

Terrorist Expatriation Act Summary

Background: An existing federal statute, 8 U.S.C. § 1481, identifies seven categories of acts for which U.S. citizens lose their citizenship if they voluntarily perform one of those acts “with the intention of relinquishing United States nationality.” The list includes acts such as:

- Serving in the armed forces of a “foreign state” if such armed forces are engaged in hostilities against the United States;
- Formally renouncing nationality whenever the United States is in a state of war; or
- Committing treason against the United States.

The Terrorist Expatriation Act would simply add another category to the list of acts for which a U.S. national would lose his nationality, namely: providing material support or resources to a Foreign Terrorist Organization, as designated by the Secretary of State, or actively engaging in hostilities against the United States or its allies.

Purpose: The Terrorist Expatriation Act brings existing federal law up to date for the war on terror that the United States is currently fighting against terrorists at home and abroad. Al Qaeda and other foreign terrorist organizations (FTOs) are not covered by the existing expatriation law because they are not “foreign states.”

When the existing statute was enacted decades ago, Congress could not have anticipated enemies like the ones we are fighting today. Nonetheless, U.S. nationals who join al-Qaeda and other FTOs, declare America to be enemy soil, and take up arms with the goal of killing Americans should forfeit their rights to American citizenship or other nationality status, just as they would if they had joined the armed forces of any nation with whom the United States was at war.

This Act will provide another important tool for our military and intelligence communities to use against homegrown terrorists who travel abroad and join groups intent on attacking our homeland and Americans and our allies throughout the world. Under this Act, those individuals will not subsequently be able to use their American passports to travel back to the United States or elsewhere in the world to commit acts of terror.

How the Existing Statute Works: Under the existing federal statute, to which this provision would be added, the State Department must make an administrative determination that an individual has lost his or her U.S. nationality. The Secretary of State must approve a certificate of loss of nationality, and a copy of the certificate must also be provided to the Attorney General. The State Department has established a Board of Appellate Review to hear appeals from administrative decisions that result in the loss of nationality. An individual may also challenge that holding in federal district court. The burden of proof, by a preponderance of evidence, would be on the party asserting that loss of citizenship has occurred. This statutory scheme has been upheld, including the burden of proof, by the United States Supreme Court in a 1980 decision, *Vance v. Terrazas*. In 1986, Congress amended the existing statute to codify the Supreme Court’s holding that an expatriating act must be committed with the intent of relinquishing citizenship status for loss of citizenship to occur. This bill does not alter that requirement in any way.