one woman was “visibly pregnant, yet showed no weakness.” *Id.* (citations omitted) (internal quotation marks omitted).

⁵⁰ Cunningham, *supra* note 23.

Women have also found their place as leaders, couriers, and intelligence operatives.⁵¹ Their low level of suspicion allows women to be assets in such roles.⁵² For example, one Peruvian guerrilla insurgent organization used female housecleaners to discover the secrets of potential targets.⁵³ Women can be especially useful, compared to men, as couriers of money, weapons, and communications because they raise significantly less suspicion due to gender stereotypes.⁵⁴ Some organizations have used women to reduce suspicion toward male terrorists by pairing the two to appear as lovers or family.⁵⁵ They find and run safe houses, provide financial support, and participate in recruitment and propaganda efforts.⁵⁶

C. Why Female Terrorists Are So Dangerous

As noted above, the media has continuously portrayed female terrorists through a gender stereotypical lens, which affects the opinions and attitudes of not only the general public, but also those directly responsible for protecting this country from terrorism.⁵⁷ Female terrorists responsible for suicide attacks have been portrayed as victims, or “women without a choice.”⁵⁸ They are not viewed as free-willed, independent actors capable of committing serious violence and destruction.⁵⁹ Due to ignorance and gender clichés, women are much more likely to successfully carry out violent attacks without suspicion or interception.⁶⁰ Terrorist organizations are aware of these blind spots and are strategically using women to carry out attacks.⁶¹

Women engaged in both lethal roles and as couriers have an advantage over their male counterparts.⁶² Suicide bombers and armed insurgents are able to reach close proximity to their targets since they

⁵¹ Harmon & Holmes-Eber, *supra* note 11.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Phelan, *supra* note 15.

⁵⁵ Harmon & Holmes-Eber, *supra* note 11.

⁵⁶ *Id.*

⁵⁷ Nacos, *supra* note 13, at 230.

⁵⁸ Kemoklidze, *supra* note 35, at 185.

⁵⁹ *Id.* at 184–87.

⁶⁰ Nacos, *supra* note 13, at 230.

⁶¹ Huckerby, *supra* note 7.

⁶² *See infra* notes 63–67 and accompanying text.

do not raise suspicion of guards or police officers.⁶³ A well-known example of this type of exploitation is Dhanu, a female member of the Black Tigers, who assassinated the former Prince Minister of India, Rajiv Gandhi.⁶⁴ Dhanu played the role of a female admirer, “garlanded [Gandhi], bowed at his feet, and then detonated a bomb that killed them both.”⁶⁵ For couriers, gender expectations (that terrorists are young males) allow women to evade physical searches and close examination.⁶⁶ Organizations employ individuals that do not fit the typical terrorist profile, knowing they are unlikely to be heavily searched.⁶⁷ Particularly, pregnant women and imitators, have been used to transport money and weapons through airports and checkpoints.⁶⁸

Other women have been able to successfully transmit messages and facilitate terrorist attacks while avoiding detection.⁶⁹ In January 2015, Amedy Coulibaly killed four shoppers and took others hostage at a Paris grocery store and was posthumously tied to the Islamic State of Iraq.⁷⁰ Police had monitored Coulibaly for years and were aware of his wife Hayat Boumedienne.⁷¹ However, in 2014 Boumedienne exchanged over 500 phone calls with Cherif Kouachi’s wife, without raising any suspicion.⁷² It was not until after the attacks that officials acknowledged Boumedienne “clearly had an idea of what was going on,” and an expert stated she was “obviously very active” and wanted

⁶³ Nacos, *supra* note 13, at 230 (citations omitted).

⁶⁴ *Id.* at 230–31.

⁶⁵ *Id.* at 231.

⁶⁶ Harmon & Holmes-Eber, *supra* note 11.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See Molly Hennessy-Fiske, *Female Terrorists Finding Their Place in Islamic Militants’ Ranks*, L.A. TIMES (Jan. 25, 2015, 8:00 AM), <http://www.latimes.com/world/europe/la-fg-france-terror-women-20150125-story.html>.

⁷⁰ *Id.*; Stacey Meichtry et al., *Paris Attacker Amedy Coulibaly’s Path to Terror*, WALL ST. J. (Jan. 14, 2015, 3:30 AM), <http://www.wsj.com/articles/paris-attackers-path-to-terror-1421204761>. Amedy Coulibaly was released from prison in March 2014 after serving four years for his involvement in a convicted terrorist’s foiled prison break. *Id.* Hayat Boumedienne was able to make several hundred phone calls and arrange meetings for Coulibaly while he was imprisoned. Hennessy-Fiske, *supra* note 69.

⁷¹ Hennessy-Fiske, *supra* note 69.

⁷² *Id.* Cherif Kouachi was one of the perpetrators of the *Charlie Hebdo* attack, which occurred on the same day as Coulibaly’s. *Id.*

to be “a part of the violent nature of the jihadist ideology.”⁷³ Women like Boumedienne will continue to exploit the gender gaps created by law enforcement officers who continue to allow gender stereotypes to guide their investigations.

The media’s fascination with female violent extremists also increases the level of danger they pose.⁷⁴ Female attackers typically receive more media coverage than male colleagues and “attacks by women receive eight times the media coverage as attacks by men”⁷⁵, which allows terrorist groups to capitalize on the attention to spread their message even more broadly.⁷⁶ Extremist groups can appear “more widely accepted” when women are “drawn to their cause,” which is beneficial for recruitment purposes.⁷⁷ The attention received is even more amplified when the female terrorist is labeled attractive or beautiful by the media.⁷⁸ Using beauty or sex appeal to glamorize terrorism also works to recruit both men and women to terrorist groups.⁷⁹ In addition to using their beauty to recruit members and evade detection, some have utilized it to “lure a lustful victim to his death.”⁸⁰

II. THE UNITED STATES’ CURRENT NATIONAL SECURITY EFFORTS

This Part provides an overview of the nation’s current strategies to combat terrorism and potential terroristic threats. Section A discusses employed security measures such as mass surveillance and physical searches. Section B briefly addresses the government’s outreach efforts to counter violent extremism. Section C describes

⁷³ *Id.*

⁷⁴ *See infra*, notes 75–80 and accompanying text.

⁷⁵ Kemoklidze, *supra* note 35, at 185 (citations omitted).

⁷⁶ Erik Kleinsmith, *Sisters of Battle: Analyzing Female Terrorists*, IN HOMELAND SECURITY (Dec. 18, 2015), <http://inlandsecurity.com/sisters-of-battle-analyzing-female-terrorists>.

⁷⁷ *Id.*

⁷⁸ Harmon & Holmes-Eber, *supra* note 11 (“Any media expert recognizes what many terrorist organizers recognize: if there is anything more attention-grabbing than terrorism, it is a beautiful female terrorist.”).

⁷⁹ *Id.*

⁸⁰ *Id.* (“Early in the Sandinistas’ insurgent campaign to oust Nicaraguan dictator Anastasio Somoza, Astorga was assigned to seduce the general who was second in command of the state armed forces; instead of a tryst, however, he was knifed by assassins hidden in the room.”)

various visa programs created by the federal government to track individuals entering the nation for extended periods of time.

A. *The United States' Security Measures Have Made the Country a Leading Powerhouse in the Fight Against Terrorism*

Addressing the increasing need for security, the United States has implemented various measures to identify, track, and prevent potential terroristic threats to the country. One such measure includes mass surveillance programs aimed to identify individuals involved with terrorist organizations. The federal government has also focused its attention on securing the nation's borders by expanding the scope of physical searches conducted on individuals entering the country. The programs discussed below are representative of the United States' numerous efforts to combat terrorism but do not cover all of the government's security measures.

1. Mass surveillance of American citizens and known terrorists

The United States' surveillance programs are a hotly debated and increasingly litigated issue.⁸¹ In 1981, an executive order was issued that gave U.S. intelligence agencies permission to collect and retain intelligence information concerning United States persons to protect the country and its interests from foreign security threats.⁸² In the wake of the September 11th terrorist attacks, the U.S. government passed the USA PATRIOT Act of 2001 ("the Act").⁸³ The Act was designed to "deter and punish terrorist acts in the United States and around the world [and] enhance law enforcement investigatory tools".⁸⁴ In 2013, Edward Snowden leaked classified documents which revealed the intelligence community used Section 215 of the Act to

⁸¹ See *infra* notes 82–86 and accompanying text.

⁸² Exec. Order No. 12,333, 3 C.F.R. 200, § 1.1 (1981), *reprinted as amended by* Exec. Order No. 13,470 (2008).

⁸³ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ("USA PATRIOT Act") Act of 2001, 107 Pub. L. No. 56, 115 Stat. 272 (2001).

⁸⁴ *Id.*

secretly collect and store bulk telephone metadata.⁸⁵ The purpose of the program, which was approved by the Foreign Intelligence Surveillance Court, was to later search the data for links to terrorist organizations or activity.⁸⁶

However, the disclosure that Americans' phone call metadata was being collected and stored led to the introduction of new bills to reform the Patriot Act and specifically Section 215.⁸⁷ In June 2015, Congress passed the USA Freedom Act, which partially reforms mass surveillance.⁸⁸ Under the Act, the National Security Agency (NSA) used U.S. citizens' phone and email records to screen for and monitor potential terrorists.⁸⁹ The USA Freedom Act now requires the NSA to stop collecting the records in bulk and to "transition to acquiring call logs of targets and those of their contacts as needed in intelligence investigations."⁹⁰

In addition to this type of surveillance, the U.S. government also receives and stores information on known and suspected terrorists in the Terrorist Identities Datamart Environment (TIDE).⁹¹ TIDE is the federal government's "central repository of information on international terrorist identities."⁹² After evaluating law enforcement and intelligence information, "[f]ederal agencies nominate individuals for inclusion in TIDE".⁹³ Activities that warrant inclusion include, *inter alia*, committing or planning an international terrorist activity, soliciting funds for such activity, and providing material support.⁹⁴

⁸⁵ Sina Beaghley, *The USA Freedom Act: The Definition of a Compromise*, THE HILL (May 29, 2015, 7:00 AM), <http://thehill.com/blogs/congress-blog/homeland-security/243333-the-usa-freedom-act-the-definition-of-a-compromise>.

⁸⁶ *Id.*

⁸⁷ Steven Nelson, *Senate Passes Freedom Act, Ending Patriot Act Provision Lapse*, U.S. NEWS & WORLD REPORT (June 2, 2015, 6:34 PM), <http://www.usnews.com/news/articles/2015/06/02/senate-passes-freedom-act-ending-patriot-act-provision-lapse>.

⁸⁸ *Id.*

⁸⁹ See Beaghley, *supra* note 85.

⁹⁰ Nelson, *supra* note 87.

⁹¹ See *infra* notes 92–95 and accompanying text.

⁹² TERRORIST IDENTITIES DATAMART ENVIRONMENT (TIDE), NAT'L COUNTERTERRORISM CENTER 1 (2016), https://www.nctc.gov/docs/tide_fact_sheet.pdf [hereinafter TIDE].

⁹³ *Id.*

⁹⁴ *Id.*

TIDE supplies identities and information to the Terrorist Screening Database (TSDB), an FBI led program.⁹⁵

Agencies use TIDE and TSDB to screen individuals traveling to the United States (including TSA's "No Fly" and Selectee lists), as well as "refugee, visa, and visa waiver program applicants."⁹⁶ The TSDB supports both the Consular Lookout and Support System (CLASS), used to screen passports and visas, and the TECS system, used to make eligibility determinations for individuals arriving at U.S. ports of entry.⁹⁷ The FBI also uses information from the TSDB for its Known and Appropriately Suspected Terrorist (KST) File.⁹⁸ FBI procedures require a search of the KST File to be completed during a federal background check for a firearms purchase.⁹⁹ However, it should be noted that "being a known or suspected terrorist is not a federal firearms eligibility disqualifier."¹⁰⁰

2. Screening and physical searches of individuals at points of entry

Physical searches of individuals entering the country, government buildings, or boarding airplanes are a significant part of the U.S. government's terrorism prevention methods.¹⁰¹ Screening and searching individuals and their belongings allows the government to ensure dangerous items are not smuggled on to airplanes, into large crowds, or in close proximity to potential targets. These types of checkpoint searches are exempt from probable cause requirements.¹⁰² In response to the September 11th terrorist attacks, Congress sought to heighten airport security and passed the Airport Security and Federalization Act and the Aviation and Transportation Security Act

⁹⁵ *Id.* at 2.

⁹⁶ *Id.*

⁹⁷ LEGAL TOOLS TO DETER TRAVEL BY SUSPECTED TERRORISTS: A BRIEF PRIMER, CONGRESSIONAL RESEARCH SERVICE REPORTS & ANALYSIS (Nov. 16, 2015, 5:13 PM), <http://www.fas.org/sgp/crs/terror/travel.pdf>.

⁹⁸ WILLIAM J. KROUSE, ORLANDO NIGHTCLUB MASS SHOOTING: GUN CHECKS AND TERRORIST WATCHLISTS, CONGRESSIONAL RESEARCH SERVICE REPORTS INSIGHT (June 16, 2016), <http://www.fas.org/sgp/crs/terror/IN10509.pdf>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ STEPHEN DYCUS ET AL., COUNTERTERRORISM LAW 292 (2nd ed. 2012).

¹⁰² *Id.*

in November 2001.¹⁰³ The acts govern U.S. airports and standardize pre-flight screening of passengers and cargo “by federalizing security service and airport personnel in the nation’s airports.”¹⁰⁴ In 2010, TSA updated the metal detectors used at airport security to whole body imaging systems.¹⁰⁵

B. Outreach and Community Engagement and Countering Violent Extremism

Although the federal government has largely ignored women in the context of terrorism, it has recently recognized the value women can offer in counterterrorism efforts. In August 2011, the U.S. federal government released *Empowering Local Partners to Prevent Violent Extremism in the U.S.*,¹⁰⁶ its first national strategy aimed at preventing domestic violent extremism.¹⁰⁷ The basis for the strategy is countering violent extremism (CVE), which “encompasses the preventative aspects of counterterrorism as well as interventions to undermine the attraction of extremist movements and ideologies that seek to promote violence.”¹⁰⁸ Through CVE, the Department of Homeland Security (DHS) focuses on the root causes of violent extremism, and seeks to provide resources for communities to build and sustain local prevention efforts and confront violent extremist messages through counter-narratives.¹⁰⁹ On July 6, 2016, DHS launched a federal grant funding opportunity for state, local, and tribal partners and community groups (such as religious groups, educators, mental health and social service providers) interested in building prevention programs to deter violent extremism in their communities.¹¹⁰

¹⁰³ Adrienne W. Lerner, *Aviation and Transportation Security Act of 2001*, ENCYCLOPEDIA.COM (2004), <http://www.encyclopedia.com/social-sciences-and-law/law/crime-and-law-enforcement/aviation-and-transportation-security-act-2001>.

¹⁰⁴ *Id.*

¹⁰⁵ DYCUS ET AL., *supra* note 101, at 298.

¹⁰⁶ Press Release, The White House Office of the Press Secretary, Fact Sheet: The White House Summit on Countering Violent Extremism (Feb. 18, 2015), <https://www.whitehouse.gov/the-press-office/2015/02/18/fact-sheet-white-house-summit-countering-violent-extremism>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Countering Violent Extremism*, DEP’T OF HOMELAND SEC. (July 6, 2016), <https://www.dhs.gov/countering-violent-extremism>.

¹¹⁰ *Id.*

The United States government has made efforts to include women in its CVE initiative and other preventative measures.¹¹¹ The Bureau of Counterterrorism has integrated gender into its programs in multiple ways.¹¹² Focusing on preventative efforts, the bureau aimed to build the capacity of women working to counter violent extremism, looked to conduct national security training for women in law enforcement, and supported women's participation in community policing.¹¹³ The Bureau's goal is to utilize females' "unique reach into society" to detect and prevent extremism in communities.¹¹⁴

C. U.S. Visa Programs Are Used to Record Individuals Entering the Country for an Extended Period of Time

The San Bernardino shooting in December 2015, sparked discussions over the screening process for U.S.'s visa programs, as Tashfeen Malik's online messages supporting violent jihad were only discovered after she obtained a visa, entered the country, and perpetrated a brutal attack.¹¹⁵ USA immigration law mandates foreign individuals obtain a visa or permit, to enter the country.¹¹⁶ There are two general visa classifications: "immigrant" and "nonimmigrant."¹¹⁷ The United States has multiple types of visas within those classifications, including the fiancé visa (also known as a K-1

¹¹¹ See Melanne Verwee, Ambassador-at-Large for Global Women's Issues & Daniel Benjamin, Coordinator, Office of the Coordinator for Counterterrorism, Remarks at The Roles of Women in Terrorism and Counterterrorism at the Center for Strategic and International Studies (Apr. 19, 2012), <http://www.state.gov/s/gwi/rls/other/2012/189241.htm> (explaining how women are playing a vital role in counter-radicalization).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See Bennett & Serrano, *supra* note 2; see also Matt Apuzzo et al., *U.S. Visa Process Missed San Bernardino Wife's Online Zealotry*, N.Y. TIMES (Dec. 12, 2015), http://www.nytimes.com/2015/12/13/us/san-bernardino-attacks-us-visa-process-tashfeen-maliks-remarks-on-social-media-about-jihad-were-missed.html?_r=0.

¹¹⁶ USA Visa Information Center, H1 BASE, <http://www.h1base.com/content/compareworkvisas> (last visited Dec. 7, 2016).

¹¹⁷ *Id.* Immigrant visas, such as a green card, are for individuals intending to relocate and live permanently in the U.S. Nonimmigrant visas are for individuals coming to the United States temporarily and for a specific purpose. *Id.*

nonimmigrant visa)¹¹⁸ that Tashfeen Malik used to enter the country.¹¹⁹ In 2014 alone, the United States issued 36,000 K-1 visas.¹²⁰ In response to the attack, President Obama ordered a review of the fiancée visa program; consequently, as of January 2016, his administration is seeking to determine what new measures are feasible without creating major delays in the program.¹²¹ Following the shooting, immigration officials considered a temporary prohibition on new visas while they reviewed the approximately 90,000 K-1 visas issued from 2013 to 2015.¹²²

There are a variety of ways individuals can obtain a visa to enter the United States for an extended period of time. In addition to the K-1 visa, there are visas for, *inter alia*, work, study, visitors/tourists, and spouses.¹²³ The United States also has a visa waiver program, which allows visitors from thirty-eight countries to enter the United States without a visa and stay up to ninety days.¹²⁴ In December 2015, the U.S. House of Representatives voted to change the program and require visitors who have also visited Iraq or Syria in the previous five years to obtain a visa to enter the U.S.¹²⁵ The goal of this change is to provide the United States with more intelligence about the individuals entering the country.¹²⁶ The House Bill also requires program countries to share counterterrorism information with

¹¹⁸ *Fiancé(e) Visas*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/family/family-us-citizens/fiancee-visa/fiancee-visas> (last updated July 17, 2015).

¹¹⁹ Oren Dorell, *Female Shooter in San Bernardino, Calif., Entered the U.S. on Fiancée Visa*, USA TODAY (Dec. 3, 2015, 10:01 PM), <http://www.usatoday.com/story/news/2015/12/03/female-shooter-san-bernardino-calif-entered-us-fiancee-visa/76732260>.

¹²⁰ *Id.*

¹²¹ Apuzzo et al., *supra* note 115. Specifically, the Obama administration is attempting to determine whether the required background checks can be expanded.

Id.

¹²² *Id.*

¹²³ *USA Visa Information Center*, *supra* note 116.

¹²⁴ Alex DeMitrack, *VISA Program Security to Be Strengthened After San Bernardino Attacks*, CBS LOCAL BALT. (Dec. 9, 2015, 7:26 PM), <http://baltimore.cbslocal.com/2015/12/09/visa-program-security-to-be-strengthened-after-san-bernardino-attacks/>.

¹²⁵ *Id.*

¹²⁶ *Id.* Dr. Michael Greenberger, with the University of Maryland's Center for Health & Homeland Security, supports the change as a "sound, prudent measure." *Id.*

the United States in order to keep its designation.¹²⁷ As of July 2016, a similar bill was introduced in the Senate and is awaiting a vote.¹²⁸

III. HOW THE U.S. GOVERNMENT SHOULD IMPROVE THEIR COUNTERTERRORISM MEASURES

The growing number of female terrorists, including the San Bernardino shooter, should persuade the U.S. government to improve their counterterrorism measures. Although the federal government has implemented initiatives to incorporate females into its counterterrorism efforts¹²⁹, officials need to consider how gender plays a role in terrorism efforts. As discussed above, terrorist organizations are aware of the world's blind spot when it comes to female terrorists and are actively exploiting it.¹³⁰ The United States must end gender profiling in its counterterrorism methods and instead begin viewing women as legitimate potential threats.¹³¹ The U.S.'s efforts to incorporate gender into its counterterrorism strategies are commendable, however, it is important to focus on more than just a woman's role in preventing male radicalization.¹³²

A. The Federal Government Should Eliminate Gender Profiling Practices in Its Counterterrorism Measures

Although the United States has created numerous means to identify and prevent terrorist attacks, inherent profiling of potential suspects based on gender serves to hinder the effectiveness of each program. Female terrorists will continue to fly under the radar if law enforcement agents conducting surveillance and physical searches do not treat the genders equally. Furthermore, law enforcement agents may actually be required by the Department of Justice to consider all

¹²⁷ *Id.* See also Visa Waiver Program Security Enhancement Act, S. 2337, 114th Cong. § 4 (2015).

¹²⁸ S. 2337.

¹²⁹ See Verveer & Benjamin, *supra* note 111 (explaining how women are playing a vital role in counter-radicalization).

¹³⁰ Nacos, *supra* note 13, at 219.

¹³¹ *Id.* at 232. For the gender advantage of female terrorists to disappear altogether, "the men and women who implement anti- and counterterrorist policies day-in and day-out must have this understanding as well and must act accordingly." *Id.* (citations omitted).

¹³² Huckerby, *supra* note 7.

individuals as potential threats regardless of gender. The first step to eliminate gender profiling practices is educating government agents on the realities of female terrorism.

1. Gender Profiling Practices Greatly Diminish the Success of Surveillance Programs and Physical Searches.

As noted above, the federal government advanced its use of tools to combat terrorism after 9/11 through the identification and apprehension of terrorism suspects.¹³³ Through the creation and utilization of terrorist databases such as TIDE and TSDB, the federal government has made significant efforts in tracking suspected and known terrorists and preventing attacks.¹³⁴ However, the sheer number of people listed in TIDE suggests that the database contains inaccuracies (as of 2014, there were one million individuals listed.¹³⁵ The National Counterterrorism Center (NCTC), which manages TIDE, must make the repository more effective and accurate.¹³⁶

Although the tools purport to be gender neutral, efforts such as surveillance and investigation tend to fixate on men in practice.¹³⁷ Counterterrorism detentions, interrogations, and prosecutions in the United States have also predominantly targeted men.¹³⁸ In fact, there appears to be few instances where women were specifically targeted by these measures, either as terrorism suspects or because of a familial relationship with a terrorism suspect.¹³⁹ Having only men on the radar as potential terrorists “leaves a significant gap in counterterrorism strategy.”¹⁴⁰ Profiling only men may result in “increased pressure on

¹³³ CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, A DECADE LOST: LOCATING GENDER IN U.S. COUNTER-TERRORISM, NYU SCHOOL OF LAW 82 (2011), <http://chrgj.org/wp-content/uploads/2012/07/locatinggender.pdf> [hereinafter A DECADE LOST].

¹³⁴ TIDE, *supra* note 92.

¹³⁵ Hugh Handeyside, *Numbers Tell the Story of Our Government's Watchlisting Binge*, ACLU (Aug. 6, 2014), <https://www.aclu.org/blog/numbers-tell-story-our-governments-watchlisting-binge>.

¹³⁶ *Id.*

¹³⁷ A DECADE LOST, *supra* note 133.

¹³⁸ *Id.* at 86. Examples of each include Guantanamo Bay, CIA detention facilities, and terrorism-related prosecutions in the U.S. *Id.*

¹³⁹ *Id.*

¹⁴⁰ Susan N. Herman, *Women and Terrorism: Keynote Address*, 31 WOMEN'S RTS. L. REP. 258, 265 (2010).

women to assume a more active role” in order for terrorist organizations to avoid detection.¹⁴¹ Experts have already noted that terrorist organizations are aware of the typical terrorist profile, and are working to exploit it.¹⁴²

2. The Department of Justice Prohibits Federal Law Enforcement Agencies From Using Gender to Determine The Likelihood an Individual Is Engaged in a Crime

The federal government and its agents may already be legally mandated to consider men and women as an equal threat to the nation’s security. Although most courts have not explicitly addressed gender profiling, some have held that profiling on the basis of race or ethnicity is unconstitutional.¹⁴³ The Department of Justice (DOJ) also views such actions as unconstitutional.¹⁴⁴ The DOJ prohibits law enforcement officials from acting on the belief that criminal propensity increases with the possession of a certain protected characteristic.¹⁴⁵ Listed characteristics include gender, race, ethnicity, national origin, religion, sexual orientation, or gender identity. Therefore, the federal government and its agents cannot exclude women from their investigations, watch lists, or screening efforts because they believe men are more likely to commit terrorist attacks. The government must investigate women as suspects themselves if the facts point to such an assumption.¹⁴⁶

¹⁴¹ *Id.*

¹⁴² Huckerby, *supra* note 7.

¹⁴³ *See* Farag v. United States, 587 F. Supp. 2d 436, 466–67 (E.D.N.Y. 2008) (holding that race and ethnicity cannot be used to establish criminal propensity under the Fourth Amendment); *see also* Sharon L. Davies, *Profiling Terror*, 1 OHIO ST. J. CRIM. L. 45, 53 (2003) (noting courts have agreed that race should not be considered in profiling).

¹⁴⁴ Dep’t of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity 2* (Dec. 2014) (“The Constitution protects individuals against the invidious use of irrelevant individual characteristics.”) [hereinafter *Guidance for Federal Law*].

¹⁴⁵ *Id.* at 3.

¹⁴⁶ Rachael Lavina, Note, *Women in Terrorism: How the Rise of Female Terrorists Impacts International Law*, 30 CONN. J. INT’L L. 241, 254 (2015).

This is not to say that individual characteristics can never play a role in counterterrorism efforts.¹⁴⁷ The DOJ does allow for the use of characteristics when an officer has specific trustworthy information that a specific individual committed a crime¹⁴⁸ or “reliable, locally or temporally relevant information linking persons possessing a listed characteristic to a particular incident.”¹⁴⁹ Officers may also use a listed characteristic when attempting to find sources for information relating to a threat to national security or an authorized intelligence activity.¹⁵⁰ However, federal agencies need to acknowledge and accept that many terrorist organizations, including the most traditional, have female members who are involved in furthering the organization’s agenda.¹⁵¹ They cannot overlook females as sources of critical information relating to national security, as gender does not bear on their placement or access to information.¹⁵² Men and women should be subjected to the same level of scrutiny.¹⁵³

3. Steps to Prevent Gender Profiling in Counterterrorism Efforts

Educating federal investigators and law enforcement officers on the potential threat of female terrorists is imperative, as they are often the government’s first contact with a potential terrorist.¹⁵⁴ Like the general public and mass media, many law enforcement agents underestimate the dangers posed by female terrorists.¹⁵⁵ According to

¹⁴⁷ See *infra* notes 148–150 and accompanying text.

¹⁴⁸ *Guidance for Federal Law*, *supra* note 144, at 3.

¹⁴⁹ *Id.* at 7.

¹⁵⁰ *Id.* at 8. The Guidance gives an example of a terrorist organization, made up of members of a particular ethnicity, who sets off a bomb in a foreign country. *Id.* Even if there is no specific information that the organization is currently a threat to the U.S., the FBI may consider ethnicity when developing sources with information that could assist in mitigating potential threat from that organization. *Id.*

¹⁵¹ Bloom, *supra* note 34, at 92.

¹⁵² See Hennessy-Fiske, *supra* note 69 (explaining that female terrorists are known to exploit gender stereotypes to avoid detection).

¹⁵³ Lavina, *supra* note 146, at 254 (noting that equal levels of scrutiny would be a positive step towards recruitment prevention).

¹⁵⁴ See A DECADE LOST, *supra* note 133, at 83.

¹⁵⁵ See Herman, *supra* note 140, at 261–62 (noting that militant leaders vastly underestimate the abilities of women in conflict); see also Katherine Lindemann, *Female Terrorists – A Surprisingly Timeless Phenomenon*, RESEARCHGATE (Dec. 21, 2015), <https://www.researchgate.net/blog/post/female-terrorists-a-surprisingly->

the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, the effectiveness of counterterrorism measures to identify suspects is compromised when women are ignored as potential terrorists.¹⁵⁶ The DOJ also acknowledges that biased practices are ineffective and “simply not good law enforcement.”¹⁵⁷

Federal and state law enforcement officials and investigators should focus on better understanding indicators of potential terrorist activity, such as techniques, behaviors, and tactics, and not on profiling potential terrorists.¹⁵⁸ The reality of gender equality must “inform the measures designed to prevent and respond to terrorism and...the implementation of anti- and counterterrorist policies.”¹⁵⁹ The government should design and enforce pre-detention preventative and investigatory methods that address the many roles of female terrorists.¹⁶⁰ Limited but specialized training of TSA agents and security personnel would provide a better understanding of terrorists and their strategies.¹⁶¹ As it has been noted, women can act as couriers through airports and other modes of transportation.¹⁶² Female security teams should be available to search women in the United States, as is TSA procedure.¹⁶³

B. Visa Policies and Practices Must Be Improved to Ensure Terrorists Cannot Exploit Visa Expiration Dates

The Department of Homeland Security has begun the process of changing traveler eligibility requirements for the Visa Waiver

timeless-phenomenon (recalling a moment when law enforcement intelligence laughed at her female terrorism slide during a presentation).

¹⁵⁶ U.N. Secretary-General, *Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶ 46, U.N. Doc. A/64/211 (Aug. 3, 2009).

¹⁵⁷ *Guidance for Federal Law*, *supra* note 144, at 1.

¹⁵⁸ A DECADE LOST, *supra* note 133, at 83.

¹⁵⁹ Nacos, *supra* note 13, at 232.

¹⁶⁰ A DECADE LOST, *supra* note 133, at 95.

¹⁶¹ Harmon & Holmes-Eber, *supra* note 11.

¹⁶² Phelan, *supra* note 15.

¹⁶³ Harmon & Holmes-Eber, *supra* note 11. *See also Security Screening*, TRANSP. SEC. ADMIN., <https://www.tsa.gov/travel/security-screening> (last visited Dec. 7, 2016).

Program.¹⁶⁴ The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, which was enacted in December 2015, is responsible for the changes.¹⁶⁵ However, there is still a significant problem regarding visa overstays.¹⁶⁶ The Assistant Secretary for International Affairs at the Department of Homeland Security admitted in a congressional hearing that the Department does not know how many people overstay their visas every year.¹⁶⁷ Despite a congressionally passed law requiring the development of a system to track individuals who overstay their visas, the federal government still has not been able to successfully create one.¹⁶⁸ Although Tashfeen Malik did not overstay her visa, the attack resurfaced many concerns and fears that terrorists might “exploit the gaps in the system.”¹⁶⁹ The federal government should continue its work to develop a better process for tracking visas and those who overstay. While the majority of individuals who stay in the country past their visa expiration date are not terrorist threats,¹⁷⁰ it is important that the government has better intelligence regarding who is in the country. Stricter laws on visa expiration dates would decrease terrorist organizations’ ability to exploit the system.

CONCLUSION

Female terrorists have continued to prove they are just as capable of destruction and violence as their male counterparts.¹⁷¹

¹⁶⁴ *Visa Waiver Program*, DEP’T OF STATE, BUREAU OF CONSULAR AFFAIRS, <https://travel.state.gov/content/visas/en/visit/visa-waiver-program.html> (last visited Dec. 7, 2016).

¹⁶⁵ *Id.*

¹⁶⁶ Ron Nixon, *U.S. Doesn’t Know How Many Foreign Visitors Overstay Visas*, N.Y. TIMES (Jan. 1, 2016), http://www.nytimes.com/2016/01/02/us/politics/us-doesnt-know-how-many-foreign-visitors-overstay-visas.html?_r=0.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* See also Schmidt & Perez-Pena, *supra* note 2 (explaining that Malik was granted a conditional green card in July of 2015).

¹⁷⁰ See Nixon, *supra* note 166 (explaining that the majority of people who overstay are not investigated because the government only investigates those who are criminals or threats to national security); see also Stephen Dinan, *99 Percent of Illegal Immigrants Who Overstay Visas Aren’t Investigated*, THE WASHINGTON TIMES (Jan. 20, 2016), <http://www.washingtontimes.com/news/2016/jan/20/illegal-immigrants-who-overstay-visas-rarely-inves/> (connecting individuals overstaying visas to countries with known terrorist problems).

¹⁷¹ See *supra* Part I.B–C.

Foreign and domestic terrorist organizations have given no indication they will stop utilizing and recruiting women to further their goals.¹⁷² The United States government must reevaluate their current counterterrorism methods to ensure they are adequately designed and implemented to protect the country from all terrorism, whether perpetrated by males or females. By eliminating gender profiling from screening and monitoring measures and modifying visa policies and practices, the U.S. can minimize the growing advantage of female terrorists.

¹⁷² *Id.*