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Money Makes the World of Terrorism Go Round

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MONEY MAKES THE WORLD OF TERRORISM GO ROUND

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ABSTRACT

Upon thinking of terrorist organizations, one may conceptualize violent attacks, extremist ideologies, member radicalization, or deadly weapons. The commonality amongst these terrorist functions is that they all need money to exist. Rather than focusing on terrorist functions, the United States' counterterrorism efforts should focus on terrorist financing—the enabling source of terrorist organizations.

Although the United States has established a Combating the Financing of Terrorism (CFT) legal framework, the substantive law is an inadequate response to the unique—and evolving—threat of terrorist financing. From the Bank Secrecy Act of 1970 to the Anti-Money Laundering Act of 2021 (AMLA), CFT efforts have been couched within financial legislation that rely on the formal financial system to target money laundering. Although the AMLA is a partial response to the CFT framework's deficiencies, several issues remain unaddressed, such as the financing of domestic terrorism and the increasing use of cryptocurrency in terrorist financing.

This paper proposes an innovative CFT framework specifically and solely tailored to the complexity of terrorist financing. This framework prioritizes a global approach, provides a preemptive response to the sourcing of terrorist funds, and responds to the informal loopholes that terrorist organizations use to process funds outside of the formal financial system.

INTRODUCTION

United States counterterrorism efforts have traditionally focused on military action, counterintelligence, and kinetic warfare, among others. In doing so, the United States has deemphasized one of the most powerful tools of all:¹ money.² In today's world and globalized economy, money is a binding source of power.³ For terrorist organizations, money is the “weapon that makes all other weapons of war possible.”⁴ In fact, money “is the lifeblood of terrorist operations.”⁵

Although money may be one of terrorism's key enablers, it is also its Achilles heel.⁶ The United States should appreciate its financial system as an enormous strength in counterterrorism efforts. With the world's largest economy,⁷ major financial institutions, and prevalent market enforcement, the United States should shift its battlefield to the world of finance.⁸

This paper explores current deficiencies in and potential solutions to the United States' *Combating the Financing of Terrorism* (CFT) framework.⁹ Section I summarizes the concept of terrorist financing with a focus on the sources,

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¹ See Shima Baradaran et al., *Funding Terror*, 162 PENN. L. REV. 477, 482 (2014), (“Though the United States has spent enormous sums to fight terrorism with its military might, many are concerned that it has not invested sufficient resources in cutting off the true lifeline of terrorism: its clandestine network of global financing.”).

² Julia C. Morse, *The Counterterror War That America Is Winning*, THE ATLANTIC (Sept. 15, 2021), <https://www.theatlantic.com/ideas/archive/2021/09/america-terrorism-finance/620067/> (“The U.S. has disproportionate market power, claiming the world's largest economy and its biggest financial sector.”). See Michael Freeman, *The Sources of Terrorist Financing: Theory and Typology*, 34 STUDIES IN CONFLICT & TERRORISM 461, 465–66 (2011) (defining “control” in terrorist financing as the power over money).

³ Robert C. Kelly, *What Is Money?*, Investopedia (June 22, 2021), <https://www.investopedia.com/insights/what-is-money/> (“Money makes the world go round.”).

⁴ Tom C.W. Lin, *Financial Weapons of War*, 100 MINN. L. REV 1377, 1377 (2016).

⁵ Press Release, George W. Bush, President, United States of America, President Freezes Terrorists' Assets (Sept. 24, 2001), <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010924-4.html>.

⁶ JUAN C. ZARATE, *TREASURY'S WAR: THE UNLEASHING OF A NEW ERA OF FINANCIAL WARFARE* 1 (2013).

⁷ Caleb Silver, *The Top 25 Economies in the World*, INVESTOPEDIA (Dec. 24, 2020), <https://www.investopedia.com/insights/worlds-top-economies/>

⁸ Morse, *supra* note 2.

⁹ See Julia Kagan, *Combating the Financing of Terrorism (CFT)*, INVESTOPEDIA (July 25, 2021), <https://www.investopedia.com/terms/c/combating-financing-terrorism-cft.asp> (defining CFT as a “set of government laws, regulations, and other practices that are intended to restrict access to funding and financial services for those whom the government designates as terrorists.”). Note that “combating” and “countering” are used interchangeably when describing “CFT” efforts.

processes, and uses of terrorist funds. Section II outlines the CFT legal framework from Executive Order 13224 to the Anti-Money Laundering Act of 2020.¹⁰ Section III discusses existing deficiencies throughout the CFT framework and explains how the Anti-Money Laundering Act of 2020 could be a partial solution. Finally, Section IV proposes an innovative CFT framework to revamp the United States' role in financial counterterrorism efforts.

I. WHAT IS TERRORIST FINANCING?

Terrorist financing is “the raising and movement of funds intended for terrorist causes.”¹¹ Terrorist funds flow throughout three stages: sources, processes, and uses.¹²

A. Sources: Where Do the Funds Originate?

One of the largest and oldest sources of terrorist financing is state sponsorship, which occurs when national governments provide monetary support to terrorist organizations.¹³ State sponsorship enables terrorists to obtain large quantities of funds through a relatively simple process.¹⁴ However, a state may leverage funding to compel a group to act in the state's self-interest.¹⁵ As terrorist organizations tend to value independence and self-sufficiency, state sponsorship is a very rare source of funding.¹⁶ Currently, the governments of Syria, Iran, North Korea, and Cuba continue to sponsor terrorism, despite the criminalization and public condemnation of state sponsorships since the September 11, 2001 Attacks (9/11 Attacks).¹⁷

¹⁰ Exec. Order No. 13224, 66 Fed. Reg. 49,079 (Sept. 25, 2001); National Defense Authorization Act (NDAA) of Fiscal Year 2021, PUB. L. NO. 116-283 (Anti-Money Laundering of 2020 (AMLA) enacted under Division F).

¹¹ ZARATE, *supra* note 6, at 21.

¹² See Baradaran, *supra* note 1, at 486–94 (2014) (explaining the holistic process of terrorist financing in three stages, placement, layering and integration). For purposes of clarity, these three stages will be referred to as sources, processes, and uses.

¹³ NICHOLAS RYDER, THE FINANCIAL WAR ON TERRORISM: A REVIEW OF COUNTER-TERRORIST FINANCING STRATEGIES SINCE 2001 12 (2015).

¹⁴ Michael Freeman, *The Sources of Terrorist Financing: Theory and Typology*, 34 STUDIES IN CONFLICT & TERRORISM 461, 465–66 (2011).

¹⁵ *Id.*

¹⁶ RYDER, *supra* note 13, at 12.

¹⁷ DIANNE E. RENNACK, CONG. RSCH. SERV., R43835, STATE SPONSORS OF ACTS OF INTERNATIONAL TERRORISM—LEGISLATIVE PARAMETERS: IN BRIEF (2021), <https://sgp.fas.org/crs/terror/R43835.pdf>.

As state sponsorships have decreased, most terrorist organizations have sourced their funds through profitable illegal activities.¹⁸ These activities include, but are not limited to, revolutionary taxes, extortion, territorial control, natural resource extraction, charity scams, kidnapping, theft, commodities smuggling, human trafficking, drug trafficking, weapons trafficking, antiquities trade, kidnapping, and fraud.¹⁹ Recently, technological advancements have expanded the scope of these sources, opening the door to profitable illegal activities like ransomware attacks and computer hacking.²⁰ Illegal activities provide a reliable source of cash flow and can therefore enhance the “legitimacy” of terrorist organizations.²¹ However, they pose large risks to terrorists of capture by law enforcement.²²

Terrorist organizations may also depend on legal activities as a source of funds. The most common example is running a for-profit business.²³ For example, from 1992 to 1996, Al Qaeda operated an array of legitimate businesses, including a honey farm, a bakery, and a furniture company, to financially support the organization.²⁴ This business form is advantageous to terrorists because these activities are facially legal and thus rarely trigger detection by law enforcement.²⁵ Additionally, organizations may source funds from charitable donations, specifically through popular support or membership dues.²⁶ Donors—including United States persons²⁷—financially contribute to the political, social, and religious causes that these organizations espouse.²⁸ The prevalence of

¹⁸ See RYDER, *supra* note 13, at 12 (explaining how terrorist organizations engage in profitable criminal activities that serve as a source of funds for terrorist organizations).

¹⁹ Freeman, *supra* note 14, at 465–70; JAYESH D’SOUZA, TERRORIST FINANCING, MONEY LAUNDERING, AND TAX EVASION: EXAMINING THE PERFORMANCE OF FINANCIAL INTELLIGENCE UNITS 50 (2012).

²⁰ U.S. DEP’T OF TREAS., ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM NATIONAL PRIORITIES, 4–6 (2021), [https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20\(June%2030%2C%202021\).pdf](https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20(June%2030%2C%202021).pdf) (outlining the emerging threat of virtual currencies and cybersecurity in terrorist financing).

²¹ Freeman, *supra* note 14, at 468 (explaining how terrorist organizations can directly control these criminal/illegal activities, as opposed to conditioned sponsorships under state control).

²² *Id.*

²³ *Id.* at 469.

²⁴ *Id.*

²⁵ See ZARATE, *supra* note 6, at 21 (explaining the evidentiary challenges in determining terrorist intent and purposes for terrorist-related funds derived from legitimate sources).

²⁶ See Freeman, *supra* note 14, at 470.

²⁷ U.S. DEP’T. OF TREAS., NATIONAL TERRORIST FINANCING RISK ASSESSMENT (2018).

²⁸ See ZARATE, *supra* note 6, at 21 (“Since the political, social or religious causes espoused by terrorist groups may coincide with the goals and beliefs of certain nation-states and individuals, terrorist groups also receive financial and other forms of support from countries and willing donors.”). Note that donations to terrorists and/or terrorist organizations are illegal under the “Material Support” statutes, 18 U.S.C. §§ 2339(A), 2339(B).

charitable donations as a source is likely to increase as terrorist organizations manipulate social media, crowdfunding, cryptocurrencies, and encrypted messaging platforms to seek donors.²⁹

B. Processes: How Do Terrorist Organizations Receive the Funds?

To process funds sourced from illegal activities, terrorist organizations engage in money laundering.³⁰ Money laundering is the process of making funds originating from criminal sources appear legitimate.³¹ There are three steps in the money laundering process: concealment, conversion, and integration.³² Terrorist organizations source funds through illegal activities, cleanse the funds through concealment, convert the funds by commingling them with legitimate funds in the financial system, and then integrate them by using the funds in the economy.³³ Money laundering is typically a transnational process, with each stage taking place in a different jurisdiction.³⁴ As the world's largest economy, the United States' financial system is often home to money laundering activities.³⁵

Contrastingly, to process funds sourced from legal activities, terrorist organizations engage in "reverse money laundering."³⁶ Terrorist organizations source funds from legal activities (e.g., for-profit businesses or charitable donations) to use them for terrorist operations, turning them into "dirty" funds.³⁷ Note that because a terrorist organization can source funds from both illegal and legal activities, it may use both money laundering and reverse money laundering to process funds.³⁸

²⁹ Hans-Jakob Schindler, *New Technologies: The Emerging Terrorist Financing Risk*, ACAMS TODAY (June 3, 2020), <https://www.acamstoday.org/new-technologies-the-emerging-terrorist-financing-risk/>

³⁰ ROBERTO DURRIEU, *RETHINKING MONEY LAUNDERING & FINANCING OF TERRORISM IN INTERNATIONAL LAW: TOWARD A NEW GLOBAL LEGAL ORDER* 20 (2013).

³¹ *Id.*

³² *Id.* at 16.

³³ *Id.* at 30.

³⁴ *Id.* at 36–41.

³⁵ Morse, *supra* note 2. Although many terrorist organizations conceal their funds in foreign "regulator haven jurisdictions" with little to no financial regulations, funds eventually end up in the U.S. financial system due to the predominance of the U.S. dollar and market control in the U.S. See DURRIEU, *supra* note 30, at 33 (discussing "regulator haven jurisdictions"). See also ZARATE, *supra* note 6, at 11 (outlining the predominance of the U.S. in the global financial market).

³⁶ ZARATE, *supra* note 6, at 21.

³⁷ *Id.* at 69–72.

³⁸ See DURRIEU, *supra* note 30, at 68 (comparing terrorist financing to organized crime which only sources funds from illegal activities).

Terrorist organizations also process funds through shell corporations, “business entit[ies] with no significant assets or ongoing business activities, which [are] capable of transferring large sums of money worldwide.”³⁹ Because most states offer lenient and simple incorporation procedures—with no ownership disclosure requirements⁴⁰—terrorist organizations favor shell companies as a “back door to the [United States] financial system.”⁴¹

Finally, terrorist organizations can process funds through Informal Value Transfer Systems (IVTS), which are “unconventional banking systems, transferred through a network of intermediaries.”⁴² IVTS can include *hawala* transfers,⁴³ black markets, internet transfers, and, most recently, virtual currencies—which include cryptocurrencies.⁴⁴ As terrorist organizations steer clear from the regulated and surveilled formal financial system, they venture into the unregulated and confidential world of IVTS to process their funds. IVTS are advantageous for terrorist organizations because their completely anonymous and decentralized operations take place in a virtual setting, which is currently unregulated.⁴⁵ As virtual currencies grow in prominence globally, the use of IVTS as a process for

³⁹ Baradaran, *supra* note 1, at 492.

⁴⁰ As discussed later in Sections II and III, although the Anti-Money Laundering Act of 2020 (AMLA) enacted the Corporate Transparency Act, which mandates “beneficial ownership requirements,” the AMLA has yet to be implemented and thus, these disclosure requirements have not taken full effect.

⁴¹ Baradaran, *supra* note 1, at 492–93.

⁴² U.S. DEP’T. OF TREAS., INFORMAL VALUE TRANSFER SYSTEMS (2003), [HTTPS://WWW.FINCEN.GOV/SITES/DEFAULT/FILES/ADVISORY/ADVIS33.PDF](https://www.fincen.gov/sites/default/files/advisory/advis33.pdf) (defining an IVTS as “any system, mechanism, or network of people that receives money for the purpose of making the funds or an equivalent value payable to a third party in another geographic location, whether or not in the same form.”). See Sheng Zhou, *Bitcoin Laundromats for Dirty Money: The Bank Secrecy Act’s (BSA) Inadequacies in Regulating and Enforcing Money Laundering Laws over Virtual Currencies and the Internet*, 3 JOURNAL OF LAW & CYBER WARFARE 103, 111–14 (<https://www.jstor.org/stable/pdf/26432561.pdf?refreqid=excelsior%3A70cc58506ee5a58f14505b2823fb634c>) (including crypto and virtual currencies within the IVTS realm of “underground financial networks”). See Baradaran, *supra* note 1, at 488–89 (portraying the role that IVTSs play in the laundering of terrorist funds).

⁴³ D’SOUZA, *supra* note 19, at 81 (defining *Hawala* as an informal fund transfer system based on connections between family ties or acquaintances that relies on a system of trust rather than on the use of a negotiable instrument).

⁴⁴ NICK RIDLEY, TERRORIST FINANCING: THE FAILURE OF COUNTER MEASURES 110 (2012). As discussed later in Sections II and III, although the Anti-Money Laundering Act of 2020 (AMLA) broadened the definition of regulated “financial institutions” to include “currency that substitutes for value,” which specifically targets virtual currencies, the AMLA has yet to be implemented and thus, these disclosure requirements have not taken full effect. See *infra* text accompanying notes 189–191. Moreover, this paper estimates that the AMLA is likely to be an inadequate regulatory response for virtual currencies. See *infra* text accompanying notes 217–223.

⁴⁵ See U.S. DEP’T. OF TREAS., *supra* note 42 (stating that IVTS are globally accessible systems known for reliability, efficiency, and anonymity).

terrorist financing is likely to increase.⁴⁶ Furthermore, terrorist organizations have already found loopholes to make the already anonymous operation of virtual currencies even more anonymous, encouraging further donations from supporters.⁴⁷

C. Uses: How Do Terrorist Organizations Use the Funds?

Like any other business, terrorist organizations need money to operate.⁴⁸ Yet unlike typical businesspeople, terrorists are not motivated by financial greed or profit; instead, they are motivated by “nonfinancial goals such as seeking publicity, political legitimacy, political influence, and dissemination of an ideology.”⁴⁹

Terrorist organizations typically use most funds for membership recruitment, training, members’ food and housing, travel, salaries, weapons, equipment, communication devices, bribery, ideology promotions, payment for operatives, etc.⁵⁰ A comparatively small portion of terrorist funds are used for attacks themselves, a concept known as “cheap terrorism.”⁵¹ For example, Al-Qaeda annually spent about \$30 million for maintenance and operations in the years leading up to the 9/11 Attacks but only spent \$500,000 on the attacks themselves.⁵²

In sum, terrorist organizations use most funds to maintain, grow, and operate the organization, specifically in pursuit of ideology dissemination throughout religious, political, and economic systems.⁵³

⁴⁶ See DION SCHWARZ, ET AL., TERRORIST USE OF CRYPTOCURRENCIES: TECHNICAL AND ORGANIZATIONAL BARRIERS AND FUTURE THREATS (2019) 27–33, 47 https://www.rand.org/content/dam/rand/pubs/research_reports/RR3000/RR3026/RAND_RR3026.pdf, (“Growth will increase the volume of transactions—a critical limitation of current systems—and greater adoption of these systems [cryptocurrencies] will spur improvements in ease of use.”).

⁴⁷ See Nathaniel Popper, *Terrorists Turn to Bitcoin for Funding, and They’re Learning Fast*, THE NEW YORK TIMES (Aug. 18, 2019), <https://www.nytimes.com/2019/08/18/technology/terrorists-bitcoin.html> (summarizing how Hamas terrorist groups have been creating unique bitcoin addresses to send digital currency to prevent any address tracing).

⁴⁸ See *supra* text accompanying notes 4–5.

⁴⁹ ZARATE, *supra* note 6, at 21.

⁵⁰ See D’SOUZA, *supra* note 19, at 148; See also Freeman, *supra* note 14, at 462. Both outline the various ways terrorist organizations use their funds.

⁵¹ See RYDER, *supra* note 13 at 20.

⁵² D’SOUZA, *supra* note 19, at 49; RYDER, *supra* note 13, at 20–22.

⁵³ See *supra* text accompanying note 46.

II. CURRENT LEGAL APPROACHES IN COMBATING THE FINANCING OF TERRORISM

Prior to the 9/11 Attacks, the United States lacked a comprehensive legal framework targeting the financing of terrorism; instead, the law primarily targeted financing during times of war or general money laundering.⁵⁴ Consequently, the 9/11 Attacks served as a wake-up call for the United States to establish the *Combating the Financing of Terrorism* (CFT) framework.⁵⁵

Subsections A and B outline the primary origins of the CFT framework, namely Executive Order 13224 (EO 13224) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act).⁵⁶ Subsection C summarizes the recently enacted Anti-Money Laundering Act of 2020, which is a legislative response to the deficiencies of the Bank Secrecy Act and the USA PATRIOT Act.⁵⁷ Finally, subsection D briefly explains the role of international law in the United States, specifically through the United Nations (UN) and the Financial Action Task Force (FATF).

A. Executive Order 13224

On September 23, 2001, twelve days after the 9/11 attacks, President George W. Bush issued EO 13224 pursuant to his authority under the International Emergency Economic Powers Act (IEEPA).⁵⁸ The order outlined four priorities: (1) a national emergency declaration,⁵⁹ (2) terrorist designations,⁶⁰ (3) financial sanctions,⁶¹ and (4) prohibitions on access to the U.S. financial system.⁶²

President Bush declared a “national emergency to deal with the threat of terrorist attacks,” emphasizing a focus on the “financial foundation of foreign

⁵⁴ See RYDER, *supra* note 13, at 65–75 (summarizing the pre-9/11 legal framework, which focused primarily on white-collar crime and anti-money laundering laws).

⁵⁵ See IntelBrief, *Emerging Terrorist Financing Threats and Trends*, THE SOUFAN CENTER (Mar. 12, 2021), <https://thesoufancenter.org/intelbrief-2021-march-12/> (discussing the post-9/11 financial concerns that triggered the creation of CFT law).

⁵⁶ Exec. Order No. 13224, 66 Fed. Reg. 49,079 (Sept. 25, 2001); USA PATRIOT Act of 2001, PUB. L. NO. 107-56, 115 STAT. 272.

⁵⁷ Anti-Money Laundering Act of 2020 (AMLA), PUB. L. NO. 116-283, Division F. §§ 6001–6511.

⁵⁸ International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 35 §§ 1701–1708 (granting the President broad and vast powers to “deal with any unusual and extraordinary threat . . . to the national security”).

⁵⁹ Exec. Order No. 13224, 66 Fed. Reg. 49,079 (Sept. 25, 2001), <https://www.govinfo.gov/content/pkg/FR-2001-09-25/pdf/01-24205.pdf>

⁶⁰ *Id.* § 1.

⁶¹ *Id.*

⁶² *Id.* §§ 2, 4.

terrorists.”⁶³ Specifically, President Bush remarked, “[m]oney is the lifeblood of terrorist operations. Today, we ask the world to stop payment.”⁶⁴ Through EO 13224, President Bush initiated the United States’ “Financial War on Terrorism.”⁶⁵

Next, President Bush designated twenty-nine individuals and entities that had connections to terrorism⁶⁶.⁶⁷ President Bush also delegated this designation power to the Secretary of State, the Secretary of Treasury, and the Attorney General.⁶⁸ Under EO 13224, an individual or entity may be designated for any of the following reasons: (1) committing, or posing a significant risk of committing, acts of terrorism that threaten the security of the United States; (2) acting for or on behalf of an individual or entity listed in the Annex or any persons subject to section one of EO 13224; or (3) assisting in or providing support to acts of terrorism, or any designated individuals or entities.⁶⁹ Public notice of a designation is published in the *Federal Register* and the Office of Foreign Assets Control’s (OFAC)⁷⁰ “Specially Designated Nationals” list.⁷¹ A designation is effective until revoked or terminated by United States law.⁷²

A designation may trigger a series of consequences including financial sanctions.⁷³ After a designation, OFAC immediately blocks all assets, property, and interests in property that a designated individual or entity has in the United States.⁷⁴ OFAC may also block assets of individuals and entities that provide support, services, or assistance to any designated individuals or entities.⁷⁵

To further financially isolate designated individuals and entities, EO 13224 prohibits their access to the United States’ financial system.⁷⁶ Section two disallows United States persons from engaging in any transaction or dealing with the blocked

⁶³ *Id.*

⁶⁴ Press Release, *supra* note 5.

⁶⁵ See RYDER, *supra* note 13, at 46.

⁶⁶ Exec. Order No. 13224, 66 Fed. Reg. 49,079, § 3 (defining terrorism, for purposes of this order, as an “(d) activity that (i) involves a violent act or an act dangerous to human life, property, or infrastructure; and (ii) appears to be intended (A) to intimidate or coerce a civilian population; (B) to influence the policy of a government by intimidation or coercion; or (C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.”).

⁶⁷ *Id.* Annex.

⁶⁸ *Id.* §§ 6,7.

⁶⁹ *Id.* § 1.

⁷⁰ The Office of Foreign Assets Control (OFAC) is within the Department of Treasury. See ZARATE, *supra* note 6, at 24 (describing OFAC as “the most powerful yet unknown agency in the US government”).

⁷¹ U.S. DEP’T OF STATE, EXECUTIVE ORDER 13224: DESIGNATION PROCESS, <https://www.state.gov/executive-order-13224/>

⁷² *Id.*

⁷³ Exec. Order No. 13224, § 4.

⁷⁴ *Id.* § 1.

⁷⁵ *Id.*

⁷⁶ *Id.* § 2.

assets, property, or interests in property of designated individuals or entities.⁷⁷ Section four prohibits donations to any individuals or entities that would be subject to the order.⁷⁸ Finally, United States persons may not transact, or conspire to transact, to evade or avoid any prohibitions.⁷⁹

To maximize effectiveness, EO 13224 includes two additional enforcement sections. Section six calls for the cooperation and coordination with other countries for the prevention, suppression, and denial of financial access to terrorists and terrorist organizations.⁸⁰ Section ten provides for a “no notice” strategy, which requires that no notice be given to any individuals or entities subject to EO 13224 measures.⁸¹

B. The USA PATRIOT Act

On October 26, 2001, Congress passed, and President Bush signed into law, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act).⁸² The overall purpose of the USA PATRIOT Act is “to deter and punish terrorist acts in the United States and around the world [and] to enhance law enforcement investigatory tools.”⁸³

The USA PATRIOT Act’s relevant CFT law is within the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001.⁸⁴ Title III’s purpose is “to increase the strength of United States measures to prevent, detect, and prosecute international money laundering and the financing of terrorism.”⁸⁵ Within Title III, there are three subtitles: (A) International Counter Money

⁷⁷ *Id.* § 3.

⁷⁸ *Id.* § 4.

⁷⁹ *Id.* § 2.

⁸⁰ *Id.* § 6.

⁸¹ *Id.* § 10.

⁸² USA PATRIOT Act of 2001, PUB. L. NO. 107-56, 115 STAT. 272 (2001).

⁸³ *Id.*

⁸⁴ International Money laundering Abatement and Financial Anti-Terrorism Act of 2001, PUB. L. NO. 107-56, 115 STAT. 272 (2001). Although Congress has amended and reauthorized the USA PATRIOT Act several times over the years, it is important to note that Title III has remained permanent since 2005. The original USA PATRIOT Act contained several sunset provisions—provisions requiring periodic reauthorization by Congress. Title III contained a sunset provision in § 303, but Congress never passed a joint resolution by the 2005 deadline to sunset the title, making Title III permanent. Office of Justice Programs, *USA PATRIOT Act: Justice Information Sharing*, U.S. DEP’T. OF JUST., <https://bja.ojp.gov/program/it/privacy-civil-liberties/authorities/statutes/1281> (explaining the legislative procedural history of the USA PATRIOT Act, Title III).

⁸⁵ International Money laundering Abatement and Financial Anti-Terrorism Act of 2001, PUB. L. NO. 107-56, § 302, 115 STAT. 272 (2001).

Laundering and Related Measures,⁸⁶ (B) Bank Secrecy Act Amendments and Related Improvements,⁸⁷ and (C) Currency Crimes and Protection.⁸⁸

Title III, Subtitle A targets international money laundering.⁸⁹ First, it imposes an array of compliance measures on financial institutions. It requires financial institutions to identify and record customers with correspondent accounts,⁹⁰ comply with an enhanced set of due diligence requirements from the Bank Secrecy Act of 1970 (BSA)^{91, 92} refrain from transacting with foreign shell banks,⁹³ share information related to terrorist funds,⁹⁴ prevent beneficial ownership accounts,⁹⁵ and adopt identification verification for new accounts.⁹⁶ Second, Subtitle A expands the United States' international legal reach via enabling provisions that establish long-arm jurisdiction over foreign money launderers,⁹⁷ grants the authority to seize funds from interbank accounts,⁹⁸ and requires collaboration between the Secretary of Treasury and foreign governments.⁹⁹

Title III, Subtitle B¹⁰⁰ amends and enhances the BSA by broadening the BSA's scope to include intelligence and counterintelligence efforts for international terrorism.¹⁰¹ It requires financial institutions to submit suspicious activity reports¹⁰² and implement anti-money laundering programs.¹⁰³ Furthermore, Subtitle B expands the BSA's definition of "financial institutions"¹⁰⁴ to include underground

⁸⁶ *Id.* §§ 311–330.

⁸⁷ *Id.* §§ 351–366.

⁸⁸ *Id.* §§ 371–77.

⁸⁹ *See* USA PATRIOT Act of 2001 §§ 311–330 (Subtitle A—International Counter Money Laundering and Related Measures).

⁹⁰ *Id.* §§ 311, 319.

⁹¹ Bank Secrecy Act of 1970, PUB. L. NO. 94-12, 84 STAT. 1114-2 (original anti-money laundering law of the United States, amended by USA PATRIOT Act).

⁹² International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, PUB. L. NO. 107-56, § 312, 115 STAT. 272 (2001).

⁹³ *Id.* § 313.

⁹⁴ *Id.* § 314.

⁹⁵ *Id.* § 325.

⁹⁶ *Id.* § 326.

⁹⁷ *Id.* § 317.

⁹⁸ *Id.* § 319.

⁹⁹ *Id.* §§ 323, 328, 330.

¹⁰⁰ *See* USA PATRIOT Act of 2001 §§ 351–366 (Subtitle B—Bank Secrecy Act Amendments and Related Improvements).

¹⁰¹ *Id.* § 358(a).

¹⁰² *Id.* §§ 351, 356.

¹⁰³ *Id.* § 352 (requiring financial institutions to have internal policies, procedures, a compliance officer, employee training, audit function).

¹⁰⁴ *Id.* § 359 (amending 31 U.S.C. § 5312(a)(2)(R) to include individuals that engage as a business in the "informal money transfer system").

banking systems, and delegates the authority to manage reports with financial institutions to the Financial Crimes Enforcement Network (FinCEN)¹⁰⁵.

Title III, Subtitle C¹⁰⁶ criminalizes bulk cash smuggling,¹⁰⁷ prohibits unlicensed money transmitting businesses,¹⁰⁸ includes terrorism proceeds in criminal laundering laws,¹⁰⁹ and extends the United States' extraterritorial jurisdiction in prosecuting fraudulent actions.¹¹⁰

C. Anti-Money Laundering Act of 2020

On January 3, 2021, Congress passed the National Defense Authorization Act (NDAA),¹¹¹ which enacted the Anti-Money Laundering Act of 2020 (AMLA).¹¹² The AMLA is a product of collaborative efforts among United States' legislators, regulators, and the financial industry to expand and improve the BSA and USA PATRIOT Act regulatory regimes.¹¹³

The AMLA presents six goals to further its objectives of anti-money laundering (AML) and countering the finance of terrorism (CFT)¹¹⁴: (1) to improve coordination and information sharing among administrative agencies, (2) to modernize laws to adapt to new and emerging threats, (3) to encourage technological innovation in counterterrorism efforts, (4) to reinforce risk-based procedures, (5) to establish uniform beneficial ownership information report requirements, and (6) to establish a secure, nonpublic database for the beneficial ownership information.¹¹⁵ The AMLA encompasses five titles focused on (LXI)

¹⁰⁵ *Id.* § 362.

¹⁰⁶ *See* USA PATRIOT Act of 2001 §§ 371–377 (Subtitle C—Currency Crimes and Protection).

¹⁰⁷ *Id.* § 371.

¹⁰⁸ *Id.* § 373.

¹⁰⁹ *Id.* § 376.

¹¹⁰ *Id.* § 377.

¹¹¹ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, PUB. L. NO. 116-283.

¹¹² Anti-Money Laundering Act of 2020, PUB. L. NO. 116-283, Division F. §§ 6001–6511 (2021).

¹¹³ *See* Carl A Fornaris, et al., *FinCEN Identifies New Anti-Money Laundering AML National Priorities*, XI THE NATIONAL LAW REVIEW 187 (July 6, 2021), <https://www.natlawreview.com/article/fincen-identifies-new-anti-money-laundering-aml-national-priorities>.

¹¹⁴ *See* Kagan, *supra* note 9 (defining the CFT, combating the financing of terrorism, framework). Note that “combating” and “countering” are used interchangeably when referring to “CFT”.

¹¹⁵ Anti-Money Laundering Act of 2020 § 6002.

strengthening programs,¹¹⁶ (LXII) modernizing systems,¹¹⁷ (LXIII) improving internal processes,¹¹⁸ (LXIV) the Corporate Transparency Act,¹¹⁹ and (LXV) additional measures¹²⁰.

Title LXI aims to strengthen the AML, CFT, and Treasury Financial Intelligence programs.¹²¹ It broadens the BSA’s CFT purpose by codifying a requirement for financial institutions to implement risk-based CFT programs.¹²² Specifically, this title aims to strengthen FinCEN,¹²³ create a special hiring authority for terrorism and financial intelligence,¹²⁴ and increase technical assistance and collaboration with international counterparts.¹²⁵ Most importantly, to target emerging methods in illicit terrorist financing, this title amends the BSA’s “financial institution” definition to include the “trade of antiquities” and “value that substitutes for currency.”¹²⁶ Consequently, transmitters and transactions of these illicit forms of financing are subject to complying with the BSA’s requirements for formal institutions and transactions.¹²⁷

Title LXII modernizes the AML/CFT system “by embracing . . . technology and innovation, streamlining low-value processes, and eliminating obsolete regulations and guidance.”¹²⁸ It streamlines requirements for suspicious activity reports (SAR) by automating the reporting process and reducing unnecessarily burdensome regulatory requirements.¹²⁹ To maximize the SAR utility, FinCEN

¹¹⁶ *See id.* §§ 6101–6112 (Title LXI—Strengthening Treasury Financial Intelligence, Anti-Money Laundering, and Countering the Financing of Terrorism Programs).

¹¹⁷ *See id.* §§ 6201–6216 (Title LXII—Modernizing the Anti-Money Laundering and Countering the Financing of Terrorism System).

¹¹⁸ *See id.* §§ 6301–6314 (Title LXIII—Improving Anti-Money Laundering and Countering the Financing of Terrorism Communication, and Processes).

¹¹⁹ *See id.* §§ 6401–6403 (Title LXIV—Establishing Beneficial Ownership Information Reporting Requirements).

¹²⁰ *See id.* §§ 6501–6511 (Title LXV—Miscellaneous).

¹²¹ *See id.* §§ 6101–6112.

¹²² *Id.* § 6101 (amending the Bank Secrecy Act of 1970, 31 U.S.C. § 5311(2) Declaration of purpose).

¹²³ *Id.* § 6102.

¹²⁴ *Id.* § 6105.

¹²⁵ *Id.* §§ 6108–1612.

¹²⁶ *Id.* §§ 6102(d), 6110 (amending the Bank Secrecy Act of 1970, 31 U.S.C. § 5312(a) Definitions and application, to include the “trade of antiquities” and “value that substitutes for currency or funds”).

¹²⁷ *See* 31 U.S.C. § 5311–5332 (Subchapter II—Records and Reports on Monetary Instruments Transactions).

¹²⁸ *See id.* § 6201–6216. *See* Carl A. Fornaris et al., *The Anti-Money Laundering Act of 2020: Congress Enacts the Most Sweeping AML Legislation Since Passage of the USA PATRIOT Act*, XI THE NATIONAL LAW REVIEW 19 (Jan. 19, 2021), <https://www.gtlaw.com/en/insights/2021/1/the-anti-money-laundering-act-2020-congress-sweeping-aml-legislation-since-passage-usa-patriot-act>.

¹²⁹ Anti-Money Laundering Act of 2020 §§ 6204, 6205.

must (1) publish threat pattern and trend formations based on these reports¹³⁰ and (2) adopt the Pilot Program, which shares SAR information with foreign branches, subsidiaries, and affiliates for CFT purposes.¹³¹ Additionally, this title provides various technological advancement provisions that establish BSA subcommittees on innovation and technology,¹³² BSA innovation officers,¹³³ technology testing with data analytics processing,¹³⁴ financial technology assessments with a cyber security emphasis,¹³⁵ and a financial crimes technology symposium.¹³⁶

Title LXIII aims to improve government communication, oversight, and efficiency.¹³⁷ To improve communication, this title facilitates a system for interagency coordination and consultation.¹³⁸ To improve oversight, this title mandates AML and CFT training for examiners.¹³⁹ To improve efficiency, this title imposes additional damages for repeat BSA violators,¹⁴⁰ imposes heightened and longer-term penalties for violators,¹⁴¹ and prohibits the concealment of asset sources.¹⁴² One significant procedural provision expands the Department of Justice's (DOJ) jurisdiction over foreign subpoenas, which allows DOJ to subpoena foreign banks for *any* records related to *any* account related to an investigation or action, regardless of whether the foreign bank has a correspondent account in the United States.¹⁴³ Finally, this title aims to improve internal oversight by updating whistleblower incentives and protections, providing awards of up to 30% of the total recovered monetary sanctions and increasing protections against retaliation.¹⁴⁴

Title LXIV, the Corporate Transparency Act (CTA), establishes beneficial ownership information reporting requirements.¹⁴⁵ The CTA is a direct response to malignant actors that create "shell corporations" to facilitate illicit financial

¹³⁰ *Id.* § 6206.

¹³¹ *Id.* § 6212.

¹³² *Id.* § 6207.

¹³³ *Id.* § 6208.

¹³⁴ *Id.* § 6209.

¹³⁵ *Id.* § 6210.

¹³⁶ *Id.* § 6211.

¹³⁷ *See id.* §§ 6301–6314.

¹³⁸ *Id.* § 6301.

¹³⁹ *Id.* § 6307.

¹⁴⁰ *Id.* § 6309.

¹⁴¹ *Id.* §§ 6310, 6312.

¹⁴² *Id.* § 6313.

¹⁴³ *Id.* § 6308.

¹⁴⁴ *Id.* § 6314.

¹⁴⁵ *See id.* §§ 6401–6403

activity.¹⁴⁶ Reporting companies¹⁴⁷ are required to provide the beneficial owner's¹⁴⁸ name, date of birth, address, and an official identification number.¹⁴⁹ All beneficial ownership information is added to a confidential, secure, and non-public database.¹⁵⁰ This information may be disclosed to the government for national security, intelligence, and law enforcement purpose;¹⁵¹ additionally, financial institutions may access this information for Customer Due Diligence (CDD) compliance.¹⁵²

Title LXV provides proactive measures that incorporate the Government Accountability Office (GAO) to perform studies and strategize responses to emerging threats.¹⁵³ The GAO is now responsible for conducting studies regarding the Corporate Transparency Act requirements' utility,¹⁵⁴ the public-private partnerships in information sharing efforts,¹⁵⁵ the connection between human trafficking and illicit laundering,¹⁵⁶ and the growth of trade-based money laundering.¹⁵⁷

D. International Guidance from the United Nations and the Financial Action Task Force

The United States is not acting alone in the financial war on terrorism. International norms and regulations, created by two intergovernmental organizations, the United Nations (UN) and the Financial Action Task Force (FATF), greatly influence United States legislation.¹⁵⁸

¹⁴⁶ *Id.* § 6402(3)

¹⁴⁷ *See id.* § 6403(a) (defining a “reporting company” as corporation, limited liability company, or other similar entity formed under law, essentially subjecting all business entities in the U.S. to the CTA).

¹⁴⁸ *See id.* (defining “beneficial owner” as someone who exercises substantial control over a business entity or owns at least 25% of the entity's interests).

¹⁴⁹ *Id.* (amending 31 U.S.C. 5336(b) as the beneficial ownership requirements).

¹⁵⁰ *Id.*

¹⁵¹ *See id.* (amending 31 U.S.C. 5336(c) as the retention and disclosure FinCEN guidelines).

¹⁵² *Id.*

¹⁵³ *See id.* §§ 6501–6511.

¹⁵⁴ *Id.* § 6502.

¹⁵⁵ *Id.* § 6503

¹⁵⁶ *Id.* § 6505.

¹⁵⁷ *Id.* § 6506.

¹⁵⁸ *See DURRIEU, supra* note 30, at 137–43 (emphasizing the priority of harmonization of AML laws between international and U.S. law).

The UN outlines its main stances in “legally binding”¹⁵⁹ Security Council Resolutions (UNSCR) 1267,¹⁶⁰ 1373,¹⁶¹ and 1390.¹⁶² UNSCR 1373 is the UN’s central resolution regarding terrorist financing; it advises states to “take all measures to deny safe haven to those who finance, support or commit terrorist attacks.”¹⁶³

The FATF provides non-binding international recommendations based on data collection and publications on money laundering and terrorist financing trends.¹⁶⁴ FATF recommendations provide advisory model standards for AML and CFT frameworks.¹⁶⁵

III. PROGRESS, NOT PERFECTION

Prior to the 9/11 Attacks, the United States did not have any CFT legal tools.¹⁶⁶ The closest tool was the BSA, an anti-money laundering law with no specific focus on terrorist financing.¹⁶⁷ Although the USA PATRIOT Act expanded the BSA’s regulatory scope to target terrorist financing, the USA PATRIOT Act has been criticized for being hastily pushed through the Congressional approval process in just three days, lacking any scrutiny or discussion to determine its validity.¹⁶⁸

¹⁵⁹ Note that although titled as “legally binding,” UN Security Council resolutions are legally binding only for UN member states. *Terrorism Prevention: UN Resolutions and Reports*, UNITED NATIONS, <https://www.unodc.org/unodc/en/terrorism/resources/un-resolutions-and-reports.html>

¹⁶⁰ S.C. Res. 1267 (Oct. 15, 1999) (“The situation in Afghanistan”).

¹⁶¹ S.C. Res. 1373 (Sept. 28, 2001) (“Threats to international peace and security caused by terrorist acts”).

¹⁶² S.C. Res. 1390 (Jan. 16, 2002) (“The situation in Afghanistan”).

¹⁶³ RYDER, *supra* note 13, at 50.

¹⁶⁴ *Id.* at 59.

¹⁶⁵ *See id.* at 16 (explaining the FATF’s “Forty Recommendations” and “8 Recommendations” regarding international money laundering). FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, FINANCIAL ACTION TASK FORCE (last updated Oct. 2021), <https://www.fatfgafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

¹⁶⁶ *See supra* text accompanying notes 51, 52.

¹⁶⁷ Bank Secrecy Act of 1970, PUB. L. NO. 94-12, 84 STAT. 1114-2 (original anti-money laundering law of the United States, amended by USA PATRIOT Act).

¹⁶⁸ *See Surveillance Under the USA PATRIOT ACT*, AMERICAN CIVIL LIBERTIES UNION <https://www.aclu.org/other/surveillance-under-usapatriot-act> (critiquing the USA PATRIOT Act’s approval process, lacking any discussion, debate, or hearings. “Many Senators complained that they had little chance to read it, much less analyze it, before having to vote.”).

Furthermore, some critics have brought forth data questioning the Act's effectiveness and utility in counterterrorism.¹⁶⁹

Accordingly, over the past 20 years, regulators and legislators have recognized the USA PATRIOT Act's various deficiencies in modernization, technology, coverage, and relevance. In response, Congress enacted the Anti-Money Laundering Act of 2020 (AMLA).¹⁷⁰ Although potentially useful, the AMLA is not a comprehensive, nor ultimate, solution to revamping the United States CFT framework. f

A. The Anti-Money Laundering Act of 2020 Is a Solution to Most of the Law's Deficiencies

Although the AMLA has yet to be fully implemented, it is estimated to “reform the BSA legal framework and address longstanding concerns raised by the public and private sectors,” moving the “United States closer to a global regime of fighting financial crimes.”¹⁷¹ With its purpose to modernize the AML and CFT frameworks, the AMLA *may be* a solution to certain, existing deficiencies from the USA PATRIOT Act.¹⁷² The AMLA focuses on four areas for improvement: beneficial ownership requirements, risk-based approaches, internal efficiencies, and the public-private partnership.

1. *Beneficial Ownership Requirements.* As mentioned in Section I, terrorist organizations use shell corporations as a money laundering tool to process funds.¹⁷³ With the relaxed corporate law structures in the United States, individuals or organizations have formed shell corporations for “identity protection” behind the corporate veil.¹⁷⁴

Prior to the AMLA, there were no “beneficial ownership requirements” throughout the United States' financial system.¹⁷⁵ At most, the USA PATRIOT Act

¹⁶⁹ See Maggie Ybarra, *FBI admits Patriot Act snooping powers didn't crack any major terrorism cases*, THE WASHINGTON TIMES (May 21, 2015), <https://www.washingtontimes.com/news/2015/may/21/fbi-admits-patriot-act-snooping-powers-didnt-crack/> (interviewing FBI personnel on their success in terrorism-related cases after the USA PATRIOT Act).

¹⁷⁰ Anti-Money Laundering Act of 2020, PUB. L. NO. 116-283, Division F. §§ 6001–6511 (2021).

¹⁷¹ Fornaris et al., *supra* note 113.

¹⁷² Anti-Money Laundering Act of 2020, PUB. L. NO. 116-283, Division F. §§ 6001–6511 (2021). Because the AMLA has yet to be fully implemented, we can only estimate, for now, that this can be a plausible solution to curing the predating law's deficiencies.

¹⁷³ See *supra* text accompanying notes 38–40.

¹⁷⁴ See Baradaran, *supra* note 1, at 492–95 (outlining the facile process for incorporating a “shell company” in the U.S.).

¹⁷⁵ *Id.*

required a Securities Exchange Commission (SEC) study to determine the need for such requirements, but the SEC never followed through with substantive results.¹⁷⁶ Thus, to break the trend of “lax financial reporting requirements,”¹⁷⁷ the AMLA seeks financial transparency through its Corporate Transparency Act (CTA).¹⁷⁸

The CTA requires all reporting companies¹⁷⁹ to submit information about the beneficial owner of the company, which is the individual with substantial control over the entity.¹⁸⁰ This information “chip[s] away at the anonymity that enables illicit finances to flow untraceably,” which in turn can facilitate law enforcement surveillance.¹⁸¹ Moreover, financial institutions that have access to the beneficial ownership database can further assist law enforcement through private enforcement.¹⁸²

2. Risk-Based Approaches. A common critique of the USA PATRIOT Act has been its overly broad and ineffective scope in the CFT framework.¹⁸³ Rather than adapting the law to evolving threats, Congress has stagnantly amended the USA PATRIOT Act—mainly to increase sanctions and penalties—failing to achieve substantive improvements for preemptive efforts in CFT.¹⁸⁴ To address this, the AMLA codifies a risk-based approach to fulfill the CFT regulatory framework.¹⁸⁵

¹⁷⁶ See USA PATRIOT Act of 2001 § 356.

¹⁷⁷ See Baradaran, *supra* note 1, at 494.

¹⁷⁸ Anti-Money Laundering Act of 2020 §§ 6401–6403 (Title LXIV—Establishing Beneficial Ownership Information Reporting Requirements).

¹⁷⁹ See *id.* § 6403(a) (defining a “reporting company” as corporation, limited liability company, or other similar entity formed under law, essentially subjecting all business entities in the U.S. to the CTA).

¹⁸⁰ See *id.* § 6403(a) (defining a “reporting company” as corporation, limited liability company, or other similar entity formed under law, essentially subjecting all business entities in the U.S. to the CTA).

¹⁸¹ Elizabeth G. Silver & Catherine & Catherine A. Johnson, *Anti-Corruption Hot Topic: Corporate Transparency Emerges as Cornerstone of Financial Integrity Regulatory Reforms*, XI THE NATIONAL LAW REVIEW 301 (Oct. 28, 2021), <https://www.natlawreview.com/article/anti-corruption-hot-topic-corporate-transparency-emerges-cornerstone-financial>

¹⁸² See Anti-Money Laundering Act of 2020 § 6403 (amending 31 U.S.C. 5336(c) as the retention and disclosure FinCEN guidelines). Financial institutions that comply with the Consumer Due Diligence (CDD) requirements have access to the beneficial ownership database.

¹⁸³ See *supra* text accompanying notes 167–170.

¹⁸⁴ See USA PATRIOT Act: *Justice Information Sharing*, U.S. DEP’T. OF JUST., <https://bja.ojp.gov/program/it/privacy-civil-liberties/authorities/statutes/1281> (explaining the legislative procedural history in amending the USA PATRIOT Act, Title III).

¹⁸⁵ Anti-Money Laundering Act of 2020 § 6002(4) (stating one of its purposes as “to reinforce that the anti-money laundering and countering the financing of terrorism policies, procedures, and controls of financial institutions shall be risk-based”).

First, the AMLA outlines a rulemaking structure focused on risk-based testing, oversight, and other risk management processes.¹⁸⁶ This structure prioritizes the use of technology and innovation in creating risk governance frameworks for financial institutions and government agencies.¹⁸⁷

Second, the AMLA imposes specific initiatives targeting emerging threats in terrorist financing, such as antiquities trading,¹⁸⁸ virtual currencies,¹⁸⁹ and human trafficking.¹⁹⁰ Importantly, the AMLA codifies the first regulation¹⁹¹ over virtual currencies by including “value that substitutes for currency or funds” under the BSA’s “financial institutions” definition.¹⁹² Now under the BSA’s regulatory scope, individuals, transmitters, and businesses involved with virtual currency exchanges must comply with the FinCEN, AML, and CFT regulatory frameworks.¹⁹³

In sum, the AMLA shifts CFT efforts from a damage control perspective to one of risk prevention, enabling law enforcement to be ahead of the threat through preemptive surveillance measures. This preemptive approach addresses today’s era of technological advancement, where terrorist groups are opportunists¹⁹⁴ using technology to their advantage in financing efforts.¹⁹⁵

¹⁸⁶ *Id.* § 6209.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* § 6110.

¹⁸⁹ *Id.* § 6102(d).

¹⁹⁰ *Id.* § 6505.

¹⁹¹ The AMLA codified the official approach proposed by FinCEN in 2019, adopting the same language of “value that substitutes for currency.” Note that the AMLA does not include any specific language referring to “bitcoin,” “cryptocurrency,” or “digital currency.” See FinCEN Guidance, *Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies*, U.S. DEP’T OF TREAS. (May 9, 2019), <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

See also Timothy Smith, *Cryptocurrency Regulations Around the World*, Investopedia (Sept. 21, 2021), <https://www.investopedia.com/cryptocurrency-regulations-around-the-world-5202122> (presenting the complexity of U.S. regulation on cryptocurrency due to the different interagency classifications of cryptocurrency).

¹⁹² See Anti-Money Laundering Act of 2020 § 6102(d) (amending the Bank Secrecy Act of 1970, 31 U.S.C. § 5312(a) Definitions and application to include “value that substitutes for currency or funds”).

¹⁹³ Morgan E.M. Harrison & Theresa Kananen, *Anti-Money Laundering Act Expands Regulation of Cryptocurrency and Other Digital Assets*, JDSUPRA (May 20, 2021), <https://www.jdsupra.com/legalnews/anti-money-laundering-act-expands-8737757/>.

See Anti-Money Laundering Act of 2020 § 6102(d) (amending the Bank Secrecy Act of 1970, 31 U.S.C. §§ 5312(a)(1), 5312(a)(2)(J), 5312(a)(2)(R) definitions and application to include “value that substitutes for currency or funds”).

¹⁹⁴ ZARATE, *supra* note 6, at 22.

¹⁹⁵ See DURRIEU, *supra* note 30, at 41 (“As technology advances, so do opportunities for money laundering.”).

3. *Internal Efficiencies.* Because the USA PATRIOT Act's approval process endured only three days, the Act's validity has been challenged due to a lack of reasoned consideration and debate.¹⁹⁶ Consequently, Congress has amended and reauthorized the USA PATRIOT Act has been several times over the years.¹⁹⁷ Despite these amendments, the CFT framework's low success rate has remained the same.

In response, the AMLA implements internally focused provisions that facilitate interagency communication and collaboration,¹⁹⁸ require AML and CFT training for regulators,¹⁹⁹ incorporate technology and innovation into oversight and assessments,²⁰⁰ and require studies by the Government Accountability Office (GAO) to assess the AMLA's performance.²⁰¹ These provisions address the predated CFT framework's deficiencies by maintaining internal checks that measure the AMLA's progress. This adaptive approach acknowledges that laws are not comprehensive or bullet-proof but can be monitored for ongoing improvements. Thus, the AMLA can have an evolutionary effect, addressing deficiencies as they arise, rather than waiting twenty years for a new CFT law like the United States did between the USA PATRIOT Act and the AMLA.

4. *The Public-Private Partnership.* Finally, as discussed throughout this subsection, one of the USA PATRIOT Act's deficiencies has been its overbroad scope and limited success, especially in its private sector compliance requirements. With heavily regulated record-keeping, customer due diligence, and reporting duties, private financial agents and institutions have grown to be "policem[e]n of their customers."²⁰² The private sector's active role in crime control has been criticized as a "privatization of law" that imposes excessive burdens and compliance costs on the private sector.²⁰³

In response, the AMLA requires agencies to review and propose changes for regulatory requirements, like suspicious activity reports and currency transaction reports.²⁰⁴ Because the private sector has direct access to information at the initial

¹⁹⁶ See *supra* text accompanying note 168. See also *Chronology of the USA PATRIOT Act, 2001*, AMERICAN LIBRARY ASSOCIATION, <https://www.ala.org/advocacy/chronology-usa-patriot-act-2001> for the approval process timeline.

¹⁹⁷ See *supra* text accompanying note 84.

¹⁹⁸ Anti-Money Laundering Act of 2020 § 6101 (amending the Bank Secrecy Act of 1970, 31 U.S.C. § 5311(2) Declaration of purpose).

¹⁹⁹ *Id.* § 6207.

²⁰⁰ See *id.* §§ 6301–6314.

²⁰¹ See *id.* §§ 6208–6211.

²⁰² See DURRIEU, *supra* note 30, at 155–56 (describing the negative impacts of burdensome regulatory requirements on the financial private sector).

²⁰³ *Id.*

²⁰⁴ Anti-Money Laundering Act of 2020 §§ 6204, 6205.

stages of terrorist financing—before illicit funds become untraceable upon entering the economy—prioritizing the public-private partnership is critical to the longevity of the CFT framework.²⁰⁵ Thus, the AMLA can maximize the utility of the public-private partnership by reducing “unnecessarily burdensome [CFT] requirements” throughout the private sector.²⁰⁶

B. But Deficiencies Remain

Although the AMLA provides an array of CFT legal tools, two deficiencies remain in the current CFT framework. First, it does not account for domestic terrorism. Second, its scope is too narrowly focused on money laundering.

1. *Time to Look in the Mirror: Domestic Terrorism.* Throughout the current CFT framework, Congress has limited its priorities to a global, or international, terrorism framework. EO 13224 only designates *foreign* terrorist organizations.²⁰⁷ The USA PATRIOT Act’s CFT provisions fall under Title III, the *International Money Laundering Abatement and Anti-Terrorist Financing Act*.²⁰⁸ The AMLA provides several initiatives exclusively for *international* and *foreign* collaboration, intelligence, and coordination.²⁰⁹

Yet, there is no legislation that addresses the financing of domestic terrorism. The closest legislative tool is Section 802 of the USA PATRIOT Act, which merely defines domestic terrorism.²¹⁰ The United States must face the much-needed reality check that terrorism occurs within its borders and accordingly, so does the financing of terrorism. Because current CFT surveillance and oversight *solely* focus on international or foreign individuals, entities, organizations, financial institutions, accounts, transactions, etc., it fails to acknowledge the emerging threat of domestic terrorism. Consequently, there is a lack of priority in the CFT framework for domestic counterterrorism efforts.

2. *There Is More to Terrorist Financing Than Money Laundering.* The United States’ CFT framework has been historically couched under the umbrella of anti-

²⁰⁵ See DURRIEU, *supra* note 30, at 171 (explaining that the State itself is incapable of detecting all suspicious financial activity and thus, the cooperation and interconnection between the private and public sector is critical).

²⁰⁶ Anti-Money Laundering Act of 2020 § 6204.

²⁰⁷ Exec. Order No. 13224, 66 Fed. Reg. 49,079 (Sept. 25, 2001).

²⁰⁸ International Money laundering Abatement and Financial Anti-Terrorism Act of 2001, PUB. L. NO. 107-56, 115 STAT. 272 (2001).

²⁰⁹ Anti-Money Laundering Act of 2020.

²¹⁰ USA PATRIOT Act of 2001 § 802, Definition of domestic terrorism (codified as 18 U.S.C § 2331(5)).

money laundering (AML) laws.²¹¹ This umbrella originates in the Bank Secrecy Act (BSA), which Congress enacted over fifty years ago with the purpose of assisting “U.S. government agencies in detecting and preventing money laundering.”²¹² In establishing and developing the CFT framework, Congress has relied on amending the BSA—as seen in the USA PATRIOT Act and AMLA.²¹³ But the BSA, and its AML framework—no matter how many times Congress amends it—is not equipped to address the advanced system of terrorist financing the United States faces today. Specifically, the AML framework is ill-equipped to address the sourcing and processing stages of terrorist financing.²¹⁴

First, because the AML framework is effective only *after* terrorist funds have entered the processing stage through formal financial institutions or transactions, it fails to address the initial sourcing stage of terrorist financing.²¹⁵ As a result, the AML’s *reactive* surveillance may fail to recognize a threat before a terrorist organization gets to the final stage of using the funds, when funds are no longer traceable.²¹⁶ Thus, without a preemptive response to the sourcing stage of terrorist financing, a reactive AML-based approach may be too delayed in responding to CFT threats.

Second, money laundering is not the *only* form of processing terrorist funds. To circumvent financial surveillance, terrorist organizations have ditched regulated financial institutions for informal, unregulated financial systems to process their funds.²¹⁷ Because the AML framework relies on the formal financial system, the AML financial intelligence model²¹⁸ is inadequate to address terrorist financing that occurs outside the formal system’s purview of surveillance.

Terrorist organizations are increasingly bypassing the formal system due to the rise of the cryptocurrency industry.²¹⁹ The cryptocurrency industry is a favorable form to process terrorist funds because of its anonymity, decentralization, lack of formal requirements, speedy processes, low international transaction fees,

²¹¹ See *supra* Section II.

²¹² OFFICE OF THE COMPTROLLER OF THE CURRENCY, *Bank Secrecy Act (BSA)*, <https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html>

²¹³ See *supra* Section II(A), (B).

²¹⁴ See *supra* Section I (outlining the three stages of terrorist financing as (1) sources, (2) processes, (3) uses).

²¹⁵ See *supra* Section II (describing the different surveillance/oversight methods of current AML law that take place after funds have entered the private, formal financial system).

²¹⁶ See DURRIEU, *supra* note 30, at 171 (“[w]hen the proceed of crime are totally converted, invested and/or consumed in the legal market, then, the opportunities of law enforcement authorities to detect the assets derived from crime are extremely difficult”).

²¹⁷ See Schindler, *supra* note 29 (presenting the technological developments that terrorists learn to misuse).

²¹⁸ See TIMOTHY WITTIG, UNDERSTANDING TERRORIST FINANCE 83 (2011) (emphasizing the significance of financial intelligence and how it serves as a “footprint” to tracking down terrorists).

²¹⁹ See Schindler, *supra* note 29 (presenting the terrorist misuses of cryptocurrency).

irreversible payments, and mobile platform.²²⁰ As cryptocurrencies grow to be a widely acceptable form of payment,²²¹ it is estimated that terrorist organizations will increasingly rely on cryptocurrency as a processing system.²²²

Although the AMLA codifies the first regulatory response to cryptocurrency, placing cryptocurrency (and other virtual currencies) under the same BSA and AML regulations as formal financial institutions and transactions is an impractical solution. The AMLA's cryptocurrency provisions apply to cryptocurrency businesses, transactions, and exchanges that enter the *formal* financial system through banks and money service businesses;²²³ but the entire objective of cryptocurrency use is to bypass the formal financial system!²²⁴ Thus, applying the AML framework to a financial form of exchange that was specifically created to avoid the AML framework is a regulatory response with a foreseeable dead end.

Cryptocurrency—as an exchange, transaction, value, currency, informal system, etc.—is substantially different from the institutions and transactions that comply with the formal financial system's requirements. Labeling cryptocurrency as another “financial institution” completely ignores all the elements that make cryptocurrency a threat; namely, its informality, anonymity, and decentralization.²²⁵ Subjecting cryptocurrency to the traditional AML framework seems ideal on its face, but it is impractical in substance.

IV. ESTABLISHING A LARGER LEGAL LENS

To address the remaining deficiencies in the post-AMLA CFT framework, the United States should redirect its efforts from amending existing laws towards establishing a larger legal lens—focused on the *entire* scope of CFT. To establish this larger lens, Congress should create legislation specifically tailored to the

²²⁰ Nathan Reiff, *What Are the Advantages of Paying with Bitcoin?*, INVESTOPEDIA (Aug. 02, 2021),

<https://www.investopedia.com/ask/answers/100314/what-are-advantages-paying-bitcoin.asp>

²²¹ David Walsh, *Paying with Bitcoin: These are the major companies that accept crypto as payment*, EURONEWS (April 4, 2021), <https://www.euronews.com/next/2021/12/04/paying-with-cryptocurrencies-these-are-the-major-companies-that-accept-cryptos-as-payment>.

²²² See SCHWARZ, *supra* note 46.

²²³ See Anti-Money Laundering Act of 2020 § 6102(d) (amending the Bank Secrecy Act of 1970, 31 U.S.C. §§ 5312(a)(1), 5312(a)(2)(J), 5312(a)(2)(R) Definitions and application to include “value that substitutes for currency or funds”).

²²⁴ See Jake Frankenfield, *Cryptocurrency*, INVESTOPEDIA (Oct. 30, 2021), <https://www.investopedia.com/terms/c/cryptocurrency.asp>. See Mike Chu, *What is the Point of Cryptocurrency?*, DATAOVERHAULERS (2021), <https://dataoverhaulers.com/purpose-point-of-cryptocurrency/#:~:text=The%20main%20point%20of%20cryptocurrency,or%20more%20real%20Dworld%20problems>.

²²⁵ See *supra* text accompanying notes 41–47.

purpose of CFT. This lens should prioritize two reforms, a global approach and a framework that expands beyond AML.

A. A Global Approach: International and Domestic

As explained in Section III, AML and CFT laws focus on the financing of *international* terrorism with no mention of domestic terrorism (DT).²²⁶ Through a larger legal lens focused on a CFT framework, the United States should prioritize a global—international *and* domestic—approach.

The United States should include DT in this global approach by extending all current and future AML and CFT laws to the domestic context—for the *sole* purpose of countering DT financing. The goal is to utilize CFT’s preemptive measures—financial intelligence, surveillance, and oversight—to counter DT. For example, financial institutions should be required to submit suspicious activity reports and disclose consumer reports related to domestic terrorism, rather than only for international terrorism.²²⁷

Unlike international terrorism, DT has not been criminalized. Further, there are no *legally* designated domestic terrorist organizations (DTO), and there is no prohibition against providing material support to DTOs. Due to the lack of DT law, this global approach should be cautiously limited to operating under the 18 U.S.C. § 2331(5) domestic terrorism definition.²²⁸ Purposefully, this is to initiate domestic counterterrorism efforts without triggering concerns regarding First Amendment or Due Process rights, which have been obstacles in addressing DT.²²⁹

²²⁶ See *supra* text accompanying notes 206–208.

²²⁷ See 31 U.S.C. §§ 5311–5332 (Subchapter II–Records and Reports on Monetary Instruments Transactions).

²²⁸ 18 U.S.C. § 2331(5) (“(5) the term “domestic terrorism” means activities that—(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (B) appear to be intended—(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily within the territorial jurisdiction of the United States...”).

²²⁹ See Bryan Michael Jenkins, *Five Reasons to Be Wary of a New Domestic Terrorism Law*, RAND CORPORATION (Feb. 24, 2021) <https://www.rand.org/blog/2021/02/five-reasons-to-be-wary-of-a-new-domestic-terrorism.html> (presenting the constitutional, political, and criminal concerns in creating a domestic terrorism law). See Charlie Dunlap & Shane Stansbury, *Guest Post: Shane Stansbury on “Domestic Terrorism: It’s Time for a Meaningful Debate*, LAWFIRE (March 18, 2019), <https://sites.duke.edu/lawfire/2019/03/18/guest-post-shane-stansbury-on-domestic-terrorism-its-time-for-a-meaningful-debate/> (explaining the potential First Amendment challenges that would arise from designating domestic terrorist organizations; “...distinguishing between groups that incite or commit violence from those that engage in hateful but protected speech is not always clear, and it is the rare extremist organization that will not engage in *some* speech that is not protected.”).

Further, CFT surveillance and oversight for the financing of DT would require additional vetting and screening processes to adequately assess whether the financing at issue is related to DT. To assist with these processes, the CFT law should include provisions for inter-agency collaboration between the Department of Justice, the Federal Bureau of Investigation, and other law enforcement agencies responsible for addressing DT threats. Although, under this proposed framework, the DT financing would be subject to the same surveillance and oversight as the financing of international terrorism, DT financing should receive an extra layer of surveillance assessments in the financial system. With this precaution, the financial intelligence model²³⁰ can perform its risk-prevention role without entering the sensitive and political realm of defining, designating, and criminalizing DT.²³¹

Although not an ultimate solution, including DT in the CFT framework is one step in the right direction to responding to the unaddressed threat of DT. Through the CFT financial intelligence model, this framework could identify and assess DT threats, exposing the scope of the DT threat in the United States; as a result, this could prompt the much-needed debate to stabilize domestic terrorism law.²³² Moreover, it can improve counterterrorism and deterrence efforts by placing individuals and organizations involved in DT on notice that the United States is taking CFT action to assess, and eventually respond to, DT.

B. Expanding Beyond the Anti-Money Laundering Framework

As outlined in Section II, CFT legal efforts have been confined to the narrow lens of an anti-money laundering framework. Although money laundering is a prominent aspect of terrorist financing, the AML framework is not a comprehensive response to the broad and unique scope of CFT threats. First, an AML lens does not address the initial stage of sourcing in terrorist financing. Second, an AML lens overemphasizes money laundering as a process, which deemphasizes other processes that take place through informal systems, such as cryptocurrencies.

1. *Targeting the Sources of Terrorist Financing.* Because an AML framework takes effect only *after* terrorist funds have entered the formal financial system through financial institutions, transactions, or markets under the AML regulatory radar, it fails to counter terrorist financing before the processing stage. Accordingly, the AML framework is inadequate to combat the sources of terrorist financing, specifically, illegal activity sources.²³³

²³⁰ See TIMOTHY WITTIG, UNDERSTANDING TERRORIST FINANCE 83 (2011) (emphasizing the significance of financial intelligence and how it serves as a “footprint” to tracking down terrorists).

²³¹ See *supra* text accompanying note 229.

²³² See Dunlap & Stansbury, *supra* note 229.

²³³ See *supra* Section(I)(A).

To target the sources of terrorist financing, the CFT framework should focus on utilizing criminal statutes that target the sources—specifically, the illegal activities—that fund terrorist organizations.²³⁴ A potential approach is to mandate a sentencing enhancement for any crimes affiliated with the financing of terrorism, similar to the U.S. Sentencing Commission’s *advisory* terrorism enhancement, which imposes a twelve-level sentence enhancement for any felony that involved, or was intended to promote, a federal crime of terrorism.²³⁵ This CFT enhancement should apply to any crimes related—directly or indirectly—to the financial support of a “federal crime of terrorism.”²³⁶

To account for potential Constitutional concerns regarding the DT law’s instability,²³⁷ an additional intent requirement should be met to apply the enhancement in a DT context. Intent requirements should be as defined in 18 U.S.C § 2331(5)(B).²³⁸

In sum, a sentencing enhancement for illegal activities, which provide terrorist organizations a source of funds, can deter these activities, depriving terrorist organizations of a main source of funds. This preemptive approach targets terrorist financing at its earliest stage of sourcing, before funds become untraceable in the process and use stages.²³⁹ However, there may be evidentiary challenges in connecting illegal activities to terrorist financing this early in the financing timeline. But it is “far better to stop suspect individuals based on their documented criminal activity, rather than wait[ing] until they have committed a terrorist act.”²⁴⁰

2. *Responding to Additional Processes of Terrorist Financing.* Because the AML framework can only address terrorist financing that occurs within its

²³⁴ THACHUK & LAL, *TERRORIST CRIMINAL ENTERPRISES: FINANCING TERRORISM THROUGH ORGANIZED CRIME* (2018) (proposing that counterterrorism law should emphasize the nexus between terrorism and criminal activity).

²³⁵ See U.S. SENT’G COMM’N, U.S. Sentencing Guidelines Manual § 3A1.4 (2021).

²³⁶ 18 U.S.C. § 2332b(g)(5), “Federal crime of terrorism.” Note that because domestic terrorism has yet to be criminalized, this sentencing enhancement could only apply to the financing of international terrorism.

²³⁷ See *supra* text accompanying note 228. See also Greg Myre, *An Old Debate Renewed: Does The U.S. Now Need A Domestic Terrorism Law?*, NPR (Mar. 16, 2021), <https://www.npr.org/2021/03/16/976430540/an-old-debate-renewed-does-the-u-s-now-need-a-domestic-terrorism-law> (discussing the constitutional costs that would outweigh the benefits of a DT law).

²³⁸ 18 U.S.C. § 2331(5)(B), (domestic terrorism activities that “(B) appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping”).

²³⁹ See DURRIEU, *supra* note 30. See also *supra* Section I(B) (explaining how once terrorist funds enter the processing stage to be laundered or concealed, it is difficult to trace the flow of funds thereafter).

²⁴⁰ See THACHUK & LAL, *supra* note 234.

regulatory radar over the formal financial system, it lacks a response to funds that never enter this radar. Accordingly, terrorists—as the “opportunists”²⁴¹ they are—have mastered the unregulated, informal loopholes to bypass the AML radar.²⁴² These loopholes, Informal Value Transfer Systems (IVTS)—such as the *hawala* market, black market, internet transfers, virtual currencies, etc.—provide the benefits of anonymity and decentralization.²⁴³

In response, the United States should remove the CFT framework from under the AML umbrella and create a CFT framework solely for the purposes of CFT that prioritizes the intricacies of these informal loopholes. To do so, this CFT framework should encompass the financial intelligence approach,²⁴⁴ focused on surveillance and oversight, to target informal value transfer systems. Specifically, the CFT framework should focus on the emerging threat of cryptocurrencies as an IVTS.

Because regulatory efforts have yet to fully assess and understand the complexities to the anonymity, decentralization, and engineering behind cryptocurrencies, this CFT cryptocurrency response should be multi-faceted and adaptable to new assessments.

First, a new CFT framework should establish a cryptocurrency task force to oversee and assess the evolving threat of cryptocurrency in the terrorist financing context. Although government agencies have previously attempted cryptocurrency task forces, they address cryptocurrency in its entirety and thus, are too broad in scope for CFT purposes.²⁴⁵ Whereas here, the proposed task force should have a *sole* focus on terrorist financing in cryptocurrency. Moreover, a differentiating aspect of this CFT task force would be the involvement of private sector consultants and experts. Although the AMLA imposes cryptocurrency training and educational

²⁴¹ ZARATE, *supra* note 6, at 22, (“Terrorist groups are opportunists and do not shy away from the use of classic criminal activity to raise funds for their criminal goals.”).

²⁴² See Schindler, *supra* note 29. See Bryan Michael Jenkins, *Five Reasons to Be Wary of a New Domestic Terrorism Law*, RAND CORPORATION (Feb. 24, 2021) <https://www.rand.org/blog/2021/02/five-reasons-to-be-wary-of-a-new-domestic-terrorism.html> (presenting the constitutional concerns in reaction to legislative efforts regarding domestic terrorism).

²⁴³ See *supra* text accompanying notes 41–46.

²⁴⁴ See WITTIG, *supra* note 218 (emphasizing the significance of financial intelligence and how it serves as a “footprint” to tracking down terrorists).

²⁴⁵ See U.S. DEP’T OF JUST., *Deputy Attorney General Lisa O. Monaco Announces National Cryptocurrency Enforcement Team* (Oct. 6, 2021), <https://www.justice.gov/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-national-cryptocurrency-enforcement-team> (creating an inter-agency taskforce to assist in tracing and recovering assets lost to fraud, extortion, ransom via cryptocurrency); See U.S. DEP’T OF JUST., *REPORT OF THE ATTORNEY GENERAL’S CYBER DIGITAL TASK FORCE: CRYPTOCURRENCY ENFORCEMENT FRAMEWORK* (Oct. 2020), (producing findings from the DOJ Cyber-Digital Task Force that analyzes cryptocurrency as an industry).

requirements on regulators,²⁴⁶ government resources would be better spent on outsourcing experts and leaders in the cryptocurrency industry, who have already grasped a comprehensive understanding of the system.²⁴⁷

Second, this CFT framework should implement an anonymous reporting system online, through FinCEN or another government agency, for individuals to report cryptocurrency accounts or addresses involved in illegal activity. An anonymous reporting system could enable victims of illegal activities, such as ransomware attacks, to report their attackers without fear of receiving OFAC sanctions if they succumbed to the attack and provided payment.²⁴⁸ Third-party reporting websites, such as “Bitcoinabuse.com,”²⁴⁹ like this already exist, but a government-sponsored reporting system would streamline law enforcement’s access and response to the reports. Additionally, a reporting system could have a deterrent effect on crypto criminals, as their activity be under the government’s radar. Moreover, the task force experts can compile these reports, make connections in accounts and addresses,²⁵⁰ and the government can publish these crypto accounts and addresses as “designated” crypto threats.

Third, this CFT framework should pursue a long-term response in the form of compromise with the cryptocurrency industry, specifically with cryptocurrency exchange platforms.²⁵¹ Instead of waiting for the unrealistic expectation that

²⁴⁶ Anti-Money Laundering Act of 2020 § 6102. *See* Schindler, *supra* note 29, (“Regulatory gaps and lack of technical expertise within regulatory bodies pose challenges for controlling this risk.”).

²⁴⁷ *See Top Crypto Asset Compliance and Risk Management Startups*, TRACXN (last updated Oct. 17, 2021), <https://tracxn.com/d/trending-themes/Startups-in-Crypto-Asset-Compliance-and-Risk-Management> (listing Crypto Asset Compliance and Risk Management firms that specialize in providing AML/CFT compliance services). Some of these firms already assist law enforcement and government agencies in tracking, compiling, and organizing blockchain assessments for criminal connections. *See* Ari Redbord, Head of Legal & Government Affairs, TRM Labs, Guest Speaker at Duke University School of Law: Cryptocurrency and National Security (Oct. 25, 2021) (outlining the services and assistance that TRM Labs, a Blockchain Intelligence firm, provides to law enforcement in cryptocurrency crimes).

²⁴⁸ *See* U.S. DEP’T OF TREAS., UPDATED ADVISORY ON POTENTIAL SANCTIONS RISKS FOR FACILITATING RANSOMWARE PAYMENTS (outlining the OFAC sanctions that apply, under material support statutes, 18 U.S.C. §§ 2339A, 2339B, when providing payment to terrorist organizations).

²⁴⁹ Kevin Helms, *Here’s How to Check If a Bitcoin Address Is a Scam*, BITCOIN.COM (July 22, 2020), <https://news.bitcoin.com/how-to-check-bitcoin-address-scam/>

²⁵⁰ *See supra* text accompanying note 244.

²⁵¹ Note that in the cryptocurrency industry, these platforms are referred to as “exchanges,” or “platforms.” Under the BSA’s “financial institutions” definition, these exchanges would be considered as “transmitters.” *See* Jake Frankenfield, *Cryptocurrency*, INVESTOPEDIA (Oct. 30, 2021), <https://www.investopedia.com/terms/c/cryptocurrency.asp> (outlining how cryptocurrency exchanges facilitate the buying, selling, transferring and storing of cryptocurrencies). *See also* Paula Likos & Coryanne Hicks, *The 5 Best Cryptocurrency Exchanges*, U.S. NEWS & WORLD REPORT (Dec. 15, 2021),

cryptocurrency transactions—specifically those connected to terrorist financing—will enter the AML radar via the formal financial system, the government should go directly to the source of these transactions; namely cryptocurrency exchanges.²⁵² Specifically, the government should form a liaison with these exchanges to apply CFT’s financial intelligence approach to cryptocurrency exchanges, which would facilitate law enforcement surveillance over specific cryptocurrency accounts or addresses.²⁵³ Rather than imposing the burdensome, and potentially ineffective,²⁵⁴ BSA and AML requirements on these exchanges as “financial institutions,” the government should collaborate with these exchanges to establish a compliance method that caters to the uniqueness of cryptocurrency.²⁵⁵

For example, rather than requiring a cryptocurrency exchange, like Coinbase,²⁵⁶ to report every transaction over \$10,000²⁵⁷—which realistically would lead to a bureaucratic and ineffective investigation—the government should create a compliance process. Upon showing a threat of extreme danger—like terrorist financing—the government may surveil threatening accounts or addresses, and their currency purchasers, on these exchange platforms to collect financial intelligence. Through financial intelligence, law enforcement may track crypto users and currency transactions of concern.

In sum, applying the AML framework to the cryptocurrency industry will disincentivize terrorists from processing funds through cryptocurrencies, which will lead terrorists to find the next unregulated loophole to the financial system. Consequently, the government must realize the power of the public-private partnership—specifically, the cryptocurrency industry—for financial intelligence, especially when these informal transactions never enter the government’s radar within the formal financial system. The threat of cryptocurrency is here to stay;²⁵⁸

<https://money.usnews.com/investing/cryptocurrency/articles/the-best-cryptocurrency-trading-sites>.

²⁵² See Adam Hayes, *How to Buy Bitcoin*, INVESTOPEDIA (Dec. 3, 2021), <https://www.investopedia.com/articles/investing/082914/basics-buying-and-investing-bitcoin.asp> (explaining the process of initiating bitcoin transactions through bitcoin transmitters that serves as intermediaries to the blockchain system).

²⁵³ See WITTIG, *supra* note 218 (emphasizing the significance of financial intelligence and how it serves as a “footprint” to tracking down terrorists).

²⁵⁴ See *supra* text accompanying notes 199–203.

²⁵⁵ See *supra* text accompanying notes 216–221.

²⁵⁶ Todd Haselton, *Here’s What Coinbase Is and How to Use It to Buy and Sell Cryptocurrencies*, CNBC (Apr. 14, 2014), <https://www.cnbc.com/2021/04/14/what-is-coinbase-how-to-use-it.html>

²⁵⁷ See 31 U.S.C. §§ 5311–5332 (Subchapter II—Records and Reports on Monetary Instruments Transactions).

²⁵⁸ See Lee Reiners, *Ban Cryptocurrency to Fight Ransomware*, WALL STREET JOURNAL, <https://www.wsj.com/articles/ban-cryptocurrency-to-fight-ransomware-11621962831> (“Banning anything runs counter to the American ethos.”).

the government must think outside the box of its traditional, regulatory AML framework to adapt to the unique, and evolving, threat of cryptocurrency.

CONCLUSION

Money may make the world of terrorism go round, but the United States runs the world of money.²⁵⁹ It's time for the United States to revamp its *Combating the Financing of Terrorism* (CFT) framework to make these worlds collide.

²⁵⁹ *See supra* text accompanying note 7, 8.