Sentencing Terror in All Forms: Understanding § 3A1.4's Application in Domestic Terrorism and What It Reveals About Sentencing Foreign Terrorism Cases

REZA SARRAFIAN*

United States v. Betim Kaziu *was the first time a federal court explicitly referenced the sentences and eventual pardons of two January 6 defendants when considering the punishment of a foreign terrorism defendant. Betim Kaziu's resentencing raises questions about how courts should account for differences in sentencing between foreign and domestic terrorism cases, especially when both often rely on the same enhancement—United States Sentencing Guidelines Section 3A1.4. By comparing Kaziu's sentence with those of January 6 defendants who led violent conspiracies against the United States government, the court acknowledged a perceivable disparity in how the enhancement can operate—highlighting that nonviolent material support for foreign terrorism may be punished as severely as overt acts of domestic political violence.*

The terrorism enhancement in the United States Sentencing Guidelines was originally intended to punish international terrorism but has expanded to cover domestic acts, despite the absence of a standalone federal crime of domestic terrorism. Courts have shown a willingness to apply this enhancement broadly in domestic terrorism cases yet remain reluctant to use domestic terrorism cases as comparators when sentencing foreign terrorism defendants—particularly in nonviolent material support prosecutions. This Comment traces the history and development of Section

---

* J.D. Candidate, 2026, Columbia Law School. Reza would like to thank Judge Bianco and Judge Karas for introducing him to the fascinating history of terrorism prosecutions. Many thanks to the Columbia Journal of Law & Social Problems staff for their invaluable feedback and editorial work. Lastly, the author would like to extend a special thank you to Afsaneh, Amir, Hossein, and Gabrielle for their unwavering support throughout law school.

3A1.4, analyzes the judicial mechanisms that have enabled its expansive use in domestic terrorism cases, and examines the limited, cautious ways courts have incorporated domestic terrorism comparisons in foreign terrorism sentencing. It argues that purely domestic offenses can serve as instructive comparators to reveal and address sentencing inconsistencies. It ultimately contends that the enhancement should be reoriented to apply only to violent acts of terrorism.

CONTENTS

INTRODUCTION

Betim Kaziu was twenty-one years old when he traveled from his home in Brooklyn to Egypt and Kosovo to wage global jihad.[1] His plan was interrupted in Kosovo when local law enforcement discovered incriminating evidence on his computer and digital camera.[2] In 2012, he was convicted of four offenses: (1) conspiracy to commit murder in a foreign country; (2) conspiracy to provide material support for terrorists; (3) attempt to provide material support to a foreign terrorist organization; and (4) conspiracy to use a firearm.[3] The district court sentenced Kaziu to twenty-seven years in prison.[4]

United States v. Betim Kaziu initially appears to be a standard resentencing case with the usual considerations: the defendant's prior infractions, the evidence of rehabilitation, the defendant's

1. *See* United States v. Kaziu, 768 F. Supp. 3d 477, 479 (E.D.N.Y. 2025).
2. *See id.*
3. *See id.* at 478.
4. *See id.*

age at the time of the offense, and the harsh conditions of his confinement.[5] However, there is something different about this case: it is the first in which a court considered the sentences of defendants convicted for their involvement in the United State Capital attack on January 6. Specifically, in assessing whether Kaziu received a disproportionate sentence, the court looked at the sentences of Stewart Rhodes III and Enrique Tarrio.[6] Stewart Rhodes III, a defendant in *United States v. Rhodes*, received a lighter sentence than Kaziu despite obtaining firearms and leading a conspiracy to oppose the peaceful transfer of presidential power.[7] So did Enrique Tarrio, a defendant in *United States v. Nordean et al.*, who was the "primary organizer"[8] of the January 6 attack.[9] Kaziu, by contrast, never succeeded in joining a terrorist group, and his conduct physically harmed no one.[10] More consequential still than the comparative leniency shown to Rhodes and Tarrio is President Trump's use of clemency to release them from prison.[11] Kaziu remains incarcerated, with his sentence reduced from twenty-seven to twenty years.[12]

Judge Block, who presided over *Kaziu*, disclaimed reliance on these comparisons, emphasizing that the "consideration of these two defendants' sentences was not necessary to support the Court's conclusion that the balancing of the § 3553(a) factors [to be considered in imposing a sentence] warranted the 20-year sentence."[13] At the same time, he admitted that Rhodes' and Tarrio's sentences "nonetheless add cogency to the Court's decision."[14] What, precisely, is the court doing when it both distances itself from these comparisons and yet invokes them? Does their presence reveal a sentencing parity between defendants convicted of non-violent foreign terrorism offenses and their violent domestic counterparts; a subtle institutional critique of terrorism sentencing more broadly; or a signal to defendants like Kaziu to take an expansive view of "similarly situated defendants"

---

5. *See id*. at 482–87.
6. Kaziu, 768 F. Supp. 3d at 485–87.
7. *See* United States v. Rhodes, No. 22-CR-00015 (D.D.C. Jan. 12, 2022).
8. Kaziu, 768 F. Supp. 3d at 486 (citing United States v. Nordean et al., No. 1:21-CR-00175 (D.D.C. Aug. 17, 2023), ECF No. 855 at 84.).
9. *See* United States v. Nordean et al., No. 21-CR-00175 (D.D.C. Sept. 5, 2023).
10. United States v. Kaziu, 768 F. Supp. 3d 477, 487(E.D.N.Y. 2025).
11. *See id*. at 487 n.17.
12. *Id.* at 487.
13. *Id.*
14. *Id.*

and continue citing domestic terrorism cases when arguing for a lesser sentence?

The severity of Kaziu's crime should not be understated—he planned to engage in violent jihad against the United States. But the question remains: were Kaziu's offenses more severe than Rhodes' and Tarrio's? As Judge Block observed, "[t]o be sure, these two defendants were not interested in waging global jihad. But they did engage in overt terrorist acts—albeit domestic—motivated to disrupt or harm the United States and national security."[15]

Procedurally, the United States Sen

tencing Guidelines (U.S.S.G.) Section 3A1.4 terrorism sentencing enhancement binds these three defendants and assigns them the label of "terrorist."[16] *Kaziu* presents an important opportunity to examine how courts have applied this enhancement to defendants involved in domestic terrorism, and the extent to which they have relied on those cases when sentencing defendants involved in foreign terrorism.

This Comment will first trace the history, the expansion, and the limits of Section 3A1.4. Next, it will analyze the different ways courts have justified applying the enhancement against defendants involved in domestic terrorism. Finally, it will examine the limited ways in which courts have incorporated domestic terrorism comparators into foreign terrorism sentencing. This Comment argues that domestic terrorism cases can serve as instructive benchmarks when sentencing defendants involved in foreign terrorism and contends that the enhancement should be reoriented to apply only to violent acts of terrorism.

I. DEFINING AND PUNISHING TERRORISM UNDER § 3A1.4

U.S.S.G. Section 3A1.4 has faced significant criticism. Some scholars have called it "draconian"[17] and nothing but a "blunt instrument,"[18] but it might also be a court's only tool for identifying

15. Kaziu, 768 F. Supp at 487.

16. *See id.* at 486–87.

17. James P. McLoughlin Jr., *Deconstructing United States Sentencing Guidelines Section 3A1.4: Sentencing Failure in Cases of Financial Support for Foreign Terrorist Organizations*, 28 LAW & INEQ. 51, 54 (2010).

18. George D. Brown, *Notes on a Terrorism Trial—Preventive Prosecution, "Material Support," and the Role of the Judge After United States v. Mehanna*, 4 HARV. NAT'L SEC. J. 1, 5 (2013).

a crime as "domestic terrorism."[19] Congress first directed the Sentencing Commission to develop an enhancement for international-terrorism offenses,[20] and traces of that mandate remain in the source of Section 3A1.4's definition of "federal crime of terrorism"—18 U.S.C. § 2332b, whose title continues to read *Acts of terrorism transcending national boundaries*.[21] Then came the 1995 Oklahoma City Bombing: 168 people killed, 850 injured,[22] and a criminal justice system lacking a clear legal basis to define the attacks as domestic terrorism. Although the PATRIOT Act provides a statutory definition of domestic terrorism,[23] there was no federal criminal offense at the time specifically targeting domestic terrorism.[24] The aftermath of the Oklahoma City Bombing prompted Congress to broaden Section 3A1.4 to include these types of cases.[25] Today, the enhancement applies to offenses labeled as a "federal crime of terrorism" rather than the earlier designation of "international terrorism," which carried geographical limitations.[26]

Section 3A1.4 increases a defendant's offense level under the Sentencing Guidelines to a minimum of 32[27] and designates their criminal history as Category VI—this means that defendants who qualify can receive 210 to 262 months in prison.[28] To reach this designation, the government must prove by a preponderance of evidence that the defendant's offense "involved, or was intended to promote, a federal crime of terrorism."[29] A federal crime of

19. *See Responding to Domestic Terrorism: A Crisis of Legitimacy,* 136 HARV. L. REV. 1914, 1928 (2023) (explaining how the enhancement is "currently the primary tool federal prosecutors have to label a domestic terrorist as a domestic terrorist").

20. *See* McLoughlin, *supra* note 17, at 51.

21. 18 U.S.C. § 2332b (2024).

22. *See* TONY POVEDA ET AL., THE FBI: A COMPREHENSIVE REFERENCE GUIDE 95 (Athan G. Theoharis ed., 1999).

23. *See* 18 U.S.C. § 2331(5) (defining "domestic terrorism" as activities that (A) involve acts dangerous to human life in violation of federal or state criminal law; (B) appear to be intended to intimidate or coerce a civilian population, influence government policy by intimidation or coercion, or affect government conduct through mass destruction, assassination, or kidnapping; and (C) occur primarily within the territorial jurisdiction of the United States).

24. *See* John D. Cella & Craig R. Heeren, *The "Terrorism" Sentencing Enhancement and Its Application to Domestic Terrorism*, 71 DOJ J. FED. L. & PRAC. 195, at 195–96 (2023).

25. *See id. at 198.*

26. *See id.* 196.

27. *See* U.S. SENT'G GUIDELINES MANUAL § 3A1.4(A) (U.S. SENT'G COMM'N 2023) (providing that if the offense level prior to the application of U.S.S.G. § 3A1.4 is above level 20 but below level 32, the guideline adds 12 levels).

28. *See* McLoughlin, *supra* note 17, at 54.

29. Wadie E. Said, *Sentencing Terrorist Crimes*, 75 OHIO ST. L.J. 476, 480 (2014).

terrorism has two requirements: first, the offense must be specifically intended to "influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct," and second, it must constitute a violation of one of the enumerated federal statutes listed under Section 2332b(g)(5)(B).[30] Section 2332b(g)(5)(B) provides a long list of serious offenses, including the destruction of aircrafts, the bombing or arson of government property that risks or causes death, and the bombing of public places and facilities.[31]

Providing material support to terrorist organizations[32] is also an enumerated offense.[33] But despite being expressly tied to terrorism, a conviction under this statute does not automatically qualify a defendant for the terrorism enhancement.[34] The government must still show that the defendant intended such material support to intimidate, affect, or retaliate against government conduct. Put simply, a defendant can be convicted of "providing material support or resources to a foreign terrorist organization," with the knowledge that "the organization is a designated terrorist organization" or "has engaged or engages in terrorism,"[35] and still not receive the terrorism enhancement.[36] As the Ninth Circuit observed, "Congress created this distinction in order to punish certain dangerous terrorists more severely than persons who committed non-violent crimes."[37]

Sentencing judges and prosecutors keen on applying the terrorism enhancement but lacking certain requisite facts can turn to Section 3A1.4's upward departure provision, known as Application Note 4. This provision applies where a defendant's offense was "calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct," but the offense itself did not involve one of the enumerated crimes under 2332b(g)(5)(B), nor did the defendant intend to promote such an offense.[38] Alternatively, courts may invoke Application Note 4 when the defendant's offense

30. 18 U.S.C. § 2332b(g)(5)(A) and (B).
31. *See* 18 U.S.C. § 2332b(g)(5)(B).
32. *See* 18 U.S.C. § 2339B.
33. *See* 18 U.S.C. § 2332b(g)(5)(B)(i).
34. *See* United States v. Alhaggagi, 978 F.3d 693, 699 (9th Cir. 2020).
35. 18 U.S.C. § 2339B(a)(1).
36. *See Alhaggagi*, 978 F.3d at 699 (holding that the terrorism enhancement "does not automatically apply to all material support offenses").
37. *Id.*
38. U.S.S.G. § 3A1.4 cmt. n.4.

involved, or was intended to promote, one of the enumerated crimes, but the defendant's terrorist motive was to "intimidate or coerce" civilians rather than to influence or affect government conduct.[39] In effect, Application Note 4 allows the court to apply Section 3A1.4's enhancement even in cases where prosecutors are not able to satisfy the traditional two-factor test.[40] This departure can result in a sentence that, at most, matches the Guidelines calculation had the sentencing standard of Section 3A1.4 applied.

In contrast, courts uncomfortable with enforcing the significant penalties of Section 3A1.4 have discretion under U.S.S.G. § 4A1.3 to depart *downward* in sentencing. A court may exercise this discretion where it finds that the enhancement "over-represents 'the seriousness of the defendant's past criminal conduct or the likelihood that the defendant will commit other crimes.'"[41] As the Second Circuit noted in *United States v. Meskini*, "[c]onsidering the serious dangers posed by all forms of terrorism, the Guidelines are in no way irrational in setting the default for criminal history at a very high level, with downward departures permitted in exceptional cases."[42] Section 4A1.3 has been applied to only three cases, none of which involved domestic terrorism.[43] So, while the bar may be lower for convictions involving foreign terrorism,[44] that does not mean defendants engaged in domestic terrorism are treated any less seriously. On the contrary, the limited instances

---

39. *Id*.

40. *See* Cella & Craig, *supra* note 24, at 200–01 (explaining the Sentencing Commission did not have a specific discussion about Application Note 4, but that the upward departure provides courts "with a viable tool to account for the harm involved during the commission of these offenses on a case-by-case basis").

41. United States v. Meskini, 319 F.3d 88, 92 (2d Cir. 2003).

42. *Id.*

43. *See* United States v. Benkahla, 501 F. Supp. 2d 748, 759 (E.D. Va. 2007) (holding that defendant who made false statements about his participation at a jihad training camp was nevertheless "the quintessential candidate for a downward departure under § 4A1.3" because "he does not share the same characteristics or the conduct of a terrorist . . ."); United States v. Jumaev, No. 12-CR-00033-JLK, 2018 WL 3490886, at *9 (D. Colo. July 18, 2018) (holding that defendant guilty of conspiring and attempting to provide material support by giving $300 to a Foreign Terrorist Organization (FTO) warranted downward departure under § 4A1.3 if the terrorism enhancement applied); United States v. Muhtorov, 329 F. Supp. 3d 1289, 1300–01 (D. Colo. 2018) (holding that downward departure is warranted in the sentencing of defendant convicted on three counts of material support to a FTO because there is no evidence that he is "most likely of all offenders to recidivate").

44. *See* Said, *supra* note 29, at 480 (finding that material support can "result in very high sentences for what would otherwise be innocuous and constitutionally protected activity," whereas cases involving "purely domestic terrorist crimes with no international bent" require "some form of violent activity to conspiracy to commit violence without exception").

of leniency for crimes of this nature appear largely in cases involving defendants convicted of foreign terrorism offenses.[45]

II. WHAT "DOMESTIC TERRORISM" CASES TELL US ABOUT THE TERRORISM ENHANCEMENT

Defendants in domestic terrorism cases generally do not rely on foreign terrorism cases to argue for lower sentences, likely because their conduct is often more serious than a material support offense.[46] Instead, they typically challenge the applicability of Section 3A1.4 itself, arguing that they did not commit a "federal crime of terrorism."[47] Part II examines cases in which defendants have raised such arguments, as well as the different rationales courts have offered to justify applying Section 3A1.4 despite these objections.

In *United States v. Jordi*, John Jordi plotted to bomb several abortion clinics with the intent of "prevent[ing] the deaths of unborn children" and "dissuad[ing] other doctors from performing abortions."[48] He bought gas cans, gasoline, starter fluid, flares, and a handgun in preparation.[49] But Jordi's plans never came to fruition—a grand jury indicted him, and he eventually pleaded guilty to attempted arson in violation of 18 U.S.C. § 844(i).[50] At sentencing, the government filed a motion for an upward departure under Section 3A1.4, Application Note 4,[51] arguing that

---

45. *See id.*

46. *See* United States v. Stafford, 782 F.3d 786 (6th Cir. 2015) (upheld application of § 3A1.4 to a defendant convicted of conspiring to bomb a bridge "as a revolutionary act"); U.S. v. Dye, 538 Fed. Appx. 654 (6th Cir. 2013) (upholding application of § 3A1.4 to a defendant who sought to disrupt the function of the court by firebombing the courthouse); United States v. Tubbs, 290 Fed. Appx. 66 (9th Cir. 2008) (upholding application of § 3A1.4 to a defendant who pled guilty to the arson of a ranger station with the intent to influence and affect government, commerce, and private business); United States v. Garey, 546 F.3d 1359 (11th Cir. 2008) (upholding application of § 3A1.4 for conviction stemming from threats to blow up a city hall, shopping mall, and news organization, and rejecting the defendant's argument that the offense did not transcend national boundaries and therefore did not warrant the enhancement); United States v. Hale, 448 F.3d 971 (7th Cir. 2006) (upholding application of § 3A1.4 to a defendant convicted of soliciting the murder of a federal judge).

47. *See* United States v. Jordi, 418 F.3d 1212, 1215 (11th Cir. 2005); United States v. Harris, 434 F.3d 767, 770 (5th Cir. 2005); United States v. Graham, 275 F.3d 490, 514 (6th Cir. 2001).

48. United States v. Jordi, 418 F.3d 1212, 1214 (11th Cir. 2005).

49. *See id.*

50. *See id.* at 1213–14.

51. *See* Cella & Craig, *supra* note 24, at 200 (explaining how Application Note 4 "permits a discretionary upward departure for a defendant who has a terroristic motive but

Jordi's plan intended to intimidate or coerce a civilian population.[52] The district court acknowledged that a higher sentence might be appropriate but reasoned that Section 3A1.4(a) required a showing that Jordi's crime transcended national boundaries, which was absent here.[53] Consequently, the court declined to apply the departure.[54]

The Eleventh Circuit found this determination improper[55] but declined to decide whether an adjustment under Section 3A1.4(a) requires conduct to transcend national boundaries.[56] They noted that the government was not seeking an "adjustment" under that subsection, but rather an "upward departure" under Application Note 4.[57] The court clarified that Application Note 4 does not require a finding that the offense was a "federal crime of terrorism,"[58] and it may apply to offenses involving terrorism even if they do not satisfy the statutory definition under 18 U.S.C. Section 2332b(g)(5).[59] Jordi violated 18 U.S.C. § 844(i), which fell under Section 2332b(g)(5)(B), and he was found to have acted with the intent "to intimidate or coerce a civilian population," meaning he qualified for the upward departure.[60]

The Eleventh Circuit's distinction between "upward departures" and "adjustments" is notable. The district court was reluctant to apply the Section 3A1.4(a) adjustment, and the Eleventh Circuit avoided the question of whether the adjustment requires conduct to transcend national boundaries. Nevertheless, Application Note 4's upward departure offered a narrow path that permitted the result without resolving the broader question. Other courts have taken alternative routes to reach similar outcomes, but one thing is clear: a defendant need not cross-national boundaries to be eligible for the terrorism enhancement.

---

whose offense did not 'involve' and was not 'intended to promote' a 'federal crime of terrorism,' as required for the adjustment").

52. *See* United States v. Jordi, 418 F.3d 1212, 1214 (11th Cir. 2005).

53. *Id.* at 1214.

54. *Id.*

55. *Id.* at 1217.

56. *See id*. at 1216 (holding that the court "need not decide whether an adjustment under 3A1.4 requires a showing that the defendant's conduct 'transcended national boundaries' to resolve this appeal").

57. *Id*.

58. United States v. Jordi, 418 F.3d 1212, 1216 (11th Cir. 2005).

59. *Id.* at 1217.

60. *Id.*

The Sixth Circuit in *United States v. Graham* applied the Section 3A1.4(a) adjustment directly by grounding its analysis in Section 2332b(g)(5)(A) and (B) despite the absence of any transnational connection.[61] Randy Graham, a member of a local militia that planned targeted attacks on the government, operated an illegal marijuana operation that helped finance the militia's acquisition of weapons.[62] The group, called the North American Militia (NAM), was preparing for a "war" with the government.[63] They planned, among other things, to attack a highway, power facilities, fuel depots, gas stations, and communication facilities, as well as to assassinate federal officials, including federal prosecutors and members of Congress.[64]

Graham participated in recruitment, purchased weapons, and led one of the cells tasked with carrying out the attacks.[65] Eventually, federal agents arrested Graham, and a jury found him guilty on several counts, including conspiracy to commit offenses against the United States, in violation of 18 U.S.C. § 371.[66] The district court applied Section 3A1.4 to Graham's conviction, and sentenced him to 55 years in prison.[67] Graham appealed, arguing that this sentence was improper because he did not commit a "federal crime of terrorism."[68] The Sixth Circuit disagreed and affirmed the district court's adjustment, holding that defendants do not need to be convicted of a federal crime of terrorism as defined by Section 2332b(g)(5) for the adjustment to apply.[69] Instead, a district court only needs to identify an enumerated "federal crime of terrorism" listed under Section 2332b(g)(5)(B), satisfy the intent requirement of Section 2332b(g)(5) (i.e., that the offense be "calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct"), and support those findings by a preponderance of the evidence.[70]

Here, a consequence of Graham's conspiracy conviction was the inference that he "intended to promote" a federal crime of

61. United States v. Graham, 275 F.3d 490 (6th Cir. 2001).
62. *Id.* at 497.
63. *Id.*
64. *Id.* at 498.
65. *Id.*
66. Graham, 275 F.3d at 500.
67. *Id.* at 500.
68. *Id.* at 514.
69. *Id.* at 517.
70. *Id.*

terrorism. The crime in question violated 18 U.S.C. § 844(i), an enumerated offense that punishes any person who "maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce."[71]

The dissent in Graham's case, written by Judge Cohn, mainly relied on the legislative history of Section 3A1.4 and argued that classifying a conspiracy conviction as a "federal crime of terrorism" was incorrect, as it went "against Congressional intent." Specifically, Judge Cohn noted,

> Plainly, the legislative history of the statutes reflects a concern by Congress, much like the concern of the delegates to the Constitutional Convention of 1787 over the definition of "treason," that "terrorism" being a phrase which carries far-reaching connotations that is not to be used indiscriminately and must be carefully defined.[72]

Interestingly, Judge Cohn's dissent points out that Graham was never convicted under Section 844(i).[73] Instead, his Section 371 conspiracy conviction "was premised" on five substantive offenses, among which was violating Section 844(i).[74] Indeed, the majority admits in a footnote that, due to the phrasing of the jury instructions, the court only knows that the jury found Graham guilty of conspiring to achieve at least one of the objects of the conspiracy in the indictment, "but we do not know which one."[75]

One could argue that the court used the enhancement indiscriminately in this case because Section 844(i) was the only substantive offense out of the five that was enumerated under Section 2332b(g)(5)(B).[76] The Sixth Circuit may have rolled the dice here. But even if they were correct about which offense Graham was guilty of, it is unclear whether a conspiracy conviction

---

71. Graham, 275 F.3d. at 518.
72. *Id.* at 537.
73. 18 U.S.C. § 844(i) states, "Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned . . ."
74. United States v. Graham, 275 F.3d 490, 515 (6th Cir. 2001).
75. *Id*. at 515 n.14.
76. *Id* at 515.

alone is enough to qualify for the enhancement. Perhaps the facts were too compelling to disregard Section 3A1.4. The majority christened Section 3A1.4 as "the domestic terrorism enhancement,"[77] and there was ample evidence to suggest that Graham indeed planned to wage a "war" against the United States government.[78]

Waging war against the United States[79] or planning to bomb clinics[80] are not the only caliber of domestic offenses that have received the terrorism enhancement. In *United States v. Harris*, for example, Travis James Harris threw a Molotov cocktail into a municipal building, causing severe property damage.[81] The district court applied the enhancement after Harris pleaded guilty to maliciously damaging and destroying the building by fire and explosive materials, which violated Section 844(i), an offense enumerated under Section 2332b(g)(5)(B).[82] Harris argued that his offense was not a federal crime of terrorism because there was no evidence that he intended to "influence or affect the government's conduct by intimidation or coercion, or to retaliate against government conduct" as required by Section 2332b(g)(5)(A).[83] Further, his offense did not transcend national boundaries.[84]

The Fifth Circuit rejected Harris's argument, observing that although Section 2332b violations require transnational conduct, Section 3A1.4 looks only to the Section 2332b(g)(5) definition, which encompasses many domestic offenses.[85] Thus, Section 3A1.4 permits an upward adjustment whenever an enumerated offense is committed with the requisite intent, regardless of whether the conduct transcends national boundaries.[86] The court found that Harris intended to retaliate against and intimidate officers who had arrested him and pursued charges against his father.[87]

---

77. *Id.* at 514.
78. *Id.* at 497.
79. Graham, 275 F.3d at 515.
80. *See* United States v. Jordi, 418 F.3d 1212, 1214 (11th Cir. 2005).
81. *See* United States v. Harris, 434 F.3d 767, 769 (5th Cir. 2005).
82. *Id*. at 769, 773.
83. *Id.* at 773.
84. *See id.*
85. *See id*. (observing that definition "encompasses many offenses, none of which has an element requiring conduct transcending national boundaries").
86. United States v. Harris, 434 F.3d 767, 773 (5th Cir. 2005).
87. *Id.* at 774.

Accordingly, it held that his sentence fell within the applicable Guidelines range.[88]

Each of these cases provides insight into ways courts have applied Section 3A1.4 to violent, domestic offenses. *Jordi* illustrates how courts have avoided directly addressing the geographical question, opting instead for an upward departure to achieve the desired penalty. *Graham* demonstrates one court's determination to apply the enhancement to an offense recognizable as domestic terrorism, even when the requisite factors were unclear. Lastly, *Harris* illustrates a court's willingness to apply Section 3A1.4 to a defendant who committed a serious offense against the government, even when the crime lacked the political motives often associated with terrorism cases. Across all three cases, none of the defendants engaged in material support for foreign terrorist organizations or committed offenses with transnational ties. Yet, the courts each still applied Section 3A1.4, with the Sixth Circuit in *Graham* going so far as to call it "the domestic terrorism enhancement."[89] For these kinds of defendants, the sentencing battle begins and ends with whether their crime is classified as an act of terrorism—yet what do cases like these reflect about foreign terrorism sentencing and the purpose of Section 3A1.4?

III. HOW COURTS HAVE USED DOMESTIC TERRORISM CASES IN SENTENCING FOREIGN TERRORISM

Despite the penalty that binds them, foreign and domestic terrorism cases are rarely discussed in tandem. Part III discusses the few occasions when courts have addressed domestic terrorism cases when sentencing defendants charged with foreign terrorism, and how these cases have influenced their sentencing determinations.

In *United States v. Abu Ali*, American citizen Ahmed Omar Abu Ali embedded himself in an al-Qaeda cell while studying in Saudi Arabia.[90] There, he plotted to organize a sleeper cell in the United States to carry out 9/11-style attacks and assassinate President Bush.[91] Following al-Qaeda's suicide bombings in Riyadh, Abu Ali

88. *Id.*
89. United States v. Graham, 275 F.3d 490, 515 (6th Cir. 2001).
90. *See* United States v. Abu Ali, 528 F.3d 210, 221–22 (4th Cir. 2008).
91. *See id.* at 222–24.

stood guard over the cell's safehouses.[92] Saudi authorities soon arrested him and uncovered a GPS device, a walkie-talkie, and "jihad literature."[93] After obtaining a videotaped confession of his al-Qaeda ties, Saudi authorities handed him over to the United States.[94] Federal prosecutors charged him with nine counts—including material support for al-Qaeda and conspiracy to assassinate the President—and a jury convicted him on all counts.[95] The Sentencing Guidelines recommended life imprisonment, but the district court instead found that a non-guidelines sentence was appropriate and imposed a thirty-year sentence.[96]

Despite the sentence's severity, the Fourth Circuit deemed it a significant downward deviation from the applicable guidelines.[97] A "driving force behind the [district court's] decision" was the comparison to "similarly situated" domestic terrorist defendants, John Walker Lindh,[98] Timothy McVeigh, and Terry Nichols.[99] The court referred to these cases in its consideration of Section 3553(a)(6), which instructs courts to consider the need to avoid unwarranted sentence disparities among defendants with similar records and conduct.[100] Specifically, the court used these cases "as poles on a potential sentencing spectrum," considering that Ali's case was more akin to Lindh's than McVeigh and Nichols because he took fewer steps to further the conspiracy, resulting in less material harm.[101] The court noted that "while it does not rest its judgment solely on a comparison to the Walker Lindh case . . ., in light of the similarities . . . a sentence of less than life

92. *See id*. at 224.
93. *Id*. at 244.
94. *Id*. at 224–25.
95. Abu Ali, 528 F.3d at 225–226.
96. *Id*. at 258–59.
97. *Id*. at 259.
98. *See* United States v. Lindh, 227 F. Supp. 2d 565 (E.D. Va. 2002) (Lindh pleaded guilty to providing services to the Taliban and carrying an explosive during a felony and received a twenty-year sentence.).
99. *See* United States v. Abu Ali, 528 F.3d 210, 259–68 (4th Cir. 2008); *see also* United States v. McVeigh, 153 F.3d 1166 (10th Cir. 1998) (describing how Timothy McVeigh, with the help of Terry Nichols, bombed and destroyed the Murrah Building in Oklahoma City, killing a total of 168 people and injuring hundreds more).
100. *See* United States v. Abu Ali, 528 F.3d 210, 259 (4th Cir. 2008); 18 U.S.C. § 3553(a)(6).
101. United States v. Abu Ali, 528 F.3d 210, 259 (4th Cir. 2008).

imprisonment is necessary to prevent an unwarranted disparity in Mr. Abu Ali's case."[102]

The Fourth Circuit reversed, finding that the district court erred by using those cases in its consideration of Section 3553(a)(6).[103] The circuit court reasoned that while it is true that Abu Ali's offenses did not cause injury, "[h]ad [his] plans come to fruition, they would, according to his own words, have led to massive civilian casualties and the assassination of senior United States officials."[104] Additionally, the Fourth Circuit remarked that

> [W]hile the Oklahoma City bombing was undoubtedly one of the most heinous and devastating acts in our nation's history, to require a similar infliction of harm before imposing a similar sentence would effectively raise the bar too high. We should not require that a defendant do what McVeigh and Nichols did in order to receive a life sentence.[105]

Judge Diana Gribbon Motz's dissent took issue with the majority's decision to overturn Ali's original sentence.[106] Judge Motz argued, among other things, that Ali's criminal conduct is "similar—not identical, but similar" to Lindh's, and it "certainly does not differ so much from Lindh's as to eradicate the usefulness of any comparison between the two."[107] Judge Motz also believed that the district did not err in comparing Abu Ali's case to McVeigh and Nichols to determine that Abu Ali warranted a less severe sentence.[108] She noted that, "[i]n focusing on what it perceives to be the severity of Abu Ali's offenses, the majority fails to appreciate and weigh the gravity of the actual harms and devastating losses of life inflicted by McVeigh and Nichols."[109]

The majority in *Abu Ali* may suggest that *McVeigh* is not instructive in foreign terrorism cases.[110] Their argument rests on a concern that it raises the bar too high—courts will reserve life sentences only for the most heinous acts of terrorism, and anything

---

102. *Id.* at 262.
103. *See id.* at 264.
104. *Id.*
105. *Id.* at 265.
106. *See* Abu Ali, 528 F.3d at 269–70.
107. *Id.* at 278.
108. *See id.* at 279–81.
109. *Id.* at 280.
110. *See id.* at 265.

less than what occurred in Oklahoma City will preclude that penalty.[111] While this characterization may be hyperbolic, there is something to be said about why *McVeigh* was used here. Judge Motz and the district court were skeptical of sentencing Abu Ali to life in prison; the majority in the Fourth Circuit were not. Instead of exemplifying a disparity between the sentencing of foreign and domestic terrorism defendants, *McVeigh* was used as the most heinous example of terrorism and a ceiling for the most severe punishment a court can impose in response. In this way, *McVeigh* could have been replaced with another malevolent defendant, like Omar Abdel-Rahman,[112] and garnered the same utility from the district court as being the far end of the "sentencing pole." The fundamental flaw in the district court's holding is not its comparison of *Abu Ali* to a domestic terrorism case, but in its comparison to a case involving a horrific offense that did not receive a more lenient sentence. If Terry Nichols had received 30 years as Abu Ali did, perhaps the Fourth Circuit would have been more receptive to the district court.

If courts or defendants involved in foreign terrorism-related offenses want to engage with domestic terrorism cases, they should narrow their approach. The focus should be on the violent nature of most domestic terrorism offenses[113] to argue that a heavy sentence is not warranted due to potential disparities or the absence of the requisite *mens rea.* This is especially relevant in nonviolent cases involving material support to a foreign terrorist organization, where such a comparison could be used to challenge the application of a Section 3A1.4 enhancement.

For example, in *United States v. Alhaggagi*, 21-year-old Amer Alhaggagi "trolled" users of pro-Islamic State of Iraq and Syria (ISIS) Sunni group chats and anti-ISIS Shia group chats.[114] Eventually, Alhaggagi encountered an FBI confidential human source (CHS).[115] On one occasion, he and an undercover agent visited a storage locker, where the FBI had left several barrels of mock explosives.[116] However, Alhaggagi began distancing himself from the CHS and the undercover agent, later explaining that the

111. *See* Abu Ali, 528 F at 265.
112. *See* United States v. Stewart, 590 F.3d 93, 101 (2d Cir. 2009) (noting that Rahman successfully conspired to bomb the World Trade Center in 1993).
113. *See* cases and accompanying text discussed *supra* in note 46.
114. United States v. Alhaggagi, 978 F.3d 693, 696 (9th Cir. 2020).
115. *See id.* at 695.
116. *See id.* at 696.

explosives made him realize the gravity of a situation that "he never took seriously . . . until [the agent] was ready to make a bomb."[117] Likewise, Alhaggagi described his online communications as "full of absurdities and contradictions," as they were merely his "chat persona."[118]

Despite cutting off communication with the undercover agents, Alhaggagi continued to engage online with people he believed were ISIS members.[119] On two occasions, he agreed to create social media and email accounts for alleged ISIS members, "believing he needed to curry favor with certain users to continue his trolling and retaliatory games."[120] He also posted materials about jihadist courses, instructions for building napalm bombs and chloroform, and links to ISIS training videos in Telegram chat rooms.[121]

Prosecutors indicted Alhaggagi for attempting to provide material support to a designated terrorist organization, for possessing device-making equipment, for using an unauthorized access device, and for aggravated identity theft—all of which he pled guilty to.[122] The district court applied the terrorism enhancement and sentenced him to 188 months, despite the probation office's recommendation of 48 months.[123]

The Ninth Circuit disagreed and held that the terrorism enhancement did not apply.[124] It reasoned that Alhaggagi's efforts to provide material support through social media were not "calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct," as required by Section 2332b(g)(5)(A).[125] The court distinguished the intent needed to sustain a conviction for material support from the heightened intent necessary for a terrorism enhancement.[126] It found the Second Circuit's decision in *United States v. Stewart* instructive, since Alhaggagi, like Mohammed Yousry (the defendant in *Stewart*), committed the offense of supporting a foreign terrorist group.[127] Still, it was not enough to

117. *Id.*
118. *Id.* at 695–96.
119. *See* Alhaggagi, 978 F.3d at 696.
120. *Id.* at 696–97.
121. *See id.* at 697.
122. *See id.*
123. *See id.*
124. *See* Alhaggagi, 978 F.3d at 700.
125. *Id.* at 701.
126. *Id.* at 700.
127. *See id.* at 702.

demonstrate that Alhaggagi intended to influence or affect government conduct.[128]

Most notably, the Ninth Circuit alluded to domestic terrorism cases[129] in rejecting the district court's assumption that Alhaggagi knew the accounts were meant to "influence or affect government conduct."[130] The court observed:

> Unlike conspiring to bomb a federal facility, planning to blow up electrical sites, attempting to bomb a bridge, or firebombing a courthouse—all of which have triggered the enhancement—opening a social media account does not inherently or unequivocally constitute conduct motivated to 'affect or influence' a 'government by intimidation or coercion.' . . . In other words, one can open a social media account for a terrorist organization without knowing how that account will be used; whereas it is difficult to imagine someone bombing a government building without knowing that bombing would influence or affect government conduct.[131]

Ultimately, *Abu Ali* and *Alhaggagi* illustrate two vastly different ways courts have used domestic terrorism case precedent in sentencing defendants involved in foreign terrorism. Although courts may be hesitant to engage with or rely on them, domestic terrorism cases can still serve as useful comparators. Borrowing Judge Block's language in *Kaziu*, they "add cogency,"[132] especially when used to argue against the terrorism enhancement due to lack of intent[133] or to assist judges in considering the Section 3553(a) factors.[134]

IV. REFORM

The purpose of this Comment is to examine how courts sentence domestic terrorism cases and how they interact with cases

---

128. *See* Alhaggagi, 978 F.3d at 702.
129. *See* United States v. Graham, 275 F.3d 490 (6th Cir. 2001); United States v. Stafford, 782 F.3d 786 (6th Cir. 2015); U.S. v. Dye, 538 Fed. Appx. 654 (6th Cir. 2013).
130. United States v. Alhaggagi, 978 F.3d 693, 701–02 (9th Cir. 2020).
131. *Id.* at 702.
132. United States v. Kaziu, 768 F. Supp. 3d 477, 487 (E.D.N.Y. 2025).
133. *See* Alhaggagi, 978 F.3d at 700.
134. *See* United States v. Kaziu, 768 F. Supp. 3d 477, 487 (E.D.N.Y. 2025).

involving foreign terrorism. Yet in trying to make sense of § 3A1.4 as the only doctrinal vehicle for labeling conduct 'domestic terrorism,' a kind of phantom pain emerges—a discomfort that persists even when we look to foreign-terrorism cases for guidance; there is no federal crime of domestic terrorism. But instead of formulating a criminal statute, Congress could simply remove the material support statute, Section 2339B, as an enumerated offense so that Section 3A1.4 could function primarily as a "domestic terrorism enhancement."

While some have proposed expanding the material support statute, Section 2339B, to include designations of domestic terrorist organizations,[135] this raises additional constitutional concerns already present in material support prosecutions.[136] Deciding which domestic organization should be designated will also be contentious. If given a statutory authority, it might be more likely for the Secretary of State to designate Antifa as a terrorist organization[137] than, say, the Oath Keepers.[138]

There is also no guarantee that expanding material support to domestic terrorist organizations will help citizens and courts better understand domestic terrorism as a legal offense. What might be more appropriate, at least for now, is not expanding criminalization, but restructuring how courts punish acts of terrorism. Including Section 2339B as an enumerated offense creates an inconsistency at the core of the issue raised in the resentencing of Betim Kaziu and its discussion of the two January 6 defendants. On one hand, some domestic terrorism defendants argue that the enhancement is meant solely for foreign terrorists.[139] On the other hand, there are individuals involved in foreign terrorism who committed nonviolent acts but face the same penalties and labels as those engaged in violent acts of domestic

---

135. *See Responding to Domestic Terrorism: A Crisis of Legitimacy*, 136 HARV. L. REV. 1914, 1921 (2023) (explaining how proponents of the "Status Quo Camp" may argue that the government "conceivably has enough room to stretch" § 2339A to include "domestic terror").

136. *See* ERIK LUNA & WAYNE MCCORMACK, UNDERSTANDING THE LAW OF TERRORISM 67 (2d ed. 2015).

137. *See* Evan Perez & Jason Hoffman, *Trump Says He Will Designate Antifa a Terrorist Organization*, CNN (May 31, 2020), https://www.cnn.com/2020/05/31/politics/trump-antifa-protests/index.html [https://perma.cc/GZ6M-V75E].

138. *See* Max Matza, *Proud Boys and Oath Keepers among over 1,500 Capitol riot defendants pardoned by Trump*, BBC NEWS (Jan. 21, 2025), https://www.bbc.com/news/articles/c5y7l47xrpko [https://perma.cc/3MRL-X6WL].

139. *See supra* Part II.

terrorism.[140] This Comment recommends that Congress remove the material support statute, Section 2339B, from the Section 2332b(g)(5) enumerated offense list. Doing so would allow for a more consistent application of Section 3A1.4, primarily as a sentencing enhancement for domestic terrorism—or, at the very least, only for violent acts of terrorism. Perhaps the issue with Section 3A1.4 was not phantom pain, but rather an unnecessary appendage.

CONCLUSION

By the time a court sentences a defendant, the damage is already done—an FTO has received funding, a courthouse lies in ruins, or a community is left shaken by how close it came to devastation. Judges can classify these offenses as acts of terrorism through the sentencing enhancement. Notably, courts have shown a willingness to apply that enhancement to domestic terrorism cases, despite procedural uncertainties and a lack of transnational factors. However, that willingness has not translated into comfort with using domestic terrorism cases as comparators when sentencing defendants in foreign terrorism cases. Domestic terrorism cases can be cogent comparators. In some instances, they may even be instructive in determining whether to apply the enhancement to nonviolent defendants involved with foreign terrorist organizations. At the same time, their cogency may stem from the incongruity of punishing such defendants the same as violent terrorists. Congress, as a first step, should remove Section 2339B as an enumerated offense to reorient Section 3A1.4 as an enhancement meant for violent acts of terrorism. Then, Congress can further clarify whether, as the Sixth Circuit suggested in *Graham*, Section 3A1.4 should function primarily as "the domestic terrorism enhancement."[141]

---

140. *See* Sameer Ahmed, *Is History Repeating Itself? Sentencing Young American Muslims in the War on Terror*, 126 YALE L.J. 1520, 1524 (2017) (noting how the terrorism enhancement "fail[s] to take into account the differences between a violent terrorist who has killed dozens and an American Muslim teenager who tweets support for ISIS online").

141. United States v. Graham, 275 F.3d 490, 514 (6th Cir. 2001).