

PROSECUTING THE WAR ON TERROR IN THE TRUMP ADMINISTRATION: THE TRUMP DOCTRINE – IS THERE REALLY A NEW SHERIFF IN TOWN?

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“The views of men can only be known, or guessed at, by their words or actions.”¹

George Washington, 1799

When billionaire businessman Donald J. Trump announced his intention to run for President of the United States in 2015,² most commentators in the “main-stream media”³ dismissed his chances to secure the Republican nomination, let alone win the office of the

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¹ THE QUOTABLE FOUNDING FATHERS 199 (Buckner F. Melton, Jr. ed., 2004) (statement by George Washington to Patrick Henry, Jan. 15, 1799).

² Trump announced his decision to run for the presidency of the United States in front of Trump Tower in New York, stating among other factors that his financial wealth would directly contribute to a successful candidacy as he would not have to answer to outside influences that typically controlled American politics. See Jeremy Diamond, *Donald Trump jumps in: The Donald’s latest White House run is officially on*, CNN (June 17, 2015, 3:07 PM), <http://edition.cnn.com/2015/06/16/politics/donald-trump-2016-announcement-elections/index.html>.

³ *Mainstream Media*, OXFORD DICTIONARY, https://en.oxforddictionaries.com/definition/mainstream_media (last visited Feb. 2, 2018) (“Traditional forms of mass communication, such as newspapers, television, and radio (as opposed to the Internet) regarded collectively.”). The general characterization of the main stream media is “censoring or downplaying stories that would lead viewers to conservative conclusions, and their use of photo bias, placement bias and other forms of deception to mislead viewers into drawing incorrect liberal conclusions.” See *Mainstream Media*, CONSERVAPEDIA, http://www.conservapedia.com/Mainstream_media (last visited October 12, 2017).

presidency against a general match up with the sure to be⁴ Democratic Party nominee Hillary Clinton.⁵ Nevertheless, on November 7, 2017, Donald J. Trump was elected as the forty-fifth President of the United States of America.⁶ Whatever else might be said about the reasons for the Trump victory, there is no doubt that dealing with the ongoing “War on Terror”⁷ and the threat of

⁴ See Michael D. Shear & Matthew Rosenberg, *Released Emails Suggest the D.N.C. Derided the Sanders Campaign*, N.Y. TIMES (July 22, 2016), <https://www.nytimes.com/2016/07/23/us/politics/dnc-emails-sanders-clinton.html>

(“Top officials at the Democratic National Committee criticized and mocked Senator Bernie Sanders of Vermont during the primary campaign, even though the organization publicly insisted that it was neutral in the race. . . .”).

⁵ See Matthew Ingram, *Here’s Why the Media Failed to Predict a Donald Trump Victory*, FORTUNE (Nov. 9, 2016), <http://fortune.com/2016/11/09/media-trump-failure/> (arguing that much of the main-stream media failed to predict Trump’s nomination because they couldn’t believe that Americans would elect someone with the views and character of Donald Trump).

⁶ Trump won forty-six percent—versus Hillary Clinton’s forty-eight percent—of the popular vote. Gregory Krieg, *It’s official: Clinton swamps Trump in popular vote*, CNN (Dec. 22, 2016, 5:34 AM), <http://www.cnn.com/2016/12/21/politics/donald-trump-hillary-clinton-popular-vote-final-count/index.html>.

Nevertheless, Donald Trump won the electoral college by a very comfortable margin of victory—306 electoral votes versus Hillary Clinton’s 232. See *Presidential Results*, CNN, <http://www.cnn.com/election/results/president> (last visited Oct. 13, 2017). See also William C. Kimberling, *The Electoral College*, <https://transition.fec.gov/pdf/electcoll.pdf> (May 1992). Trump won thirty states while Clinton won 20 plus the Federal District of Columbia. See *Presidential Results*, *supra* note 6.

⁷ See President George W. Bush, Address to the Joint Session of the 107th Congress (Sept. 20, 2001), in *SELECTED SPEECHES OF PRESIDENT GEORGE W. BUSH, 2001–2008*, 66, https://georgewbush-whitehouse.archives.gov/infocus/bushrecord/documents/Selected_Speeches_George_W_Bush.pdf (stating that: “On September the 11th, enemies of freedom committed an act of war against our country.”). Some top officials in President Bush’s Cabinet, including Defense Secretary Donald Rumsfeld, tried to replace the phrase “war on terror” with “global struggle against violent extremism.” General Richard Myers, Chairman of the Joint Chiefs of Staff, seemed to agree with the proposed change, citing the image of combat troops being seen as the solution when the conflict was coined as a “war.” See Eric Schmitt & Thom Shanker, *U.S. Officials Retool Slogan for Terror War*, N.Y. TIMES (July 26, 2005), <http://www.nytimes.com/2005/07/26/politics/us-officials-retool-slogan-for-terror-war.html>. However, on August 3, 2005, President Bush publicly overrode the attempted change in terminology by firmly stating, “Make no mistake about it, we are at war,” and using the phrase “War on Terror,” at least five times and never employing the newly coined phrase of his senior administration officials. See Richard W. Stevenson, *President Makes It Clear: Phrase is ‘War on Terror’*, N.Y. TIMES (Aug. 4, 2005), <https://www.nytimes.com/2005/08/04/politics/president-makes-it-clear-phrase-is-war-on-terror.html> (quoting President George W. Bush, Remarks to the American Legislative Exchange Council in Grapevine, Texas (Aug. 3, 2005)).

domestic Islamic terrorism played a significant role in securing Donald J. Trump the win. Some confidently predicted that “there was a new sheriff in charge”⁸ and things would surely change in that arena.

Accordingly, after one full year in office, it is time to examine the actions taken by the Trump Administration in light of its legal and policy structures for dealing with the War on Terror and the companion problem of radical Islamic terrorism—both the domestic and international threat. In this context, two general concepts bear examination. First, is there a significant change in the Trump Administration from the policies of the Bush and Obama Administrations vis a vis prosecuting the War on Terror and dealing with domestic jihadists?⁹ Second, has the Trump strategic vision and attendant actions contributed in any significant way to achieving victory and ending the War on Terror?

Of course, evaluating the Trump polices in an objective manner is fraught with built-in difficulties. On the one hand, there is President Trump’s well-established penchant for engaging in bombastic rhetoric concerning such varied topics as America’s border security,¹⁰ “radical Muslims,”¹¹ or the Obama Administration’s brokered “Iran nuclear deal.”¹² On the other hand, there is the relentless drum beat of anti-Trump vitriol¹³

⁸ See Dave Boyer, *White House to Iran: There’s a new sheriff in town*, WASH. TIMES (Feb. 7, 2017), <http://www.washingtontimes.com/news/2017/feb/7/white-house-iran-theres-new-sheriff-town/>) (“The White House fired back at Iran’s supreme leader Tuesday for ridiculing President Trump, saying the U.S. has a new sheriff in charge.”); Mark Hensch, *Conway: ‘There’s a new sheriff in town’*, THE HILL (Jan. 20, 2017, 7:54 AM), <http://thehill.com/homenews/administration/315224-conway-trump-to-give-dc-a-shock-to-its-system> (“You’ll know almost immediately that there’s a new sheriff in town.” (quoting Kellyanne Conway)).

⁹ See JEFFREY F. ADDICOTT, *RADICAL ISLAM WHY? CONFRONTING JIHAD AT HOME & ABROAD* (2016).

¹⁰ See, e.g., Scott Horsley & Tamara Keith, *Trump Calls Iran Nuclear Deal ‘Unacceptable,’ But Leaves U.S. In It For Now*, NPR (Oct. 13, 2017, 11:30 AM), <https://www.npr.org/2017/10/13/556664338/trump-to-put-iran-nuclear-deal-in-limbo-by-refusing-to-certify>; *Donald Trump’s Foreign Policy Policies*, POLITIPLATFORM, <https://www.politiplatform.com/trump> (last visited Apr. 29, 2018) (describing Trump’s official policies regarding securing American borders, defeating the ideology of radical Islam, and the Iran nuclear deal).

¹¹ *Donald Trump’s Foreign Policy Policies*, *supra* note 10.

¹² Tom DiChristopher, *Trump will extend Iran sanctions relief, keeping Obama-era nuclear deal alive—for now*, CNBC (Jan. 12, 2018, 1:30 PM), <https://www.cnbc.com/2018/01/12/trump-will-extend-iran-sanctions-relief-keeping-obama-era-nuclear-deal-alive-for-now.html>.

¹³ See, e.g., Charles M. Blow, Editorial, *Soul Survival in Trump’s Hell*, N.Y. TIMES (Sept. 11, 2017), <https://www.nytimes.com/2017/09/11/opinion/soul-survival-in-trumps-hell.html> (arguing that living in the Trump Administration is

which has become a dominant theme in the main-stream media where almost every action or pronouncement by President Trump is denigrated.¹⁴ Although it is possible to navigate between these two very distracting icebergs, it would be naive to ignore their existence.¹⁵

At the end of the day, while language is extremely important in terms of establishing and projecting policy positions, subsequent actions and results are really the key factors in any assessment regarding efficacy. President Trump's oft repeated phrase of "make America great again,"¹⁶ certainly communicates a policy of national self-interest and pride in the positive attributes that embody Americanism, but it does not reveal how he intends to do such. In other words, in terms of confronting the real and continuing threat of militant Islam—both the domestic jihadist and the international terrorist forces of ISIS,¹⁷ al-Qa'eda, the Taliban, and associated forces¹⁸—what are the Trump policies and are they working?

the equivalent of existing in a living hell).

¹⁴ See Jennifer Harper, *Numbers don't lie: Media bias against Trump is entrenched, vicious, persistent*, WASH. TIMES (June 29, 2017), <https://www.washingtontimes.com/news/2017/jun/29/inside-the-beltway-media-bias-against-trump-is-ent/>. See also Deborah Howell, Editorial, *An Obama Tilt in Campaign Coverage*, WASH. POST (Nov. 9, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/11/07/AR2008110702895.html> (admitting that there was a distinct media slant towards Obama during the then-presidential campaign and citing the number of positive stories about Obama versus the number of positive stories about McCain).

¹⁵ For an interesting discussion of the tension between the "establishment" and President Trump, see Alex Altman & Sean Gregory, *Inside Donald Trump's Latest Battle Against the NFL*, TIME (Oct. 6, 2017), <http://time.com/magazine/us/4960617/october-9th-2017-vol-190-no-14-u-s/> (arguing that President Trump is often saying things that other Americans are thinking and that Trump has a unique ability of putting his opponents on the defense where they are forced to respond on his terms). According to one Republican strategist cited in the article, "He does a good job of picking off his opponents. . . . That is his gift: he has a unique ability to bring down the discourse and drag down his opponents to his level, so that their arguments seem even more ridiculous than his." (quoting Terry Sullivan). *Id.*

¹⁶ Pamela Engel, *How Trump came up with his slogan 'Make America Great Again'*, BUS. INSIDER (Jan. 18, 2017, 10:15 AM), <http://www.businessinsider.com/trump-make-america-great-again-slogan-history-2017-1>.

¹⁷ See Graeme Wood, *What ISIS Really Wants*, THE ATLANTIC (Mar. 2015), <https://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/> (describing the origin and goals of ISIS).

¹⁸ See Joint Resolution, Pub. L. No. 107-40, 115 Stat. 224 (2001). See accompanying text, *infra* note 43.

There can be little question that during the 2016 election, President Trump made repeated pronouncements about his desire to depart from Obama and Bush policies in certain arenas of national security.¹⁹ As this paper will argue, however, just like his immediate predecessor, Barack Obama, President Trump has not developed a new War on Terror set of legal policies that differ from the template developed under President George W. Bush. In short, after a year in office, President Trump has actually retained and operated under the very same legal frameworks developed during the Bush Administration and begrudgingly adopted by the Obama Administration. The only significant difference between Trump and Obama, was that Obama's first year in office was spent in an unsuccessful but very active public relations campaign to tear down the Bush War on Terror legal policies, whereas Trump quickly elected to operate within the established legal and policy parameters he had inherited.²⁰

Finally, in terms of identifying a general Commander in Chief²¹ leadership theme, all three presidents embraced a different strategy. President Bush sought to contain by military action the rising threat of radical Islam overseas while robustly using domestic law enforcement to keep the homeland safe from future terror attacks.²² President Obama sought to ignore domestic jihadi terrorism altogether and with the exception of the short-lived troop surge in Afghanistan, used the military to engage in pin point military strikes overseas in order to blunt the influence and growth of selected international Islamic terror groups.²³ President

¹⁹ See Jacob Pramuk, *What Trump said about Afghanistan before he became president*, CNBC (Aug. 21, 2017, 11:33 AM), <https://www.cnbc.com/2017/08/21/what-trump-said-about-afghanistan-before-he-became-president.html>.

On Twitter—the president's most frequent outlet for communication—he started calling for an end to the war in Afghanistan as early as 2011 and continued that push as a candidate. In at least a dozen tweets, Trump criticized the war, sometimes urging Obama to pull out American troops. In other instances, he called the effort a waste of money or of American lives.

Id. See Meghan Keneally, *What Trump has said about Afghanistan*, ABC NEWS (Aug. 21, 2017, 12:56 PM), <http://abcnews.go.com/Politics/trump-afghanistan-past/story?id=49334361> (during Trump's presidential campaign, he often voiced his opinion on the "terrible mistake" of getting involved with Iraq. Trump, however, apparently did not have the same views on Afghanistan).

²⁰ See ADDICOTT, *supra* note 9, at 57–58.

²¹ U.S. CONST. art. II, § 2, cl. 1.

²² See, e.g., Gary L. Gregg II, *George W. Bush: Foreign Affairs*, MILLER CTR., <https://millercenter.org/president/gwbush/foreign-affairs> (last visited Feb. 15, 2018).

²³ See, e.g., James Jay Carafano et al., *A Counterterrorism Strategy for the*

Trump's leadership theme has been distinctly different—he early on publicly recognized the domestic threat of “radical Islam” within the United States and aggressively embarked on a strategy to annihilate ISIS as a geographic entity in Syria and Iraq, the then center of gravity for radical Islam and the War on Terror.

II. THE WAR ON TERROR – THE BUSH ERA

“War, far as I can see.”²⁴
CIA Director Mike Morell

Before examining the Trump Administration's policies and actions in the War on Terror, it is necessary to review the genesis of the on-going conflict and the way that the Bush Administration, Congress, and the Supreme Court grappled with a plethora of unique legal and policy challenges in the wake of 9/11.

For the United States, the War on Terror began on September 11, 2001,²⁵ following a coordinated sneak attack by nineteen members of the radical Islamic al-Qa'eda terror network who hijacked four commercial passenger planes and intentionally crashed two of them into the Twin Towers in New York City and

Next Wave”, HERITAGE FOUND. (Aug. 24, 2011), <https://www.heritage.org/defense/report/counterterrorism-strategy-the-next-wave>.

²⁴ Susan Page, *CIA Vet: War “Far as I can See,”* USA TODAY, May 11, 2015, at A1.

²⁵ The al-Qa'eda network made their own “declaration of war” on the United States on February 22, 1998, when Osama bin Laden and the “World Islamic Front” formally issued a religious fatwa urging all Muslims to engage in overt physical violence against “Crusaders and Jews.” PETER L. BERGEN, *THE OSAMA BIN LADEN I KNOW* 196 (2006). Signed by Sheikh Osama bin-Muhammed bin Laden, Ayman al Zawahiri, Abu-Yasir Rifa'i Ahmad Taha, Sheikh Mir Hamzah, and Fazlur Rahman, the declaration proclaimed:

All these crimes and sins committed by the Americans are a clear declaration of war on Allah, his messenger, and Muslims. And *ulema* (clerics) have throughout Islamic history unanimously agreed that the jihad is an individual duty if the enemy destroys Muslim countries.

On that basis, and in compliance with Allah's order, we issue the following fatwa to all Muslims:

The ruling to kill the Americans and their allies—civilians and military—is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the al-Aqsa Mosque [in Jerusalem] and the holy mosque [Mecca] from their grip.

Id.

one into an outer ring of the Pentagon.²⁶ A fourth hijacked plane crashed in an open field in Pennsylvania, most likely as a result of the heroic efforts of some of the passengers.²⁷

President Bush's strategy was to go to war. Quickly gathering together a coalition of other nations, he attacked both the al-Qa'eda and the Taliban government that protected them while also using targeted killings of radical Islamic terrorists outside of Afghanistan's "active battlefield."²⁸ Concerned with protecting the United States from any future attacks, the Bush Administration also pressed Congress for a series of new legal authorities which resulted in the following: the passage of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("USA PATRIOT Act");²⁹ the creation of the Department of Homeland Security;³⁰ the passage of a much strengthened Foreign Intelligence Surveillance Act;³¹ the creation of military commissions;³² and the establishment of a new combatant command, the United States Northern Command, in Colorado.³³

²⁶ See generally Evan Thomas, *A New Date of Infamy*, NEWSWEEK (Sept. 13, 2001), <http://www.newsweek.com/new-date-infamy-151751> (setting out a timeline of events that occurred on September 11, 2001). According to a New York Times tally, along with billions of dollars in property loss, approximately 3,000 innocent people were killed, not including the nineteen terrorists. See *A Nation Challenged*, N.Y. TIMES, Apr. 24, 2002, at A13.

²⁷ Thomas, *supra* note 26.

²⁸ See John Brennan, *The Efficacy and Ethics of U.S. Counterterrorism Strategy*, WILSON CTR. (Apr. 30, 2012), <https://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy>.

²⁹ The United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (U.S.A. PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272. The bill passed in the Senate by a vote of 98-1. 147 CONG. REC. S11,059-60 (2001). The House of Representatives passed their version by a vote of 357-66. 147 CONG. REC. H7,224 (2001).

³⁰ Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (establishing the Department of Homeland Security in response to the September 11, 2001 terrorist attacks, with the purpose of consolidating the executive branch organizations related to homeland security under one Cabinet level agency).

³¹ Protect America Act of 2007, Pub. L. No. 110-55, 121 Stat. 552.

³² Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600, *amended by* Military Commissions Act of 2009, Pub. L. No. 111-84, §§ 1801-07, 123 Stat. 2190 (to be codified in scattered sections of 10 U.S.C.) (creating military commissions, in response to the *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) decision, and with the stated purpose "[t]o authorize trial by military commission for violations of the law of war, and for other purposes.").

³³ *About USNorthcom*, U.S. N. COMMAND, <http://www.northcom.mil/About-USNORTHCOM> (last visited Feb. 15, 2018) (explaining that U.S. Northern Command ("USNORTHCOM") was established on October 1, 2002 in response to the September 11, 2001 terrorist attacks).

By employing the military forces of the United States to destroy the al-Qa'eda safe havens in Afghanistan and unseat the Taliban regime,³⁴ the most overarching legal development advanced by the Bush Administration was the assertion that the conflict with the international al-Qa'eda network qualified as a real "war"³⁵ and could be executed under the rule of law associated with the international law of war.³⁶ Again, using the term war was a fundamental descriptive ingredient that provided a clear signal to all that the United States was using the law of war and not operating outside the rule of law. Indeed, the central premise that the United States was at war served as the absolute legal justification to kill on sight "unlawful enemy combatants,"³⁷ detain

³⁴ Philip Smucker, *The Good, Bad, and Unfinished; the US Has Shattered the Taliban. but Bin Laden and Omar Remain Elusive*, CHRISTIAN SCI. MONITOR (Jan. 7, 2002), <https://www.questia.com/read/1P2-32594568/the-good-bad-and-unfinish-ed-the-us-has-shattered> (discussing Afghanistan).

³⁵ See Office of the Press Sec'y, *Address to a Joint Session of Congress and the American People*, THE WHITE HOUSE (Sept. 20, 2001), <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html> (last visited Feb. 15, 2018) (stating that "On September 11th, enemies of freedom committed an act of war against our country."); Richard W. Stevenson, *"supra* note 7 (quoting George W. Bush, Address at the American Legislative Exchange Council (Aug. 3, 2005)).

³⁶ The central international treaty dealing with the law of war or the law of armed conflict is the 1949 Geneva Conventions. The Geneva Conventions are set out in four categories: (1) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31; (2) Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85 [hereinafter Geneva Convention II]; (3) Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135 [hereinafter Geneva Convention III]; and (4) Geneva Convention Relative to the Protections of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287. The goal of the law of war is to mitigate the accompanying evils of war by: "(a) Protecting both combatants and noncombatants from unnecessary suffering; (b) Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians; and (c) Facilitating the restoration of peace." U.S. DEPT OF ARMY, FIELD MANUAL NO. 27-10: THE LAW OF LAND WARFARE ¶ 2 (1956).

³⁷ In the Military Commissions Act of 2006, Congress specifically defined unlawful enemy combatants to include:

[A] person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces); or . . . a person who, before, on, or after the date of enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review

them without trial,³⁸ establish the use of military commissions,³⁹ and set up interrogation procedures to glean meaningful intelligence.⁴⁰ Accordingly, confinement facilities at Bagram Air Force Base, Afghanistan, and the U.S. Navy facility at Guantanamo Bay, Cuba (GITMO) were established to detain unlawful enemy combatants captured in Afghanistan and other parts of the world.⁴¹

In tandem with President Bush's clear determination that a state of war now existed, the U.S. Congress voted unanimously on September 14, 2001, (save one Congresswoman from California and a handful of those who abstained)⁴² to authorize the President to use armed force against those "nations, organizations, or

Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.

Military Commissions Act of 2006, Pub. L. No. 109-366, § 3(a)(1), 120 Stat. 2600, 2601, *amended by* Military Commissions Act of 2009, Pub. L. No. 111-84, §§ 180-07, 123 Stat. 2190 (to be codified at 10 U.S.C. § 948a). The Act also defined a lawful enemy combatant as a person who is:

[A] member of the regular forces of a State party engaged in hostilities against the United States; . . . a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or . . . a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

Military Commissions Act of 2006, Pub. L. No. 109-366, § 3(a)(1), 120 Stat. 2600, 2601.

³⁸ Under the law of armed conflict, an enemy combatant can be detained indefinitely until the war is over. The purpose is not to punish but to keep the enemy from returning to combat. *See* Geneva Convention III, *supra* note 36.

³⁹ *See supra* note 37. Military commissions are non-Article III courts and derive their authority from Congress' power to "define and punish . . . [o]ffenses against the Law of Nations" as set out in U.S. CONST. art. I, § 8, cl. 10.

⁴⁰ *See, e.g.,* Jeffrey Addicott, *Into the Star Chamber: Does the United States Engage in the Use of Torture or Similar Illegal Practices in the War on Terror*, 92 KY. L. J. 849, 911-12 (2003).

⁴¹ *See Mission Statement*, JOINT TASK FORCE GUANTANAMO, <http://www.jtfgtmo.southcom.mil/> (last visited Apr. 29, 2018). The U.S. military task force conducts "safe, humane detention operations; collects, analyzes, and reports intelligence; and provides support for legal and administrative proceedings to protect the United States and its interests." *Id.* The Guantanamo detention center use has fluctuated; the Bagram Air Force Base held considerably more detainees at one time. *See* Andrew Gumbel, *Bagram detention centre now twice the size of Guantanamo*, THE INDEP. (Jan. 8, 2008), https://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10486017.

⁴² Congresswoman Barbara Lee of California voted "nay." 147 CONG. REC. H5,683 (Sept. 14, 2001). Ten others did not cast votes. *Id.*

persons”⁴³ that “he determines planned, authorized, committed, or aided the terrorist attacks” against the United States.⁴⁴ While the military campaign to oust the Taliban and close down the al-Qa’eda training camps took only three months, October to December 2001, combat hostilities against Taliban insurgents and other terrorists in Afghanistan continued throughout the Bush presidency and still exist as of this writing.⁴⁵

After the defeat of the Taliban government, President Bush and the Congress became concerned with the unpleasant specter of a weapon of mass destruction (WMD) being employed in the United States by terrorists or the agents of a totalitarian regime. President Bush expressed this fear in a state of the Union address in 2002, which was clearly aimed at Saddam Hussein’s Iraq: “The United States of America will not permit the world’s most dangerous regimes to threaten us with the world’s most destructive weapons.”⁴⁶ With 9/11 still freshly in mind, in 2003 Congress passed an authorization for use of military force (AUMF) targeting Saddam Hussein.⁴⁷ The U.S. led military coalition to topple Saddam Hussein lasted from March 20, 2003, to May 1, 2003,⁴⁸ although continued combat activities with various insurgent elements existed throughout the Bush term. With the subsequent establishment of al-Qa’eda in Iraq, the War on Terror

⁴³ Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224 (2001) (codified as 50 U.S.C. § 1541).

⁴⁴ Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224 (2001) (codified as 50 U.S.C. § 1541).

⁴⁵ The U.S.-led coalition fight to dislodge the Taliban regime lasted from October 7, 2001, until December 22, 2001, when Hamid Karzai took control of Afghanistan as Chairman of the Afghan Interim Authority.

⁴⁶ President George W. Bush, State of the Union Address (Jan. 29, 2002). See also David E. Sanger, *Bush, Focusing on Terrorism, Says Secure U.S. Is Top Priority*, N.Y. TIMES (Jan. 29, 2002), <http://www.nytimes.com/2002/01/29/politics/bush-focusing-on-terrorism-says-secure-us-is-top-priority.html>.

⁴⁷ See Authorization for use of Military Force Against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat. 1498, 1498–99 (codified at 50 U.S.C. § 1541). The Authorization cited many factors to justify the use of military force against Iraq, including that alleged weapons of mass destruction and programs to develop such weapons posed a “threat to the national security of the United States,” and Iraq’s “capability and willingness to use weapons of mass destruction against other nations and its own people.” Authorization for use of Military Force Against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat. 1498, 1498–99.

⁴⁸ President Bush declared an end to major combat operations in Iraq on the *U.S.S. Abraham Lincoln*. See *Bush declares victory in Iraq*, BBC NEWS (May 2, 2003), http://news.bbc.co.uk/2/hi/middle_east/2989459.stm.

now had two fronts. In both Afghanistan and Iraq, U.S. policy continued to require that its armed forces abide by the spirit and principles of the law of war on all military contingency operations.⁴⁹

During the Bush Administration, the Supreme Court produced three significant opinions that addressed issues of detention, interrogation, and military commissions. None of the Supreme Court decisions, however, overturned the premise that the United States was at war and entitled to use the law of war vis a vis al-Qa'eda, the Taliban, and associated forces. As such, the United States was entitled to detain indefinitely such individuals as unlawful enemy combatants.⁵⁰ In brief, the Court considered narrow issues dealing with status and review processes applicable to detainees in GITMO. In 2006, the Supreme Court held in *Hamdan v. Rumsfeld* that although the detainees were not entitled to prisoner of war (POW) status, Common Article Three of the Geneva Conventions must be applied to the detainees at GITMO and any interrogations henceforth conducted must be set under that gauge.⁵¹ *Hamdan* also held that the President did not have the authority to institute military commissions, i.e., Congress should do so⁵² (Congress responded that same year and authorized military commissions).⁵³

Under the Bush Administration, three al-Qa'eda detainees at GITMO were tried and sentenced by military commissions.⁵⁴ In

⁴⁹ U.S. DEP'T OF DEF., DIRECTIVE NO. 2311.01E: DoD LAW OF WAR PROGRAM (2006), available at https://www.aclu.org/files/dronefoia/dod/drone_dod_231101e.pdf.

⁵⁰ See *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (approving the detention of enemy combatants).

⁵¹ See *id.* at 557, 631–32. Geneva Convention III, *supra* note 36, at art. 17. Article 17 provides the following: “No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be *threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.*” *Id.* (emphasis added).

⁵² *Hamdan v. Rumsfeld*, 548 U.S. 557, 591–92 (2006) (citing *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866)).

⁵³ Military Commissions Act of 2006, Pub. L. No. 109-136, 120 Stat. 2600, amended by Military Commissions Act of 2009, Pub. L. No. 111-84, 123 Stat. 2190.

⁵⁴ David Hicks made a plea bargain prior to trial on March 26, 2007. See Josh White, *Australian's Plea Deal Was Negotiated Without Prosecutors*, WASH. POST (Apr. 1, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/31/AR2007033100976.html>. Salim Hamdan was found guilty of terrorism charges and then sentenced by a U.S. military jury to five and a half years on Aug 7, 2008. See Jerry Markon, *Hamdan Guilty of Terror Support*, WASH. POST (Aug. 7, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/06/AR>

2008, a bitterly divided (five to four) Court held in *Boumediene v. Bush* that aliens designated as enemy combatants and detained at GITMO had the constitutional privilege of habeas corpus review by a civilian federal judge regarding their designation as unlawful enemy combatants.⁵⁵

As to jihadists found acting within the borders of the United States, the Bush Administration elected to continue to use traditional law enforcement tools for investigating and prosecuting domestic terrorists in accordance with existing federal law.⁵⁶ This formula was employed without regard to the citizenship status of the terrorist. Thus, the Bush Administration utilized federal criminal courts to prosecute two members of al-Qa'eda, including Zacarias Moussaoui, the so-called twentieth terrorist in the 9/11 attacks,⁵⁷ and jihadi shoe bomber Richard Reid.⁵⁸ A consideration in the decision to use federal courts likely rested on the fact that

2008080601092.html. Ali Hamza Ahmad Suliman al Bahlul was convicted of terrorism war crimes by a military commission and sentenced to life in prison on November 3, 2008. *See The Guantanamo Docket: Ali Hamza Ahmad Suliman al Bahlul*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/guantanamo/detainees/39-ali-hamza-ahmad-suliman-al-bahlul> (last visited Apr. 29, 2018).

⁵⁵ *See Boumediene v. Bush*, 553 U.S. 723 (2008).

⁵⁶ *See, e.g.,* Jena Baker McNeill & James Jay Carafano, *Terrorist Watch: 23 Plots Foiled Since 9/11*, HERITAGE FOUND. (July 2, 2009), <http://www.heritage.org/Research/HomelandSecurity/bg2294.cfm>; Lisa Daniels, *Prosecuting Terrorism in State Court*, LAWFARE (OCT. 26, 2016, 11:33 AM), <https://www.lawfareblog.com/prosecuting-terrorism-state-court> (indicating that there have been over 400 federal terrorist prosecutions and a handful in state courts).

⁵⁷ Zacarias Moussaoui entered a guilty plea to charges that he conspired to hijack planes and fly them into the World Trade Center and the Pentagon. *See United States v. Moussaoui*, 591 F.3d 263, 266–67 (4th Cir. 2010) (discussing the procedural history); *Moussaoui Pleads Guilty to Terror Charges*, CNN (Apr. 23, 2005, 11:33 AM), <http://www.cnn.com/2005/LAW/04/22/moussaoui/index.html>. At the sentencing stage of the three-year federal trial, a jury sentenced Moussaoui to life in prison without the possibility of parole instead of the death penalty, which the government was seeking. *See Moussaoui*, 591 F.3d at 302–08. *See also Moussaoui formally sentenced, still defiant*, NBC NEWS (May 4, 2006, 12:45 PM), <http://www.nbcnews.com/id/12615601/#.WuZ8b4gvw2x>.

⁵⁸ Richard Reid was convicted of multiple life sentences in a federal district court in December 2003 for attempting to set off a makeshift shoe bomb on American Airlines Flight 63 from Paris to Miami on December 22, 2001. *See Pam Belluck, Threats and Responses: The Bomb Plot; Unrepentant Shoe Bomber is Given a Life Sentence For Trying to Blow Up Jet*, N.Y. TIMES (Jan. 31, 2003), <http://www.nytimes.com/2003/01/31/us/threats-responses-bomb-plot-unrepentant-shoe-bomber-given-life-sentence-for.html?pagewanted=1>.

both were caught on American soil.⁵⁹

III. THE WAR ON TERROR – THE OBAMA ERA

“We are at war. We are at war against al-Qaeda”⁶⁰
Barack H. Obama

President Barack Obama inherited the War on Terror. His immediate desire to dismantle key elements of the Bush wartime legal policies developed to fight the War on Terror never materialized during his two terms in office. In fact, Obama continued to follow the Bush legal and policy roadmap, albeit reluctantly. For example, on January 22, 2009, President Obama issued a package of executive orders that were billed as the beginnings of sweeping changes in Bush policies. In three executive orders President Obama ordered: (1) the closure of GITMO within one year;⁶¹ (2) the suspension of all ongoing military commissions at GITMO;⁶² and (3) the immediate suspension of the CIA’s enhanced interrogation program.⁶³ Apart from the fact that President Bush had already long since dismantled the CIA enhanced interrogation program,⁶⁴ when Obama left office,

⁵⁹ Other considerations likely included the more efficient federal court system, the avoidance of the accused being perceived as a warrior, and the ability to prosecute collateral crimes. See *Trying Terror Suspects in Federal Courts*, HUMAN RTS. FIRST (Feb. 2018), <https://www.humanrightsfirst.org/resource/trying-terrorist-suspects-federal-court>.

⁶⁰ Office of the Press Sec’y, *Remarks by the President on Strengthening Intelligence and Aviation Security*, THE WHITE HOUSE (Jan. 7, 2010), <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-strengthening-intelligence-and-aviation-security>.

⁶¹ Exec. Order No. 13,492, 74 Fed. Reg. 4,897, 4,898 (Jan. 22, 2009). See also Exec. Order No. 13,493, 74 Fed. Reg. 4,901 (Jan. 22, 2009) (establishing a special task force on detainee disposition).

⁶² Exec. Order No. 13,492, 74 Fed. Reg. 4,897, 4,899 (Jan. 22, 2009).

⁶³ Exec. Order No. 13,491, 74 Fed. Reg. 4,893, 4,894 (Jan. 22, 2009).

⁶⁴ *Exe* U.S. DEP’T OF DEF., DIRECTIVE NO. 2310.01E, THE DEPARTMENT OF DEFENSE DETAINEE PROGRAM (2006), available at http://archive.defense.gov/pubs/pdfs/Detainee_Prgm_Dir_2310_9-5-06.pdf (providing new DoD guidelines for military detainee and terror suspect treatment). See also *What Went Wrong: Torture and the Office of the Legal Counsel in the Bush Administration: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. (2009) (testimony of Jeffrey F. Addicott, Professor of Law, Center for Terrorism Law, St. Mary’s University School of Law) (arguing that the waterboarding technique as used by the CIA authorized by the Bush DOJ did not constitute torture under the Torture Convention), available at https://www.judiciary.senate.gov/imo/media/doc/addicott_testimony_05_13_09.pdf; Exec. Order No. 13,440, 72 Fed. Reg. 40,707 (July 20, 2007) (providing interpretation of Common Article 3 provisions to

GITMO was still open⁶⁵ and military commissions were still legally operational (although stalled in function).⁶⁶ Curiously, part of the problem Obama faced in closing GITMO came in 2009 from his own Democrat-controlled Congress.⁶⁷ Not only did Congress refuse to provide the Obama Administration with the \$80 million it requested to close the GITMO military detention facility, but it placed numerous caveats on when, where, and how the President could transfer detainees out of GITMO.⁶⁸

President Obama was also uncomfortable identifying the enemy

interrogations). *See generally* Sheryl Gay Stolberg, *President Moves 14 Held in Secret to Guantanamo*, N.Y. TIMES (Sept. 7, 2006), <https://www.nytimes.com/2006/09/07/us/07detain.html?mtrref=www.google.com> (detailing President Bush's plans for secret detainees).

⁶⁵ When President Obama took office, about 250 detainees were confined at GTMO. *See Brazil May Take Guantanamo Bay Detainees*, FOX NEWS (Mar. 3, 2009), <http://www.foxnews.com/story/0,2933,504117,00.html>. When Obama left office, about forty-five detainees remained at GTMO. *See Guantanamo by the Numbers*, HUMAN RIGHTS FIRST, <https://www.humanrightsfirst.org/sites/default/files/gtmo-by-the-numbers.pdf> (last updated Feb. 14, 2018) (noting statistics on detainees and fiscal impact).

⁶⁶ The only case of an alien GTMO detainee being transferred to a federal district court took place on June 9, 2009, when Obama sent Ahmed Ghailani to a New York District Court for trial. *See* Peter Finn, *Guantanamo Bay Detainee Brought to U.S. for Trial*, WASH. POST (June 10, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/06/09/AR2009060900401.html>. This was the only case of a non-American detainee from Guantanamo Bay transferred to the U.S. to stand trial in a civilian court. *Id.* Ghailani pleaded not guilty to multiple charges in connection with the 1998 embassy bombings in Tanzania and Kenya. *United States v. Ghailani*, No. S10 98 Crim. 1023(LAK), 2010 WL 4006381, at *1 (S.D.N.Y. Oct. 6, 2009). *See also* *United States v. Ghailani*, No. S10 98 Crim. 1023(LAK), 2009 WL 3853799, at *1 (S.D.N.Y. Nov. 18, 2009) (discussing the procedural history); Finn, *supra*. In November 2009, the Obama Administration unsuccessfully attempted to transfer 9/11 mastermind Khalid Sheikh Mohammed and four other senior al-Qaeda leaders from GTMO to stand trial in federal court in New York City. *See Morning Meeting with Dylan Ratigan* (MSNBC television broadcast Nov. 13, 2009), <http://www.stmarytx.edu/ctl/> (a national television interview with Professor Jeffrey Addicott discussing his opposition to the proposed transfer).

⁶⁷ Shailagh Murray, *Senate Democrats Reject Obama's Request for Funds to Close Guantanamo Bay Prison*, WASH. POST (May 20, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/19/AR2009051903615.html>. *See also* Dafna Linzer & Peter Finn, *White House Considers Executive Order on Indefinite Detention of Terror Suspects*, WASH. POST (June 27, 2009), http://www.washingtonpost.com/wp-dyn/content/article/2009/06/26/AR2009062603361_2.html (explaining that the appropriations bill signed by President Obama "forces the administration to report to Congress before moving any detainee out of Guantanamo and prevents the White House from using available funds to move detainees onto U.S. soil.").

⁶⁸ *Id.*

in the War on Terror as having any connection whatsoever to the religion of Islam, real or imagined. This concern was best stated by senior counter-terrorism adviser, John Brennan, in 2010:

The President's strategy is absolutely clear about the threat we face. . . . Nor do we describe our enemy as "jihadists" or "Islamists" because jihad is a holy struggle, a legitimate tenet of Islam, meaning to purify oneself or one's community, and there is nothing holy or legitimate or Islamic about murdering innocent men, women and children. . . . Moreover, describing our enemy in religious terms would lend credence to the lie—propagated by al Qaeda and its affiliates to justify terrorism—that the United States is somehow at war against Islam.⁶⁹

Obama also sought to rebrand the Bush nomenclature "War on Terror"⁷⁰ with his new phrase "overseas contingency operations,"⁷¹ which was borrowed from a term coined by the military in the later part of the twentieth century to describe overseas "military operations other than war."⁷² Ironically, the very rule of law tools

⁶⁹ See Office of the Press Sec'y, *Remarks by Assistant to the President for Homeland Security and Counterterrorism John Brennan at CSIS*, THE WHITE HOUSE (2010), available at <https://obamawhitehouse.archives.gov/realitycheck/the-press-office/remarks-assistant-president-homeland-security-and-counterterrorism-john-brennan-csi>.

⁷⁰ See Edward Luce & Daniel Dombey, *Obama Junks 'Global War on Terror' Label*, FIN. TIMES (June 30, 2009), <https://www.ft.com/content/d4bd1bb6-64f7-11de-a13f-00144feabdc0> (quoting Secretary of Homeland Security Janet Napolitano, who confirmed that "War on Terror" is not used because it "does not describe properly the nature of the terrorist threat to the US.").

⁷¹ This phrase was first used in a memo to Pentagon staff members in late March 2009, which stated, "this administration prefers to avoid using the term 'Long War' or 'Global War on Terror' [GWOT.] Please use 'Overseas Contingency Operation.'" Scott Wilson & Al Kamen, *'Global War on Terror' is Given New Name*, WASH. POST (Mar. 25, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/24/AR2009032402818.html>. For roughly a month prior to the memo, senior administration officials had been publicly using the latter phrase, including Peter Orszag, Director of the Office of Management and Budget, in reference to Obama's budget proposal ("The budget shows the combined cost of operations in Iraq, Afghanistan and any other overseas contingency operations that may be necessary."), and Assistant Secretary of the Air Force for Manpower, Craig W. Duehring ("Key battlefield monetary incentives has allowed the Air Force to meet the demands of overseas contingency operations even as requirements continue to grow."). *Id.*

⁷² U.S. JOINT CHIEFS OF STAFF, JOINT DOCTRINE FOR MILITARY OPERATIONS OTHER THAN WAR I-1 (1995), <http://www.bits.de/NRANEU/others/jjp-doctrine/>

that the Obama Administration used to justify its offensive use of deadly force by the military against unlawful enemy combatants in combat (to include “drone” air strikes), and the detention of said combatants without criminal charges, could only be conducted in a time of war, not in an overseas contingency operation.⁷³

By January 2010, President Obama abandoned his rebranding effort, and when commenting on the arrest of al-Qaeda member Umar Farouk Abdulmutallab for trying to detonate an explosive device on a U.S. aircraft over Detroit, Michigan on Christmas Day 2009,⁷⁴ Obama finally announced that the U.S. was at “[W]ar against al-Qaeda.”⁷⁵

Like President Bush, President Obama continued to use the federal court system to prosecute domestic jihadists, although in several notable cases he initially refused to acknowledge that the terror attacks were motivated by radical Islamic ideology. For instance, the first major attack on the homeland since 9/11 by a radical Islamic terrorist occurred on November 2009, at Fort Hood, Texas, when Army officer Nidal Malik Hasan shot dead thirteen of his fellow soldiers at a deployment briefing.⁷⁶ For years, President Obama refused to publicly acknowledge that the murders were associated with radical Islam. Again, throughout his presidency, Obama was extremely reluctant to use the term “radical Islam” to

jp3_07.pdf. Military operations other than war (MOOTW) is the use of military capabilities for operations that fall short of actual war. These operations “focus on deterring war, resolving conflict, promoting peace, and supporting civil authorities in response to domestic crisis.” *Id.* There are six basic principles to MOOTW: objective, unity of effort, security, restraint, perseverance, and legitimacy. *Id.* at vii.

⁷³ See *Al Maqaleh v. Gates*, 604 F. Supp. 2d 205 (D.D.C. 2009). The Obama Administration argued that the conflict was in fact a war and that the Executive branch was entitled to detain indefinitely al-Qaeda, Taliban, and associated enemy forces in Bagram Air Force Base, Afghanistan, under the 2001 Congressional Authorization for Use of Military Force.

⁷⁴ See Mimi Hall, *Obama Orders Security Upgrade*, USA TODAY (Jan. 7, 2010), https://usatoday30.usatoday.com/news/washington/2010-01-07-obama-report_N.htm#.

⁷⁵ *Transcript: Obama Outlines Steps to Prevent Terrorism*, CNN (Jan. 7, 2010), <http://www.cnn.com/2010/POLITICS/01/07/transcript.obama.terror.report/index.html> (“We are at war. We are at war against al Qaeda, a far-reaching network of violence and hatred that attacked us on 9/11, that killed nearly 3,000 innocent people, and that is plotting to strike us again. And we will do whatever it takes to defeat them.”).

⁷⁶ See Nancy Gibbs, *The Fort Hood Killer: Terrified . . . Or Terrorist?*, TIME (Nov. 11, 2009), <http://content.time.com/time/subscriber/article/0,33009,1938698-8,00.html> (describing the events leading up to the Fort Hood shooting).

label jihadi terrorists in the United States.⁷⁷

In terms of the use of the military in Iraq and Afghanistan, the real seat for the ongoing War on Terror, President Obama elected to withdraw all U.S. combat troops from Iraq in 2011,⁷⁸ but to surge American forces in Afghanistan in 2010.⁷⁹ Although in his first State of the Union address given on February 24, 2009, Obama promised to develop a “new and comprehensive strategy for Afghanistan,”⁸⁰ for eight full months of his first year in office Obama struggled to decide a course of action for Afghanistan, eventually deciding to go against his campaign promises to withdraw American troops from the country.⁸¹ To the surprise of many observers, Obama elected to copy the “Bush[] surge” in American combat forces that had successfully worked to stabilize Iraq in 2007. The 100,000 troop Obama-surge in Afghanistan, however, failed miserably. Afghanistan was not stabilized. In fact, not only did Obama announce dates for withdrawal coterminous with his surge,⁸² but when the drawdown concluded, over 500 Americans were dead or wounded and the Taliban was stronger after the surge ended.⁸³

Obama also employed a large number of drone strikes on

⁷⁷ Daniella Diaz, *Obama: Why I Won't Say 'Islamic Terrorism'*, CNN (Sept. 29, 2016, 4:49 PM), <http://www.cnn.com/2016/09/28/politics/obama-radical-islamic-terrorism-cnn-town-hall/index.html>.

⁷⁸ Joshua Gillin, *Obama refused to sign plan in place to leave 10,000 troops in Iraq, Bush says*, POLITIFACT (May 18, 2015, 11:47 AM), <http://www.politifact.com/truth-o-meter/statements/2015/may/18/jeb-bush/obama-refused-sign-plan-place-leave-10000-troops-i/>; *Obama: All US troops out of Iraq by end of year*, NBC (Oct. 21, 2011, 6:58 PM), http://www.nbcnews.com/id/44990594/ns/world_news-mideast_n_africa/t/obama-all-us-troops-out-iraq-end-year/#.WjftmCOZMWo.

⁷⁹ Joe Klein, *The Mystery of the Surge*, TIME, Nov. 23, 2009, at 25.

⁸⁰ See Office of the Press Sec'y, *Remarks of President Barack Obama -- Address to Joint Session of Congress*, THE WHITE HOUSE (Feb. 24, 2009), http://www.whitehouse.gov/the_press_office/remarks-of-president-barack-obama-address-to-joint-session-of-congress.

⁸¹ See *id.* (showing Obama's overall plans to increase the troop levels in Afghanistan).

⁸² See, e.g., Stephen Dinan, *GOP: Obama's Afghan policies confusing*, WASH. TIMES (Jan. 12, 2010), <http://www.washingtontimes.com/news/2010/jan/12/gop-sees-confusion-obamas-afghan-policies/> (indicating Obama's policies are confusing to deployed troops); John Dickerson, *The Fog of War*, SLATE (Dec. 1, 2009, 11:35 AM), <http://www.slate.com/id/2237100/> (noting that Obama's speech detailing deployment of more troops while setting a deadline for withdrawal of troops was confusing).

⁸³ Eric Beech, *Taliban stronger than before U.S. troop surge: lawmakers*, REUTERS (May 6, 2012, 12:07 PM), <https://www.reuters.com/article/us-usa-afghanistan-taliban/taliban-stronger-than-before-u-s-troop-surge-lawmakers-idUSBRE84509G20120506>.

individuals deemed to be terrorists, the target list being closely monitored from the oval office. In contrast to President Bush who only ordered 50 drone strikes, by the end of his final year in office Obama had ordered 542 military drone strikes in such places as Pakistan, Yemen, Sudan, Afghanistan, Somalia, and the Philippines, which killed an estimated 3,797 people.⁸⁴

Domestically, President Obama continued to use the federal courts to prosecute domestic terrorists, but he also created the Countering Violent Extremism (CVE) program, which attempted to provide resources to local communities to build prevention efforts to address the root causes of extremism of all sorts, to include radical Islam.⁸⁵

Perhaps the greatest error in Obama's waging the War on Terror was his precipitous order for the complete withdrawal of all American combat forces from Iraq in 2011. The power vacuum left in Iraq was quickly filled by ISIS and the War on Terror expanded exponentially.

IV. THE WAR ON TERROR – THE TRUMP ERA

“But all my life, I've heard that decisions are much different when you sit behind the desk in the Oval Office.”⁸⁶

Donald J. Trump

President Trump swept into the oval office promising prosperity and security.⁸⁷ In tandem with the prosperity promise, which was evident by the 2017 spike in America's stock market and the impressive domestic economic growth rate,⁸⁸ the security

⁸⁴ See Micah Zenko, *Obama's Final Drone Strike Data*, COUNCIL ON FOREIGN REL. (Jan. 20, 2017), <https://www.cfr.org/blog/obamas-final-drone-strike-data> (“The 542 drone strikes that Obama authorized killed an estimated 3,797 people, including 324 civilians.”).

⁸⁵ *Countering Violent Extremism Task Force*, DEPT. OF HOMELAND SECURITY, <https://www.dhs.gov/cve> (last visited Feb. 7, 2018).

⁸⁶ Philip Elliott, *Trump Tries Presidential, Before Reverting to Old Habits*, TIME (Aug. 24, 2017), <http://time.com/4913683/trump-tries-presidential-reverts-old-habits/> (discussing President Trump's announcement of troop increases in Afghanistan).

⁸⁷ See Peter Morici, *Clearing Out Dysfunctional Institutions*, WASH. TIMES (Jan. 8, 2017), <https://www.washingtontimes.com/news/2017/jan/8/donald-trump-will-clear-out-dysfunctional-institut/> (describing Trump's proposed remedies for accomplishing prosperity and security).

⁸⁸ See e.g., Michael Wursthorn et al., *Dow Hurtles Past 25000 to Record*, WALL

promise was also bolstered in his first year. When measured against the geographic collapse of ISIS, the buildup of the American military, the sharp decrease in radical Islamic domestic terror attacks, and the new travel-ban targeting certain countries from which potential jihadists may emanate, it is evident that President Trump's first year witnessed positive achievements.⁸⁹ As stated in the introduction, however, any discussion of President Trump's successes in the War on Terror must appreciate the built-in dual obstacles of Trump's temperament that sometimes expresses itself in hyperbolic language and the anti-Trump rancor and animus of his opponents who call him the "Disruptor-in-[C]hief."⁹⁰

Having already established the Bush polices (which Obama also adopted) for fighting the War on Terror, it is evident that President Trump has yet to alter the current state of affairs in terms of detention of unlawful enemy combatants at GITMO, the use of military commissions,⁹¹ or the use of military force overseas against unlawful enemy combatants. Still, there are seven areas of interest that require attention in the first year of President Trump's tenure.

a. The Trump Travel Ban

One week after taking the oath of office, President Trump issued a temporary travel-ban for individuals seeking entrance into the United States from seven Muslim majority countries: Iran, Libya,

STREET J., Jan. 5, 2018, at A1 (describing the positive economic growth in the United States that has occurred under President Trump's tenure); Ben Leubsdorf, *In Survey, President Seen as Tailwind*, WALL STREET J., Jan. 12, 2018, at A2 (describing a survey of economists who credit President Trump's policies with growth spurt in U.S. economy).

⁸⁹ It is beyond the scope of this paper to discuss the continuing threat posed by North Korea. See, e.g., Charlie Campbell, *A War of Fiery Words, for Now, Between North Korea and the U.S.*, TIME (Aug. 21, 2017), <http://time.com/4894984/war-fiery-words-between-north-korea-us/>.

⁹⁰ Gerald F. Seib, *On International Stage, the Disruptor-in-Chief*, WALL STREET J., June 6, 2017, at A4 (discussing how Trump actually has expressed a desire to work with all civilized nations on the basis of shared interests).

⁹¹ Al Bahlul and Al-Nashiri—two detainees at Guantanamo Bay—petitioned the United States Supreme Court in early 2017 “for certiorari challenging the current military commission system under the Military Commissions Act.” JENNIFER K. ELSEA, CONG. RESEARCH SERV., LSB10043, SUPREME COURT DECLINES TO TAKE UP MILITARY COMMISSION CHALLENGES – AL BAHLUL AND AL-NASHIRI 1 (2017). Both petitions were denied in October 2017. *Id.* Military Commissions therefore remain in use for now.

Somalia, Syria, Sudan, Yemen, and Iraq.⁹² The justification was based on national security concerns associated with potential terrorists entering the United States.⁹³ The ban was immediately challenged in several federal courts, prompting the Trump Administration to issue a revised travel ban that dropped Iraq from the list and added North Korea and Venezuela.⁹⁴ In early December 2017, the Supreme Court in a seven-two opinion allowed the revised travel ban to take effect pending a full review in the summer of 2018.⁹⁵ Whether the travel-ban actually prevented a potential jihadist from entering the United States, it certainly communicated that the Trump Administration was going to tackle the War on Terror from a physiological as well as a kinetic perspective.

b. The Trump Build Up of the Armed Forces of the United States

An integral part of candidate Trump's run for office was his often-signaled desire to build up the nation's military force structure, to include increasing and modernizing America's nuclear posture.⁹⁶ Trump also made it clear that he would continue to provide American arms and equipment to America's allies around the world. In this regard, President Trump publicly

⁹² Exec. Order No. 13,769, 82 Fed. Reg. 8,977 (Jan. 27, 2017) (noting that 8 U.S.C. § 1187(a)(12) contains the names of the seven Muslim majority countries). President Trump's executive order affects travelers who have a nationality in those seven countries, but those who have dual nationality with a non-restricted country are not affected, so long as they travel on the passport from the other country. *Trump's executive order: Who does the travel ban affect?*, BBC NEWS (Feb. 10, 2017), <http://www.bbc.com/news/world-us-canada-38781302>.

⁹³ *Trump's executive order*, *supra* note 92.

⁹⁴ Michael D. Shear, *New Order Indefinitely Bars Almost All Travel from Seven Countries*, N.Y. TIMES (Sept. 24, 2017), <https://www.nytimes.com/2017/09/24/us/politics/new-order-bars-almost-all-travel-from-seven-countries.html>.

⁹⁵ See Alex Swoyer, *Travel ban case likely to end up before Supreme Court in 2018*, WASH. POST (Dec 31, 2017), <https://www.washingtontimes.com/news/2017/dec/31/travel-ban-case-likely-to-end-up-before-supreme-co/>.

⁹⁶ See, e.g., Steve Holland, *Trump wants to make sure U.S. nuclear arsenal at "top of the pack"*, REUTERS (Feb. 23, 2017, 2:28 PM), <https://www.reuters.com/article/us-usa-trump-exclusive/trump-wants-to-make-sure-u-s-nuclear-arsenal-at-top-of-the-pack-idUSKBN1622IF> (discussing the decline in America's nuclear capabilities relative to Russia). See also Matthew Kroenig, *Trump Said the U.S. Should Expand Nuclear Weapons. He's Right*, POLITICO (Dec. 23, 2016), <https://www.politico.com/magazine/story/2016/12/trump-said-the-us-should-expand-nuclear-weapons-hes-right-214546> (discussing Trump's remarks to engage in a nuclear arms war with Russia).

promoted his skills as a successful businessman who could rapidly cut large arms deals to benefit both the United States and certain allies.⁹⁷ Sometimes such assertions were spot on correct and the Trump Administration acted decisively to streamline arms sales and grant associated waivers for certain Middle Eastern nations that were deemed necessary to advance American interests,⁹⁸ but sometimes there was exaggeration in Trump taking credit for things that were already occurring consummate with the very complicated approval process set in place by Congress to oversee the sale of military equipment to foreign nations.⁹⁹ For example, while on his trip to the Kingdom of Saudi Arabia in May 2017,¹⁰⁰

⁹⁷ Jeff Daniels, *Defense manufacturers cashing in on Trump's global arms push*, CNBC (Jan. 24, 2018, 7:57 PM), <https://www.cnbc.com/2018/01/24/trump-as-us-arms-pitchman-.html>.

⁹⁸ See Julia Manchester, *US approves \$3.8B in arms sales to Bahrain*, THE HILL (Sept. 8, 2017, 8:19 PM), <http://thehill.com/policy/defense/349903-defense-us-approves-38b-in-arms-sales-to-bahrain>. The Trump Administration approved a \$3.8 billion arms deal for Bahrain on September 8, 2017. The deal included \$1.8 billion in upgrades to Bahrain's F-16 fleet and fighter jets worth \$2.7 billion. *Id.* While the Senate Foreign Relations and House Foreign Affairs Committees approved the deal, some members of Congress are cautious of military sales to Persian Gulf States, citing the Qatar crisis that occurred in the summer of 2017. See Olivia Beavers, *Dem senator: Trump's arms deal with Saudis a 'terrible idea'*, THE HILL (Jun. 20, 2017, 1:51 PM), <http://thehill.com/homenews/senate/334390-dem-senator-calls-trumps-arms-deal-with-saudis-a-terrible-idea>. Senator Chris Murphy of Connecticut criticized the Trump arms sale with Saudi Arabia worth \$110 billion. *Id.* Murphy lamented that Saudi Arabia was not the country to bring stability to the Middle East, citing the poor human rights record and his belief that the new weapons would escalate a proxy war in the region, which in turn could cause Iran to strengthen its nuclear program. *Id.* See also Amnesty slams US & UK for 'emboldening' Bahrain amid 'disastrous decline in human rights', RT WORLD NEWS (Sept. 8, 2017, 12:54 PM), <https://www.rt.com/news/402466-amnesty-bahrain-human-rights/>. The Trump Administration notified Congress of its intent to waive certain human rights conditions placed on \$4.8 billion weapons sale agreement with Bahrain that had previously been negotiated under the Obama Administration. *Id.* The sale included "19 Lockheed Martin F-16 military aircraft, along with 23 engines, as well as radars and other avionics, air-to-air and air-to-ground ordnance, and related equipment." *Id.* The Obama Administration had placed a hold on the sale citing human rights abuses by the Bahrain government, which was accused of "torturing, beating, and sexually assaulting at least 169 people." *Id.* The Bahrain government denied all allegations and President Trump lifted the conditions on the sale, telling Bahrain's King Hamad "there won't be strain with this administration." *Id.*

⁹⁹ See *Arms Sales: Congressional Review Process*, DEF. SECURITY COOPERATION AGENCY, <http://www.dsca.mil/print/399> (last visited Feb. 7, 2018) (discussing the Arms Export Control Act's requirement that Congress be notified 30 days prior to finalizing a military sale to a foreign government that has been proposed by the president).

¹⁰⁰ See Ali Vitali & Saphora Smith, *Donald Trump Lands in Saudi Arabia on First Overseas Visit of Presidency*, NBC NEWS (May 20, 2017), <https://www>.

President Trump stated that his State Department had expedited and authorized the transfer purchase of American F/A-18 Super Hornet fighting jets to Kuwait, a deal totaling five billion dollars as part of a ten billion dollar agreement.¹⁰¹ It was unclear, however, exactly how much involvement the Trump Administration had in fast tracking this particular sale into its final stages. In fact, the groundwork in the approval process had been completed more than two months before President Trump took office.¹⁰²

If President Trump can be faulted for claiming extra credit for arms deals, he cannot be faulted for strenuously advancing the common-sense premise that a strong military deters the aggressive actions of real and potential enemies. This fundamentally correct view of how to deal with the reality of dangerous State actors caused the Republican Congress to easily pass a huge funding increase for both modernization and force increases in the 2018 Defense Authorization Act, which was signed into law on December 12, 2017.¹⁰³ The Act not only authorized \$700 billion for the Department of Defense, but it mandated a 20,000-troop increase (divided among the branches).¹⁰⁴ “History teaches us that when you weaken your defenses, you invite aggression,” Trump asserted before signing the bill.¹⁰⁵ “The best way to prevent conflict

nbcnews.com/storyline/trump-s-first-foreign-trip/donald-trump-lands-saudi-arabia-first-overseas-visit-presidency-n762126 (detailing President Trump’s visit to Saudi Arabia).

¹⁰¹ David Brown, *Trump took credit for fast-tracking a super hornet deal with Kuwait. But it was all approved last year*, WASH. EXAMINER (Sept. 10, 2017, 12:01 AM), <http://www.washingtonexaminer.com/trump-took-credit-for-fast-tracking-a-super-hornet-deal-with-kuwait-but-it-was-all-approved-last-year/article/2633888#!>.

¹⁰² *See id.* (“The problem is, the Defense Security Cooperation Agency, a Pentagon agency that blesses the potential sale of military equipment to foreign countries, announced the approval on Nov. 17. That’s nine days after Trump was elected and more than two months before he would take the oath [sic] office.”).

¹⁰³ *See H.R. 2810: National Defense Authorization Act for Fiscal Year 2018, About the bill*, GOVTRACK, <https://www.govtrack.us/congress/bills/115/hr2810> (last visited Mar. 9, 2018); *H.R. 2810: National Defense Authorization Act for Fiscal Year 2018, Summary*, GOVTRACK (last updated Jul. 17, 2017), <https://www.govtrack.us/congress/bills/115/hr2810>.

¹⁰⁴ *See Summary, supra* note 103; Amy Bushatz, *Trump Signs 2018 Defense Bill: Here’s What It Means for You*, MILITARY.COM (Dec. 12, 2017), <https://www.military.com/daily-news/2017/12/12/trump-signs-defense-bill-heres-what-it-means-you.html>.

¹⁰⁵ *See* President Donald J. Trump, Remarks on Signing the National Defense Authorization Act for Fiscal Year 2018 (Dec. 12, 2017) (transcript available at

or be—of any kind—is to be prepared and really be prepared. Only when the good are strong will peace prevail.”¹⁰⁶ This fundamentally obvious thinking was encapsulated as a vital principle of Trump’s National Security Strategy.

The size of our [military] force matters. To deter conflict and, if deterrence fails, to win in war, the Nation must be able to field forces capable of operating in sufficient scale and for ample duration to defeat enemies, consolidate military gains, and achieve sustainable outcomes that protect the American people and our vital interests. The United States must reverse recent decisions to reduce the size of the Joint Force and grow the force while modernizing and ensuring readiness.¹⁰⁷

c. A New Use of Force Authorization

The War on Terror is the longest “war” in American history (not counting the armed conflicts with various American Indian tribes as America expanded westward).¹⁰⁸ One of the primary legal underpinnings for this long war is Congress’ September 2001 Use of Force Authorization (AUMF).¹⁰⁹ With the rise of ISIS, some wondered if a new AUMF might be needed to replace the 2001 version. Late in his second term in office, President Obama believed that such was necessary. In a December 6, 2015, address to the nation regarding the terror attack by two radical Islamic extremists at a Christmas party in San Bernardino, California, President Obama asked Congress for a new AUMF which would specifically name ISIS and set out parameters for conducting armed attacks. Obama said:

<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-2810-national-defense-authorization-act-fy2018/>).

¹⁰⁶ *Id.*

¹⁰⁷ NAT’L SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 29 (2017), available at <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>.

¹⁰⁸ See Kurtis Lee, *Memorial Day: The number of americans who have died in battle since the Revolutionary War*, L.A. TIMES (May 29, 2017, 3:00 AM), <http://www.latimes.com/nation/la-na-memorial-day-20170529-htlmlstory.html>.

¹⁰⁹ See Authorization for Use of Military Force Against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat. 1498, 1498–99 (2002) (codified at 50 U.S.C. § 1541).

[I]f Congress believes, as I do, that we are at war with ISIL [sic], it should go ahead and vote to authorize the continued use of military force against these terrorists. For over a year, I have ordered our military to take thousands of airstrikes against ISIL targets. I think it's time for Congress to vote to demonstrate that the American people are united and committed to this fight.¹¹⁰

While President Trump also considered the utility of a new AUMF in the War on Terror that was specifically designed for ISIS and even assorted conditions in Syria, the matter quickly faded. President Trump was clearly more focused on accomplishing the actual destruction of ISIS as a geographic entity than dealing with the sure to follow political food-fights in the Congress over the exact wording that a new AUMF should take. Indeed, with the destruction of ISIS in Syria and Iraq accomplished during the first year of the Trump Administration, the matter is now moot.

d. ISIS

Ad-Dawlah al-Islāmiyah fīl-'Irāq al-Shām is known in the English-speaking world as Islamic State of Iraq and al-Sham (ISIS), although the group prefers the Arabic word *al-Shām* which means Islamic State (IS).¹¹¹ Until recently, the Sunni-based terror group was the primary spearhead across the globe for radical Islam. “Following *takfiri* doctrine [proclaiming people to be apostates because of their sins] the Islamic State is committed to purifying the world by killing vast numbers of people.”¹¹²

Capitalizing on the Syrian civil war and a fractured Iraqi society, ISIS sought to create a utopian State which would eventually conquer the world. In pursuit of this self-styled Muslim Caliphate, they proudly and openly committed acts of violence and horror while unabashedly proclaiming that such was commanded and condoned by their interpretation of the Muslim religion.¹¹³

¹¹⁰ President Barack Obama, Address to the Nation on United States Counterterrorism Strategy (Dec. 6, 2015).

¹¹¹ See Ray Sanchez, *ISIL, ISIS, or the Islamic State?*, CNN (Oct. 25, 2017, 1:30 PM), <https://www.cnn.com/2014/09/09/world/meast/isis-isil-islamic-state/index.html>.

¹¹² See Wood, *supra* note 17.

¹¹³ See *What is 'Islamic State'?*, BBC NEWS (Dec. 2, 2015), <http://www>

While it has always been obvious that the vast majority of modern Muslims around the world strongly reject this reading of the Muslim religion, for ISIS and the many followers of radical Islam, the means will always justify the ends, resulting in the deaths of far more Muslims than Christians or Jews.¹¹⁴

One of President Trump's clearest strategy policy positions in the War on Terror was that ISIS had to be eradicated from their expansive geographic holdings in Syria and Iraq.¹¹⁵ In January 2017, he expressed his firm vision that the Pentagon must hit ISIS strongholds far harder than ever before.¹¹⁶ Again, Trump inherited the ISIS problem due in large part to Obama's decision to precipitously withdraw all U.S. forces from Iraq in 2011, although the civil war in Syria was also a major contributing element to the meteoric rise of the group.¹¹⁷ Although President Obama ignored the conventional wisdom that a complete U.S. military departure in Iraq would fragment the country along sectarian lines and cause it to spiral down into chaos, Obama correctly understood that most Americans were tired of large combat troop deployments overseas and wanted an end to the War on Terror.¹¹⁸ By ordering the rapid withdrawal from Iraq, Obama gambled that things might be stable enough to leave the nascent country to its own devices. Then, if Afghanistan could be stabilized, President Obama might have

.bbc.com/news/world-middle-east-29052144.

¹¹⁴ See Dean Obeidallah, *No One Wants to See ISIS Defeated More Than Muslims*, HUFFINGTON POST (updated Dec. 06, 2017), https://www.huffingtonpost.com/dean-obeidallah/isis-defeat-muslims_b_10825028.html; Michael Lipka, *Muslims and Islam: Key findings in the U.S. and around the world*, PEW RES. CTR. (Aug. 9, 2017), <http://www.pewresearch.org/fact-tank/2017/08/09/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world/>.

¹¹⁵ Part of the concern rested in the fear that ISIS would launch a 9/11 type attack on the United States. See Maggie Ybarra, *Islamic State could soon execute 9/11-scale attack in U.S.; FBI warns local cops*, WASH. TIMES (May 7, 2015), <https://www.washingtontimes.com/news/2015/may/7/islamic-state-could-soon-execute-911-scale-attack-/>.

¹¹⁶ See *Trump to order Pentagon to hit ISIS harder, report*, FOX NEWS (Jan. 27, 2017), <http://www.foxnews.com/politics/2017/01/27/trump-to-order-pentagon-to-hit-isis-harder-report-says.html> (interview, Sean Hannity).

¹¹⁷ See Tamara Cofman Wittes, *The regional impact of U.S. policy toward Iraq and Syria*, BROOKINGS (Apr. 30, 2015), <https://www.brookings.edu/testimonies/the-regional-impact-of-u-s-policy-toward-iraq-and-syria/> (prepared testimony before the House Foreign Affairs Subcommittee on the Middle East and North Africa); *Solutions 2018: Middle East*, HERITAGE FOUND., <https://solutions.heritage.org/restoring-american-leadership/middle-east/> (last visited Mar. 10, 2018).

¹¹⁸ See *Solutions 2018: Middle East*, *supra* note 117; *War on terror fatigue: US and Australian attitudes 10 years after 9/11*, U. OF SYDNEY (Jun. 3, 2011), <http://sydney.edu.au/news/84.html?newsstoryid=7048>.

been able to declare an end to the War on Terror. Accordingly, when faced with the rise of ISIS in Syria and Iraq, President Obama initially resisted addressing or even recognizing ISIS as a threat—at one time mocking them as the “J.V. team.”¹¹⁹ But when Mosul, the second largest city in Iraq, was taken by ISIS in June 2014, Obama could no longer deny the hard cold facts about this new and deadly threat being a new component to the War on Terror.¹²⁰

For ISIS, the capture of Mosul was the crown jewel achievement that set the stage for its leader Abu Bakr al-Baghdadi to publicly declare the establishment of the ISIS caliphate. On July 5, 2014, dressed in black robes and a turban, al-Baghdadi stepped onto the raised pulpit at the Grand Mosque of al-Nuri, in Mosul and delivered a Ramadan sermon officially declaring himself to be Amir al-Mu'minin Caliph Ibrahim of the Islamic State, the Caliph of the Caliphate of the new Islamic State.¹²¹ At ISIS' peak of geographic power, which was reached in late 2015, the self-proclaimed Caliphate controlled an amazing 27,000 square miles of territory in Syria and Iraq.¹²² Again, only in his final year in office did Obama finally come to the full realization that if the War on Terror was to ever cease, the huge ISIS Caliphate in Iraq and Syria had to be destroyed, and that America had to do more to make that happen.

Still, it was under the firm leadership of President Trump, not President Obama, that the major military victories against ISIS occurred to include the retaking of the stronghold of Mosul¹²³ and

¹¹⁹ Shreeya Sinha, *Obama's Evolution on ISIS*, N.Y. TIMES (June 9, 2015), <https://www.nytimes.com/interactive/2015/06/09/world/middleeast/obama-isis-strategy.html>.

¹²⁰ Martin Chulov, *Isis insurgents seize control of Iraqi city of Mosul*, THE GUARDIAN (June 10, 2014), <https://www.theguardian.com/world/2014/jun/10/iraq-sunni-insurgents-islamic-militants-seize-control-mosul>.

¹²¹ Wood, *supra* note 17.

¹²² Karen DeYoung, *Under Trump, gains against ISIS have 'dramatically accelerated'*, WASH. POST (Aug. 4, 2017), https://www.washingtonpost.com/world/national-security/under-trump-gains-against-isis-have-dramatically-accelerated/2017/08/04/8ad29d40-7958-11e7-8f39-eeb7d3a2d304_story.html?utm_term=.4e4377df22ef.

¹²³ Ian Bremmer, *Iraq Controls Mosul Once Again. But Who Control's Iraq?*, TIME (July 24, 2017), <http://time.com/4856211/iraq-controls-mosul/> (discussing how Shi'ite militias who shouldered much of the fighting are seeking greater control in Iraq).

the ISIS capital of Raqqa.¹²⁴ In fact, the main battle for western Mosul took place at the same time that President Trump took office (the initial move in the Mosul campaign began in October 2016).¹²⁵ The so-called coalition consisted primarily of a combined force of 100,000 Iraqi troops and Shi'ite militia against several thousand heavily entrenched ISIS fighters. While the U.S. provided some 5,000 troops to the coalition, it was the crucial air support (along with air power from France, Britain, and Australia) that turned the tide and provided the victories on the ground.¹²⁶ The Trump promise to “bomb the sh*t” out of ISIS,¹²⁷ was powerfully fulfilled when Mosul in Iraq was wrested from ISIS in July 2017,¹²⁸ and Raqqa in Syria was taken in October 2017.¹²⁹ Indeed, by the end of 2017, ISIS was no longer in control of any significant territory in either Syria or Iraq.¹³⁰ Untold tens of thousands of ISIS fighters were killed in lawful combat operations, the remnants, perhaps 3,000,¹³¹ escaped into the desert.

While President Obama might correctly assert that it was his administration that began the fight against ISIS, the rather dramatic and quick victory on the ground over ISIS in 2017 came about in large part due to President Trump's new and dynamic leadership methodologies for defeating ISIS. This included the April 2017, Trump grant of “total authorization” for combat decisions to be made by commanders on the ground; the loosening of the supercilious rules of engagement¹³² put in place by previous

¹²⁴ See Jared Malsin, *Raqqa Is in Ruins, and ISIS in Retreat*, TIME (Nov. 6, 2017), <http://time.com/raqqa-ruins-isis-retreat/> (last visited Feb. 15, 2018) (discussing how the self-styled capital of ISIS finally fell to coalition forces).

¹²⁵ Nick Paton Walsh et al., *Battle for Mosul begins with gunfire and car bombs*, CNN (Oct. 17, 2016), <https://www.cnn.com/2016/10/17/middleeast/mosul-isis-operation-begins-iraq/index.html>.

¹²⁶ See Malsin, *supra* note 124.

¹²⁷ *Id.*

¹²⁸ Tim Arango & Michael R. Gordon, *Iraqi Prime Minister Arrives in Mosul to Declare Victory Over ISIS*, N.Y. TIMES (July 9, 2017), <https://www.nytimes.com/2017/07/09/world/middleeast/mosul-isis-liberated.html?mtrre>.

¹²⁹ See Anne Barnard & Hwaida Saad, *Raqqa, ISIS 'Capital,' Is Captured, U.S.-Backed Forces Say*, N.Y. TIMES (Oct. 17, 2017), <https://www.nytimes.com/2017/10/17/world/middleeast/isis-syria-raqqa.html?mtrref> (reporting on the retaking of Raqqa from ISIS).

¹³⁰ See Jim Michaels, *U.S., Iraq weigh military options*, USA TODAY, Dec. 19, 2017, at A1 (discussing stability in the region now that ISIS has been driven out of its geographic holdings).

¹³¹ See Christa Hayes, *ISIS in our backyard: Their faces are many*, USA TODAY, Jan. 5, 2017, at A1 (discussing the number of ISIS inspired attacks and arrests in the U.S. and the geographic defeat of ISIS in the Middle East).

¹³² See Jared Malsin, *A U.S. Commander's Year on the Front Line Against ISIS*

administrations; and the authorization for stepped up bombing missions and drone attacks.¹³³

The Trump leadership strategy in the region also looked past ISIS to encompass the on-going civil war in Syria. Unlike President Obama's failure to stand behind his self-declared "red-line" threat to President Assad in Syria concerning the use of chemical weapons,¹³⁴ there can be no question that President Trump set a crystal-clear signal to the Russians, Syrians, and Iranians that America was not going to stand on the sidelines in the conflict in Syria. This message was received rather loudly and clearly by President Trump's bold April 6, 2017, missile attack on the Syrian military base near Homs following the use of chemical weapons by Assad's regime on Syrian civilians at Khan Sheikhoun.¹³⁵ Of course, as President Trump fights through his second year in office, the issue of what next to do in the areas vacated by ISIS remains on the table. To be sure, although ISIS is now "underground," it is still capable of conducting terror attacks. In testimony before the House Judiciary Committee in December 2017, FBI Director Christopher Wray remarked: "The good news is . . . the Caliphate is crumbling and that's positive for all of us. The bad news is, ISIS is encouraging some of its recruits and potential recruits to stay where they are and commit attacks

in Iraq and Syria, TIME (Sept. 7, 2017), <http://time.com/4931037/lieut-general-stephen-townsend-interview/> (Lt. General Stephen Townsend's comments on Trump giving total authorization over combat decisions). See also Jeffrey F. Addicott, *The Strange Case of Lieutenant Waddell: How Overly Restrictive Rules of Engagement Adversely Impact the American War Fighter and Undermine Military Victory*, 45 ST. MARY'S L. J. 1, 13-18 (2013) (describing the negative impact of overly restrictive ROE).

¹³³ See Joshua Keating, *Trump Puts the CIA Back in the Targeted-Killing Business*, THE SLATEST (Mar. 14, 2017, 12:02 PM), http://www.slate.com/blogs/the_slatest/2017/03/14/trump_puts_the_cia_back_in_the_targeted_killing_business.htm (the day after his inauguration President Trump authorized the CIA to conduct drone strikes in Syria against ISIS and al-Qaida).

¹³⁴ See Glenn Kessler, *President Obama and the 'red line' on Syria's chemical weapons*, WASH. POST (Sept. 6, 2013), https://www.washingtonpost.com/news/fact-checker/wp/2013/09/06/president-obama-and-the-red-line-on-syrias-chemical-weapons/?utm_term=.c30a8ded0765.

¹³⁵ See Rick Gladstone, *Russia Assails Investigators Who Faulted Syria in Sarin Attack*, N.Y. TIMES (Nov. 8, 2017), <https://www.nytimes.com/2017/11/07/world/middleeast/russia-syria-sarin-united-nations.html> (discussing Russian objections to U.N. chemical arms investigators that faulted Syria's military for the gas attacks).

right in the homeland.”¹³⁶

As of this writing, large swaths of western and northern Iraq are in ruins.¹³⁷ In sharp contrast to previous administrations who were fixated on notions of “nation building,” Brett McGurk, the special envoy for the Global Coalition to Counter ISIS, related that the U.S. would help stabilize areas liberated from ISIS but would not run hospitals or schools.¹³⁸ According to McGurk, “It’s not our responsibility.”¹³⁹ Certainly, President Trump has shown no interest in nation-building, but is open to keeping an American ground force in Iraq in order to avoid the 2011 Obama mistake of complete withdrawal.¹⁴⁰ Again, ISIS is still a threat and Iranian militia are certainly very active in Iraq and Syria.¹⁴¹

e. Afghanistan

After President George W. Bush’s successful 2001 military campaign in Afghanistan which destroyed the al-Qa’eda infrastructure and removed the Taliban from power, many urged him to resist the temptation to maintain a long-term American military presence in the country, believing either that it was simply an impossible task to bring “democracy” to the region by nation-building, or that it was not the job of the United States military to do so.¹⁴² When President Obama took office in 2008, there were approximately 30,000 U.S. troops in the country with no end in sight to a cessation of combat activities.¹⁴³ Tragically, Obama’s surge, which increased the total coalition forces on the

¹³⁶ See Hayes: , *supra* note 131 (discussing the number of ISIS inspired attacks and arrests in the U.S. and the geographic defeat of ISIS in the Middle East).

¹³⁷ James Verini, *Surviving the Fall of ISIS*, NAT’L GEOGRAPHIC (Apr. 2017), <https://news.nationalgeographic.com/2016/10/islamic-state-isis-iraq-mosul-syria-offensive/> (discussing the devastation of former ISIS areas).

¹³⁸ Todd Beamon, *State Dept.: Trump Policies Brought ‘Dramatic’ Gains Against ISIS*, NEWSMAX (Aug. 5, 2017, 7:25 PM), <https://www.newsmax.com/Newsfront/isis-trump-state-department-islamic-state/2017/08/05/id/806041/>.

¹³⁹ *Id.*

¹⁴⁰ See Michaels, *supra* note 130.

¹⁴¹ See Shoshana Bryen, *Analyzing the Latest Round of Big Military Moves in the Middle East*, JEWISH POL’Y CTR. (Feb. 15, 2018), <https://www.jewishpolicycenter.org/2018/02/15/analyzing-latest-round-big-military-moves-middle-east/>.

¹⁴² See Alex Chadwick, *Murtha Reflects on Troop Withdrawal Proposal*, NPR (Nov. 16, 2007), <https://www.npr.org/templates/story/story.php?storyId=16353301>.

¹⁴³ AMY BELASCO, CONG. RESEARCH SERV., R40682, TROOP LEVELS IN THE AFGHAN AND IRAQ WARS, FY2001-FY2012: COST AND OTHER POTENTIAL ISSUES 9 (2009), available at <https://fas.org/sgp/crs/natsec/R40682.pdf>.

ground from a small footprint to a huge 63,500 strong footprint,¹⁴⁴ ended in absolute disaster. Nothing remotely close to stability was achieved.¹⁴⁵ When Obama left office approximately 8,400 U.S. troops were in Afghanistan to help with “training, strategy, and counterterrorism.”¹⁴⁶

Ironically, when President Trump took office in 2017, the newly minted Commander in Chief was faced with the same Afghanistan issue as the then newly minted Obama in 2008—should he order a withdrawal, maintain the status quo, or increase the troop strength? Understanding that sound military strategy is not a topic for public discourse, Trump was certainly far more circumspect in this regard than Obama.¹⁴⁷ In a repeat to his bold and decisive bombing mission against Syria’s military base suspected of using chemical weapons, President Trump alerted the world that he also meant business in Afghanistan when the United States dropped the largest non-nuclear bomb in its arsenal on a suspected underground terror command and control facility in the mountains of Afghanistan.¹⁴⁸

While taking almost as long as Obama did to issue his Afghanistan strategy, in late August 2017, Trump elected to slightly increase the troop strength,¹⁴⁹ while promising to defeat terrorism in Afghanistan. On August 21, 2017, President Trump declared that his “original instinct was to pull out” of Afghanistan but decided instead to order an unspecified increase in U.S. troop presence in the sixteen-year-old war.¹⁵⁰ As of the first month of

¹⁴⁴ *Id.*

¹⁴⁵ See Beech, *supra* note 83 (reporting on the disastrous decision to order a surge of troops to Afghanistan).

¹⁴⁶ See Michael Evans et al., *Send more troops to Afghanistan, Trump tells Nato*, THE TIMES (Aug. 22, 2017), <https://www.thetimes.co.uk/article/may-under-pressure-to-send-more-british-forces-to-support-trump-plan-for-afghanistan-troop-surge-73vkk2ndr> (citing President Trump’s demand to NATO allies to also increase their troop strength in Afghanistan).

¹⁴⁷ See Gerald F. Seib, *In Afghan Policy Debate, Trump Struggles With Himself*, WALL STREET J. (Aug. 8, 2017), <https://www.wsj.com/articles/in-afghan-policy-debate-trump-struggles-with-himself-1502120932>.

¹⁴⁸ Helene Cooper & Mujib Mashal, *U.S. Drops ‘Mother of All Bombs’ on ISIS Caves in Afghanistan*, N.Y. TIMES (Apr. 13, 2017), <https://www.nytimes.com/2017/04/13/world/asia/moab-mother-of-all-bombs-afghanistan.html>.

¹⁴⁹ *Id.*

¹⁵⁰ Elliott, *supra* note 86 (discussing President Trump’s announcement of troop increases in Afghanistan).

2018, approximately 14,000 U.S. forces are now in Afghanistan.¹⁵¹

For President Trump, the real concern is not simply helping the Afghan military fight Taliban insurgents, it is the threat of ISIS and other extremist groups that might gain new footholds in Afghanistan and Pakistan. Secretary of Defense James Mattis noted: “If you look at the region, it’s a south Asia strategy, and we’ll be addressing those issues in it.”¹⁵² In remarks given at Fort Myer, Virginia, on August 21, 2017, President Trump laid out his vision for Afghanistan, which was focused on ensuring real security, not the elusive siren song of nation building:

[T]he American people are weary of war without victory. Nowhere is this more evident than with the war in Afghanistan, the longest war in American history – 17 years. I share the American people’s frustration. I also share their frustration over a foreign policy that has spent too much time, energy, money, and most importantly lives, trying to rebuild countries in our own image, instead of pursuing our security interests above all other considerations.¹⁵³

President Trump then went on to explain the core pillar of the new Trump Afghan strategy:

A core pillar of our new strategy is a shift from a time-based approach to one based on conditions. I’ve said it many times how counterproductive it is for the United States to announce in advance the dates we intend to begin, or end, military options. We will not talk about numbers of troops or our plans for further military activities. Conditions on the ground – not arbitrary timetables – will guide our strategy from now on. America’s enemies must never know our plans or believe they can wait us out. I will not say when we are going to attack, but attack we

¹⁵¹ See Nancy A. Youssef & Gordon Lubold, *U.S. Military to Bulk Up in Afghanistan With Drones, Troops*, WALL STREET J. (Jan. 12, 2018), <https://www.wsj.com/articles/u-s-to-turn-military-focus-on-afghanistan-as-isis-battles-ebb-1515685110> (discussing Pentagon plans to reallocate drones, hardware, and 1,000 more troops to Afghanistan).

¹⁵² *Id.*

¹⁵³ President Donald J. Trump, Remarks on the Strategy in Afghanistan and South Asia (Aug. 21, 2017) (transcript available at https://www.whitehouse.gov/briefings-statements/remarks-president-trump-strategy-afghanistan-south-asia/?utm_source=link).

will.¹⁵⁴

f. Domestic Jihadists

Perhaps one of the most refreshing aspects of addressing the threat of terrorism emanating from domestic Islamic extremists, is President Trump's willingness to boldly identify the perpetrators of these murderous acts by name—disciples of radical Islam.¹⁵⁵ His first address to the nation on the matter came in his inauguration speech where President Trump was unequivocal: “We will reinforce old alliances and form new ones—and unite the civilized world against Radical Islamic Terrorism, which we will eradicate completely from the face of the Earth.”¹⁵⁶

It is clear that the 2014–2016 spike in jihadi terror attacks in the United States and across the West were directly linked to the powerful propaganda influence of ISIS.¹⁵⁷ The often proclaimed “God is on our side” narrative of ISIS during this period was bolstered by fantastic battlefield victories against Syrian and Iraqi military forces and the attendant conquest of vast areas of land.¹⁵⁸ Such successes on the battlefield inspired new recruits across the world to either join ISIS or to conduct terror attacks in the nations where they resided. During this time frame, domestic jihadists inspired by ISIS' ideology of radical Islam (directly or indirectly) engaged in terror attacks against a plethora of civilian targets in the West using homemade bombs, vehicles, firearms, and knives.¹⁵⁹

¹⁵⁴ *Id.*

¹⁵⁵ See, e.g., Masood Farivar, *Trump Pledges War on Radical Islamic Terrorism*, VOA NEWS (Jan. 18, 2017, 8:27 AM), <https://www.voanews.com/a/donald-trump-pledges-war-radical-islamic-terrorism/3676303.html> (“Containing the spread of radical Islam must be a major foreign policy goal of the United States.”).

¹⁵⁶ *The Inaugural Address*, WHITEHOUSE.GOV (Jan. 20, 2017), <https://www.whitehouse.gov/briefings-statements/the-inaugural-address/>.

¹⁵⁷ See David Patrikarakos, *Social Media Networks Are the Handmaidens to Dangerous Propaganda*, TIME (Nov. 2, 2017), <http://time.com/5008076/nyc-terror-attack-isis-facebook-russia/> (noting social media networks as being a platform for recruiting ISIS followers). See also U.S. SENATE COMM. ON HOMELAND SEC., PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, *ISIS ONLINE: COUNTERING TERRORIST RADICALIZATION & RECRUITMENT ON THE INTERNET & SOCIAL MEDIA* (2016) (detailing ISIS influence through use of online propaganda).

¹⁵⁸ Wood, *supra* note 17 (stating that ISIS policies “reflects God’s law.”).

¹⁵⁹ See, e.g., Sam Petulla, *Vehicles are Becoming the Weapons of Choice for*

With completion of the aggressive Trump move to eradicate ISIS geographically, the narrative of divine support for ISIS has greatly diminished. As one would expect, the number of ISIS inspired attacks and arrests in the United States has dropped dramatically in 2017. According to one study of “152 federal cases across the United States involving ISIS from 2014 to 2017 . . . there were double the number of cases in 2015 when compared with 2017.”¹⁶⁰

Again, President Trump has continued the policy of prosecution of domestic jihadists accused of terrorism in U.S. federal domestic courts. The dozens and dozens of domestic jihadi plots and actual terror attacks in the U.S. have all been prosecuted in federal court under the applicable domestic criminal federal statutes—for both U.S. citizens and non-U.S. citizens. For example, Ahmad Khan Rahimi was convicted of multiple crimes in federal court on October, 2017, for planting multiple bombs (some exploded) in New York and New Jersey on September of 2016.¹⁶¹ But it was a Halloween, 2017 terror attack in New York City that employed a weapon of choice already used with tragic effectiveness in England, Spain, and Germany—a vehicular attack against civilians—that put the Trump Administration to the test in terms of selecting the proper forum for meting out justice. Sayfullo Saipov, an ISIS-inspired non-U.S. citizen immigrant to the United States, drove a Home Depot rental truck onto a New York bike path, killing eight innocent civilians and injuring many more.¹⁶² For a brief moment, the Trump Administration considered labeling Saipov as an unlawful enemy combatant and transferring him to GITMO.¹⁶³

Terrorists, NBC NEWS (Aug. 17, 2017, 3:32 PM), <https://www.nbcnews.com/news/world/vehicles-are-becoming-weapons-choice-terrorists-n768846> (noting that guns, knives, and bombs have long been the tools used by terrorists, and now vehicles are now being favored as weapons).

¹⁶⁰ See Christa Hayes, *ISIS in our own backyard: Group's U.S. followers are diverse, in places large and small*, USA TODAY (Jan. 4, 2018, 4:41 PM), <https://www.usatoday.com/story/news/2018/01/04/fight-against-isis-teenager-playing-basketball-fbi-agent-and-couple-their-honeymoon-heres-how-isis-s/953954001/> (discussing the number of ISIS inspired attacks and arrests in the U.S. and the geographic defeat of ISIS in the Middle East).

¹⁶¹ Michael Wilson, *Chelsea Bomb Suspect Guilty in Attack That Sowed Terror Across Region*, N.Y. TIMES (Oct. 16, 2017), <https://www.nytimes.com/2017/10/16/nyregion/chelsea-bombing-verdict.html>.

¹⁶² Karl Vick, *The New Terrorism Comes to Ground Zero*, TIME (Nov. 2, 2017), <http://time.com/5006954/new-terrorism-comes-to-ground-zero/>.

¹⁶³ See Andrea Noble & Dave Boyer, *White House says Saipov should be considered 'enemy combatant'*, WASH. TIMES (Nov. 1, 2017), <https://www.washingtontimes.com/news/2017/nov/1/wh-saipov-should-be-considered-enemy-combatant/> (“President Trump [said] he would consider sending the alleged

While this would have certainly been a completely lawful move, President Trump decided to stick with the longstanding approach of prosecuting all domestic jihadists found operating on U.S. soil in federal district court.¹⁶⁴ Thus, Saipov was arranged for criminal trial in New York federal district court.¹⁶⁵ President Trump is content to follow the well-trod path of matriculating newly acquired domestic jihadists to the halls of justice associated with domestic criminal law. In this, he has not deviated from his predecessors, nor should he.

g. Iran

Iran has long been on America's list of State sponsors of terrorism.¹⁶⁶ In fact, it is the number one exporter of terrorism in the world.¹⁶⁷ Coupled with their open quest for nuclear weapons and overt hatred of the United States, Iran is the most dangerous rouge nation in the world. In all of this, one thing is absolutely clear—the time to stop the Iranian regime from acquiring nuclear weapons is before they acquire nuclear weapons. Unfortunately, this is something that the Obama Administration failed to understand, choosing instead to negotiate a 2015 international agreement which at best would only delay the Iranians from obtaining nuclear weapons.¹⁶⁸ In fact, a week after the deal finalized, Ayatullah Ali Khamenei, Iran's Supreme Leader, proclaimed, "Our policy toward the arrogant U.S. government won't change at all."¹⁶⁹

President Trump understands that a nuclear armed Iran will

Islamist who killed eight pedestrians with a truck to . . . Guantanamo Bay.").

¹⁶⁴ See *id.* (the Trump Administration allowed charges to be brought in federal civilian court).

¹⁶⁵ *Id.*

¹⁶⁶ Iran has been designated as a State sponsor of terrorism since January 19, 1984. *State Sponsors of Terrorism*, U.S. DEPT OF STATE, <https://www.state.gov/j/ct/list/c14151.htm> (last visited Dec. 20, 2017). North Korea, Sudan, and Syria make up the remaining countries on the list. *Id.*

¹⁶⁷ Nicole Gaouette, *Iran remains top terror sponsor as global attacks decline*, CNN (July 19, 2017, 5:35 PM), <https://www.cnn.com/2017/07/19/politics/state-country-terror-report/index.html>.

¹⁶⁸ *Iran nuclear deal: Trump's speech in full*, BBC NEWS (Oct. 13, 2017), <http://www.bbc.com/news/world-us-canada-41617488>.

¹⁶⁹ *Ayatollah Ali Khamenei says nuclear deal won't change Iran's policy towards 'arrogant' U.S.*, DAILY NEWS (July 18, 2015, 7:55 PM), <http://www.nydailynews.com/news/world/iran-nuke-deal-won-change-policy-article-1.2296740>.

spell only bad news for the region and American interests.¹⁷⁰ Indeed, with nuclear weapons in their hands, Iran would be able to threaten the West as “equals.” In addition, a nuclear Iran would surely spark nuclear proliferation in the region, starting with Saudi Arabia.¹⁷¹ The December 2017 National Security Strategy devotes much ink to describing the existential threat posed by a nuclear Iran. “Iran supports terrorist groups and openly calls for our [the United States] destruction.”¹⁷²

In October 2017, President Trump verbally chastised the Iranian regime for its sponsorship of terrorism and “decertified” the Obama brokered agreement.¹⁷³ Depending on Congress’ response, the entire agreement may soon be dismantled, although the European Union and other U.S. allies urge Trump to keep the Iran nuclear deal as written.¹⁷⁴

V. THE TRUMP DOCTRINE

“From this day forward, a new vision will govern our land. From this this day forward, it’s going to be only America first. America first.”¹⁷⁵

Donald J. Trump

As the Trump Administration enters its second year, it is apparent that President Trump has carved out his own unique approach to the War on Terror, albeit the Trump Doctrine certainly has its roots firmly planted in many of the same 9/11 legal and policy provisions developed and employed by his predecessors.

¹⁷⁰ See *Iran nuclear deal*, *supra* note 168 (discussing his plans to ensure that Iran never has access to nuclear weapons).

¹⁷¹ See Karl Vick, *The Middle East Nuclear Race is Already Under Way*, TIME (Mar. 23, 2015), <http://time.com/3751676/iran-talks-nuclear-race-middle-east/> (noting Saudi Arabia’s nuclear plan to follow suit once Iran acquires a nuclear weapon).

¹⁷² NAT’L SECURITY STRATEGY OF THE UNITED STATES OF AMERICA, *supra* note 107, at 7.

¹⁷³ See Kay Armin Serjoie, *Iranians are finding unity in hegemony*, TIME, Oct. 30, 2017, at 5 (discussing Trump’s decision from the Iranian point of view).

¹⁷⁴ See Gardiner Harris, *Top E.U. Diplomat Rejects Trump’s Call for New Iran Nuclear Deal*, N.Y. TIMES (Nov. 7, 2017), <https://www.nytimes.com/2017/11/07/us/politics/europe-trump-iran-nuclear-deal.html> (citing a top diplomat who asserts that the deal with Iran is working despite President Trump’s actions); Laurence Norman, *Europe Urges Trump to Stick to Iran Deal*, WALL STREET J. (Jan. 11, 2018, 6:11 PM) <https://www.wsj.com/articles/eu-ministers-urge-trump-to-stick-by-iran-deal-1515672674>.

¹⁷⁵ *The Inaugural Address*, *supra* note 156.

For instance, the core rule of law authority for his use of military force overseas is firmly set in the Bush era, while his actual strategy for using military force in Iraq and Syria finds some small level of parallel to Obama's final military strategy of using indigenous forces backed by American airpower and Special Forces to defeat ISIS. To be sure, Obama cannot take credit for what occurred under President Trump, particularly when one acknowledges the forceful manner in which Trump executed the strategy to defeat ISIS. Repeatedly stressing that the battle must be taken to the enemy, Trump was quick to shed restrictive rules of engagement (ROE) and allow his military commanders to execute the victory as swiftly and as humanely as possible, a principle espoused in just war theory.¹⁷⁶

In waging war, President Trump embodied the old three-step military saw on how to achieve a military victory: (1) identify the enemy; (2) identify the enemy's center of gravity; and (3) crush them. Trump has achieved these objectives while holding his cards close to the vest when it comes to how and when his commanders will employ kinetic military force.

In Afghanistan, President Trump completely jettisoned Obama's perplexing "phased withdrawal" strategy that was tied to a calendar timetable and replaced it with an open-ended strategy that boasted a troop level set to recognize "local political and security conditions"¹⁷⁷ on the ground. In other hotspots, Trump expanded the use of Army Special Operations Forces trainers to assist the militaries of certain Middle Eastern and African nations in their fight against terrorism.¹⁷⁸

¹⁷⁶ See, e.g., Aaron Mehta, *Mattis reveals new rules of engagement*, MILITARY TIMES (Oct. 3, 2017), <https://www.militarytimes.com/flashpoints/2017/10/03/mattis-reveals-new-rules-of-engagement/> ("U.S. forces are no longer bound by requirements to be in contact with enemy forces in Afghanistan before opening fire."). See generally John F. Coverdale, *An Introduction to the Just War Tradition*, 16 PACE INT'L L. REV. 221 (2004) (discussing the origins of the just war theory).

¹⁷⁷ Jaideep A. Prabhu, *Trump's Afghan Policy Better Than Obama's But Take His Rebuke of Pakistan With a Pinch of Salt*, SWARAJYA (Aug. 23, 2017, 12:13 PM), <https://swarajyamag.com/world/trumps-afghan-policy-better-than-obamas-but-take-his-rebuke-of-pakistan-with-a-pinch-of-salt>.

¹⁷⁸ Eric Schmitt, *Using Special Forces Against Terrorism, Trump Seeks to Avoid Big Ground Wars*, N.Y. TIMES (Mar. 19, 2017), <https://www.nytimes.com/2017/03/19/world/africa/trump-special-forces-navy-seals.html>. See also W.J. Hennigan, *The New American Way of War*, TIME (Nov. 30, 2017), <http://time.com/5042700/inside-new-american-way-of-war/> (describing the use of Special

In the big picture, some have called the Trump Doctrine a “medium footprint”¹⁷⁹ which seeks to avoid large ground wars¹⁸⁰ by using local forces and American Special Operations Forces to combat the cancer of radical Islamic terrorism. Again, the major differences between the final Obama 2016 strategy and Trump’s is that President Trump delegated combat decision-making on the battlefield to subordinate commanders and avoided the many pitfalls associated with nation-building. As President Trump put it in his public announcement to increase American troop strength in Afghanistan:

Ultimately, it is up to the people of Afghanistan to take ownership of their future, to govern their society, and to achieve an everlasting peace. We are a partner and a friend, but we will not dictate to the Afghan people how to live, or how to govern their own complex society. We are not nation-building again. We are killing terrorists.¹⁸¹

One national commentator summed up Trump’s War on Terror approach as “Trump has been aggressive in his use of commandos, authorizing terrorist-hunting night raids, since his first days in office, and has loosened constraints on everyone from top generals to field commanders.”¹⁸² In this regard, the emerging Trump Doctrine has demonstrated both a willingness to use the saber as well as to rattle the saber. In other words, in his first year in office Trump has willingly and overwhelmingly applied lawful violence to destroy ISIS—the saber—as well as to sternly warn North Korea and even Iran of his intention to use lawful violence if necessary in self-defense—the rattle of the saber.¹⁸³ Trump has also understood

Operations Forces to counter growing terror threats in the Middle East, Asia, and Africa).

¹⁷⁹ Peter Feaver, *Trump’s War on Terror Rejects Obama’s Off-Shore Balancing for Obama’s Operational Raiding*, FOREIGN POL’Y (Mar. 22, 2017, 4:10 PM), <http://foreignpolicy.com/2017/03/22/trumps-war-on-terror-rejects-obamas-off-shore-balancing-for-obamas-operational-raiding/>.

¹⁸⁰ Schmitt, *supra* note 178.

¹⁸¹ President Donald J. Trump, Address to the Nation on United States Strategy in Afghanistan and South Asia From Joint Base Myer-Henderson Hall, Virginia (Aug. 21, 2017) (transcript available at <https://www.gpo.gov/fdsys/pkg/DCPD-201700580/pdf/DCPD-201700580.pdf>).

¹⁸² Hennigan, *supra* note 178.

¹⁸³ *But see* Karl Vick, *Trump’s Penchant for Chaos Brings Less World Order*, TIME (Aug. 17, 2017), <http://time.com/4904284/trumps-penchant-for-chaos/> (arguing that Trump’s public rhetoric is not part of a unified strategy, citing as

that for the deterrence message to be effective, America's military might must be built up to a powerful force level – the saber America rattles cannot be a plastic McDonald's butter knife.

Accordingly, the Trump National Security Strategy released on December 18, 2017, was really no surprise. Like other national security strategies of the past, President Trump's national security strategy does an excellent job in laying out a realistic assessment of clear and present threats to the United States, to include the threat of radical Islam.¹⁸⁴ Unlike other strategies, however, the solution to the threats are not viewed from the perspective of multilateralism—Trump solutions are replaced by America-first considerations.¹⁸⁵ While this does not exclude close cooperation with friends and allies to tackle the assorted threats, it is clear that President Trump will view all such relationships from an American self-interest. For instance, the President has made it clear that those U.S. allies such as Germany, Japan, and South Korea, which benefit from the thousands of American military personnel stationed on their soil, should “reimburse the United States for the cost of defending them.”¹⁸⁶

The Trump national security strategy consists of four pillars: (1) protecting the homeland; (2) promoting American prosperity; (3) preserving peace through strength; and (4) advancing American influence.¹⁸⁷ The greatest transitional threat perceived by President Trump is: “Jihadist terrorists, using barbaric cruelty to commit murder, repression, and slavery, and virtual networks to exploit vulnerable populations and inspire and direct plots.”¹⁸⁸

Lastly, President Trump approaches diplomacy with the simple premise of “America first.” Rather than apologize for American exceptionalism, Trump views America's influence in the world as

an example Trump's August 8, 2017, remarks that future threats by North Korea, “will be met with fire and fury like the world has never seen.”).

¹⁸⁴ NAT'L SECURITY STRATEGY OF THE UNITED STATES OF AMERICA, *supra* note 107, at 1.

¹⁸⁵ *Id.*

¹⁸⁶ Fred Kaplan, *Strategic Confusion*, SLATE (Dec. 18, 2017, 6:06 PM), http://www.slate.com/articles/news_and_politics/war_stories/2017/12/donald_trump_s_new_national_security_strategy_will_baffle_allies_and_delight.html.

¹⁸⁷ See NAT'L SECURITY STRATEGY OF THE UNITED STATES OF AMERICA, *supra* note 107, at 4.

¹⁸⁸ *President Donald J. Trump Announces a National Security Strategy to Advance America's Interests*, THE WHITE HOUSE (Dec. 18, 2017), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-announces-national-security-strategy-advance-americas-interests/>.

“a positive force that can help set the conditions for peace, prosperity and, the development of successful societies.”¹⁸⁹ Reminiscent of President Theodore Roosevelt’s view of diplomacy to “speak softly and carry a big stick,”¹⁹⁰ President Trump will certainly employ dialogue when appropriate, but for the forces of totalitarianism bent on destroying American lives and interests, he has shown a willingness to use both lawful violence and the threat of lawful violence.

VI. CONCLUSION

“The [Trump] National Security Strategy puts America first.”
Donald J. Trump

Perhaps the central problem in the ongoing asymmetrical War on Terror is the difficulty of defining “victory.” Many long for the day when the 2001 AUMF will be closed out and the war ended. President Bush never achieved the victory, despite the destruction of the al-Qa’eda training camps in Afghanistan and the expulsion of the Taliban from control of that country. Indeed, Bush actually expanded the scope of the War on Terror with his military campaign against Saddam Hussein and the resulting rise of al-Qa’eda in Iraq. President Obama also failed to achieve victory in his eight years in office and seemed far shakier in his attempts to provide a clear leadership formula for ending the War on Terror. At the beginning of his presidency, Obama lamented that he was uncomfortable even articulating the word victory when it came to Afghanistan.¹⁹¹ Even with Obama’s brilliant tactical success of killing the elusive al-Qa’eda leader Osama bin Laden in 2011,¹⁹² he was not able to parlay the brilliant tactical victory into a larger strategic victory that might enable an end to the War on Terror.

¹⁸⁹ *Id.*

¹⁹⁰ A popular phrase often used by Theodore Roosevelt in the context of American foreign policy. President Roosevelt attributed it to a West African proverb. See *Big Stick Policy*, BRITANNICA ONLINE ENCYCLOPEDIA, <https://www.britannica.com/event/Big-Stick-policy> (last visited Feb. 10, 2018).

¹⁹¹ See, e.g., Andrew Malcolm, *Obama’s revealing Afghanistan war speech: 4,582 words and not one of them was ‘victory’*, L.A. TIMES (Dec. 2, 2009, 3:08 AM), <http://latimesblogs.latimes.com/washington/2009/12/afghanistan-obama-speech.html> (noting that Obama was careful not to associate “victory” with Afghanistan).

¹⁹² See Peter Baker et al., *Bin Laden is Dead, Obama Says*, N.Y. TIMES (May 1, 2011), <http://www.nytimes.com/2011/05/02/world/asia/osama-bin-laden-is-killed.html>.

Like Obama, President Trump inherited the War on Terror. After only one year in office, however, Trump has racked up some impressive achievements which have significantly contributed to actually winning the War on Terror. From day one of his presidency, Trump has projected in word and deed an infectious aura of “winning” this war and has backed up this end state goal with three positive deliverables. First, President Trump clearly identified the enemy as radical Islam—both the domestic and international jihadist. Second, President Trump absolutely destroyed the ISIS Caliphate in Syria and Iraq, the primary manifestation and center of gravity of radical Islam. Third, by destroying ISIS’s geographic holdings, President Trump directly contributed to the dramatic reduction in the number of domestic jihadi terror attacks and arrests in the United States.

With ISIS’s geographic strongholds now crushed and President Trump’s rejection of engaging in nation building, it may be possible to actually see a light at the end of the tunnel. This does not mean that radical Islam will cease to manifest itself in a variety of ways to include a possible future large-scale terror attack on the homeland, but it might mean that the United States can enter a period of stability. Again, just war theory includes the mandate of ending wars quickly, not dragging them out.¹⁹³

Sophisticates who are offended by the idiosyncrasies of the Trump temperament will no doubt continue to deny that President Trump should be credited with these milestones toward victory and simply “paint the president as only a bungling incompetent.”¹⁹⁴ But the fact of the matter is that President Trump has shown himself to be a pragmatic and successful Commander in Chief who has destroyed ISIS as a geographic powerhouse and unabashedly dealt with domestic jihadists. So, although America may not yet proclaim victory in the War on Terror, President Trump has used the law of war foundational policies to his benefit while understanding that the ultimate signpost for the end of the war may simply be an acceptable measure of stability. In any event, the Trump agenda for 2018 and beyond will certainly be shaped by

¹⁹³ See generally Coverdale, *supra* note 176.

¹⁹⁴ Robert Knight, *The real news from poland*, WASH. TIMES (July 10, 2017), <https://www.washingtontimes.com/news/2017/jul/9/donald-trump-poland-given-biased-media-coverage/> (discussing how the media produces “fake” news about President Trump and always attempts to place him in the worst possible light).

the bold outline he has crafted in his first year in office.¹⁹⁵ There is no doubt that he has changed the rules.¹⁹⁶

¹⁹⁵ David Jackson & Deirdre Shesgreen, *Trump's agenda: 7 things to watch*, USA TODAY, Jan. 2, 2018, at A1 (predicting President Trump's way ahead both in terms of national security and domestic legislation).

¹⁹⁶ Molly Ball, *Donald Trump: TIME Person of the Year 2017 Runner Up*, TIME (Dec. 18, 2017), <http://time.com/time-person-of-the-year-2017-donald-trump-runner-up/> (describing President Trump's style of leadership).