Defense Attorneys at a Dead End: Representing Stateless Terrorist Clients Detained Indefinitely

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INTRODUCTION

Nizar Trabelsi is currently held in jail on charges of conspiring to kill Americans abroad, conspiring to use weapons of mass destruction, and supporting a foreign terrorist organization (Al-Qaeda).[1] He had devised a plan to detonate bombs at a NATO air base in Belgium that housed United States soldiers.[2] He is said to have met with Osama Bin Laden and plotted a suicide bombing at the United States embassy in Paris before his arrest for plans to bomb the air base.[3] He was extradited to the United States in 2013 and has since awaited his trial.[4]

Generally, when a citizen of another country commits a "crime of moral turpitude," has "multiple criminal convictions," or is convicted of an "aggravated felony," then that individual is deportable.[5] Usually this person is deported to a country that they are a citizen of or have other ties to and where they are accepted by that country.[6] However, what happens when there are no viable deportation destinations?

A stateless individual is one who does not legally belong to any country.[7] There are "an estimated 10 million stateless people worldwide."[8] In the United

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1. *See* United States v. Trabelsi, 845 F.3d 1181, 1184 (D.C. Cir. 2017).

2. *See* United States v. Trabelsi, No. 06-cr-89 (RDM), Dkt.109, 2 (D.D.C. May 8, 2015); *Tunisian Nizar Trabelsi Extradited to US on Terror Charges*, BBC (Oct. 4, 2013), https://www.bbc.com/news/world-us-canada-24393770 [https://perma.cc/4XS3-NM9T].

3. *See Belgium Frees Jailbreak Suspects*, BBC, http://news.bbc.co.uk/2/hi/europe/7157235.stm [https://perma.cc/2MSN-D9NQ] (last updated Dec. 22, 2007).

4. *See* United States v. Trabelsi, No. 06-cr-89 (RDM), Dkt.109, 2 (D.D.C. May 8, 2015).

5. 8 U.S.C. § 1251(a)(2)(A)(i)-(iii).

6. *See* Carol Rosenberg, *U.S. Deports Terrorism Convict It Had Sought to Hold Indefinitely*, N.Y. TIMES (July 22, 2020), https://www.nytimes.com/2020/07/22/us/politics/terrorism-Adham-Hassoun-deported.html [https://perma.cc/HQN5-57HU] ("The United States has typically deported noncitizens at the end of their sentences. But because Mr. Hassoun was born in Lebanon to a Palestinian family and did not hold Lebanese citizenship, there was no obvious place to send him.").

7. Bureau of Population, Refugees, and Migration, *Statelessness*, U.S. DEPT'T OF STATE, https://www.state.gov/other-policy-issues/statelessness/ [https://perma.cc/XJR2-J253] (last visited Jan. 10, 2021) ("A stateless person is someone who, under national laws, does not enjoy citizenship . . . in any country."); *Ending Statelessness*, UNHCR, https://www.unhcr.org/en-us/ending-statelessness.html [https://perma.cc/6NUC-ZAAK] (last visited Jan. 10, 2021) ("The international legal definition of a stateless person is 'a person who is not considered as a national by any State under the operation of its law'.").

8. *Representing Stateless Persons Before U.S. Immigration Authorities*, UNHCR (Aug. 2017), https://www.unhcr.org/59e799e04.pdf [https://perma.cc/5U4R-R4ET].

States, statelessness does not arise domestically due to "*jus solis* citizenship law;" however, "individuals who were born elsewhere and have migrated to the United States may be stateless."[9] Nizar Trabelsi, who is a citizen of Tunisia, is essentially stateless because the agreement made between the United States and Belgium when extraditing Trabelsi prohibited Trabelsi from being deported to Tunisia.[10] Therefore, Nizar Trabelsi is also a stateless individual. As a stateless individual, upon serving his sentence in the United States, he cannot be deported. Trabelsi will either be freed or indefinitely detained.

It is not surprising that the general public would detest a terrorist's continued stay in the United States outside of detention. Especially post-9/11, public sentiments toward the criminal defendant rights of terrorists have eroded.[11] A growing acceptance of sacrificing rights in the name of national security has become commonplace, increasingly so in sacrificing the rights of terrorist perpetrators.[12] Fortunately, for those willing to compromise defendant rights in the name of national security, and unfortunately for the criminal defendants, a rarely used portion of the Patriot Act has thus far been used to indefinitely detain convicted stateless terrorists rather than releasing them upon completion of their sentence.[13] This portion allows the Attorney General to maintain custody of the terrorist and allows for additional detention periods of six months to be added indefinitely if the release of the individual "will threaten the national security of the United States."[14] Adham Hassoun is an example of one individual who had already finished serving his sentence for terrorism crimes when he was detained indefinitely under this portion of the Patriot Act.[15] Hassoun challenged his indefinite detention in court but was deported to an undisclosed country before the legal showdown concluded.[16]

If Nizar Trabelsi is convicted to a less than life sentence and is indefinitely detained upon completion of his sentence as a result of his stateless status and inability to be deported, he will likely challenge the indefinite detention.[17] His circumstances and legal arguments will be similar to the ones raised by Adham

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9. *Id.* at 4.

10. *See* United States v. Trabelsi, No. 06-cr-89 (RDM), Dkt.70-1, 41 (D.D.C. Sept. 15, 2014).

11. *See* Susan N. Herman, *The Limits of Advocacy: Lawyers for Terrorists/Lawyers for Torturers*, 4 HARV. L. & POL'Y REV., https://harvardlpr.com/online-articles/the-limits-of-advocacy-lawyers-for-terroristslawyers-for-torturers/ [https://perma.cc/V2N9-M628] (last visited Feb. 18, 2021).

12. *Id.* (quoting Attorney General John Ashcroft "[T]o those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists, for they erode our national unity and diminish our resolve. They give ammunition to America's enemies.").

13. *See, e.g.*, Gary Craig, *Adham Hassoun Deported; Was at Center of Terrorism-Related Courtroom Fight*, DEMOCRAT & CHRONICLE (July 23, 2020), https://www.democratandchronicle.com/story/news/2020/07/23/adham-hassoun-once-convicted-terrorism-has-been-deported/5492094002/ [https://perma.cc/EQG7-895F].

14. 8 U.S.C. § 1226a(a)(2), (6) (2001).

15. *See* Craig, *supra* note 13.

16. *See id.*

17. *Cf. id.*; Hassoun v. Searls, 968 F.3d 190, 193 (2d Cir. July 30, 2020); Zadvydas v. Davis, 533 U.S. 678, 679 (2001); Tran v. Mukasey, 515 F.3d 478, 480 (5th Cir. 2008); Thai v. Ashcroft, 366 F.3d 790, 792 (9th Cir. 2004) (these sources all provide examples that are similar to Trabelsi's situation).

Hassoun.[18] When these individuals challenge their indefinite detentions, they are generally represented by defense attorneys, whether privately or through the Federal Public Defender services.[19] However, given the abhorrent nature of these terrorism-related crimes and the request that these individuals be freed in the United States, the opposition will create an inherent framing of these defendants as enemies against the United States.[20] As such, should there be limits imposed on an attorney representing stateless terrorists? That individuals associated with terrorism are depicted as an enemy of the state makes it already difficult for defense lawyers. Now, in the case of stateless terrorists who cannot be deported out of the country, how much worse would the backlash be for lawyers representing these terrorists that have nowhere to go? When representation would assist these individuals in leaving detention but not deportation, should limits on attorneys be imposed?

This Note will argue that there should not be any additional limits placed on defense attorneys of stateless terrorists. The Model Rules of Professional Conduct ("*Model Rules*") already outline that representation of a client does not constitute endorsement.[21] This Note will extend the analysis to terrorists who cannot be deported: that is, clients who are both unpopular and potentially dangerous. Additional limitations should not be imposed on attorneys' representation of these clients because 1) sufficient limitations already exist and 2) adding further limitations would unduly restrict affirmative duties to zealously represent clients and threaten defendants' constitutional rights. In the subsequent sections, this Note will focus on the legal ethics question in the context of the *Trabelsi* case. Part I will give a brief outline of the fact summaries from the case and discuss the legal arguments for indefinite detention that Trabelsi's defense attorneys will face. Part II will delve into a discussion of legal ethics arguing against further limitations on defense attorneys using the *Model Rules* and other sources and similar case fact patterns. Part III will discuss recommendations as it pertains to the *Trabelsi* case and stateless terrorists in general. Finally, Part IV will conclude that additional limitations are unnecessary for the discussed reasons.

I. BACKGROUND AND CONTEXT

Nizar Trabelsi was arrested in Belgium in September of 2001 and prosecuted on charges of conspiracy, explosives, firearms, and other offenses, including attempting to bomb the Klein-Brogel Air Base.[22] Trabelsi was convicted in

18. *See* Craig, *supra* note 13.

19. *See, e.g.*, United States v. Trabelsi, 845 F.3d 1181, 1183 (D.C. Cir. 2017); Thai v. Ashcroft, 366 F.3d 790, 791 (9th Cir. 2004).

20. *See* Herman, *supra* note 11.

21. *See* MODEL RULES OF PROF'L CONDUCT R. 1.2(b) (2018) [hereinafter MODEL RULES] ("A lawyer's representation of a client, . . . does not constitute an endorsement of the client's political, economic, social or moral views or activities.").

22. *See* United States v. Trabelsi, No. 06-cr-89 (RDM), Dkt.109, 2 (D.D.C. May 8, 2015); *Tunisian Nizar Trabelsi Extradited to US on Terror Charges*, BBC (Oct. 4, 2013), https://www.bbc.com/news/world-us-canada-24393770 [https://perma.cc/4XS3-NM9T].

Belgium and sentenced to ten years in prison.[23] After Trabelsi finished his sentence in Belgium, he was extradited in October of 2013 from the Kingdom of Belgium to the United States.[24]

When Nizar Trabelsi finishes serving a sentence imposed in the United States, the United States government will likely attempt to continue to keep Trabelsi detained.[25] The assumption is that Trabelsi is removable and that upon finishing his sentence he will be ordered removed.[26] However, if Trabelsi is not removable, his detention should terminate under 8 U.S.C. § 1226.[27] There are three main statutes/rules that the United States government will attempt to invoke to keep Trabelsi detained: 8 U.S Code § 1231(a)(6), 8 U.S. Code § 1226(a), and 8 C.F.R. § 241.14.[28]

As briefly discussed above, Adham Hassoun and Nizar Trabelsi face similar circumstances when challenging the government attempts to keep them indefinitely detained.[29] As the only case to have challenged the indefinite detention of a stateless terrorist, the arguments that Hassoun brought up will be relevant for any future Trabelsi case. When evaluating what additional limitations might be imposed on defense attorneys, it is important to understand what the type of arguments are necessary to make in these situations. The following subsections will outline the main legal arguments that will need to be made by Trabelsi's attorneys when challenging his indefinite detention under 8 U.S Code § 1231(a)(6), 8 U.S. Code § 1226(a), and 8 C.F.R. § 241.14 by looking at the holdings in some of the *Hassoun* cases.

A. 8 U.S.C. § 1231(A)(6)

An alien typically must be removed within ninety days of a final order of removal or be released under supervision.[30] Section 1231(a)(6) allows the government to detain an alien, such as Trabelsi, who is inadmissible, removable, or "has been determined . . . to be a risk to the community or unlikely to comply with [an] order of removal.[31]" In *Hassoun*,

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23. *Id.*

24. v. *Id.*

25. *See* cases cited *supra* note 17. These cases indicate a similar procedural history to a hypothetical Trabelsi situation.

26. *See, e.g.*, Hassoun v. Searls, 968 F.3d 190, 193 (2d Cir. July 30, 2020).

27. *Id.*

28. *Id.*

29. *Compare* Hassoun v. Searls, 968 F.3d 190, 193 (2d Cir. July 30, 2020), *with* United States v. Trabelsi, 845 F.3d 1181 (D.C. Cir. 2017).

30. 8 U.S.C. § 1231(a)(6) ("An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).").

31. *Id.*

> [T]he U.S. District Court for the Western District of New York concluded that § 1231(a)(6) did not authorize Hassoun's continued detention on account of his deportable status for violating the terms of his non-immigrant visa because there was no significant likelihood that he would be removed in the reasonably foreseeable future.[32]

Similarly, Trabelsi is unlikely to be removed because re-extradition to Tunisia is not possible.[33] Both *Hassoun* and other cases on indefinite detention look at the similar circumstances of the individuals as described in *Zadvydas*.[34]Although in that case neither individual was detained under terrorism charges, both were deemed "dangerous" individuals who were not accepted for repatriation to other countries (Zadvydas was not accepted by Germany, Lithuania, and the Dominican Republic. Ma, the other individual examined in *Zadvydas*, was not accepted by Cambodia).[35] The Case Western Reserve Journal of International Law notes further on *Zadvydas* that:

> Indeed, the *Zadvydas* Court stressed that it was not considering "terrorism or other special circumstances where special arguments might be made for forms of preventive detention and for heightened deference to the judgments of the political branches with respect to matters of national security." And when the Court extended the *Zadvydas* rule to inadmissible aliens in *Clark v. Martinez*, it took pains to point out that "sustained detention of alien terrorists is a 'special arrangement' authorized by a different statutory provision." Moreover, the Court held that the capacity of Congress to "secur[e] our borders" against non-removable aliens "is demonstrated by [the fact that] [l]ess than four months after the release of our opinion [in *Zadvydas*], Congress enacted a statute which expressly authorized continued detention, for a period of six months beyond the removal period (and renewable indefinitely), of any alien (1) whose removal is not reasonably foreseeable and (2) who presents a national security threat or has been involved in terrorist activities."[36]

B. 8 U.S.C. § 1226A(A)

Prior cases for Hassoun also considered legal arguments concerning 8 U.S.C. § 1226a(a).[37] Because Trabelsi, like Hassoun, is a stateless terrorist, the elements of the outcome given here would be similar to what Trabelsi's attorneys should

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32. *Hassoun*, 968 F.3d 190, 193.

33. *See* United States v. Trabelsi, No. 06-cr-89 (RDM), Dkt.70-1, 41 (D.D.C. Sept. 15, 2014).

34. *See, e.g.*, *Hassoun*, 968 F.3d 190, 193; Tran v. Mukasey, 515 F.3d 478 (5th Cir. 2008); Zadvydas v. Davis, 533 U.S. 678, 701 (2001).

35. *See Zadvydas* 533 U.S. at 678.

36. John McLoughlin, Gregory P. Noone & Diana C. Noone, *Security, Detention, Terrorism, and the Prevention Imperative*, 40 CASE W. RES. J. INTL. L. 463, 486 (2009), https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1294&context=jil [https://perma.cc/8JBZ-E8SQ].

37. 8 U.S. Code § 1226a(a) ("Attorney General shall take into custody any alien who is certified under paragraph (3)."); Hassoun v. Searls, 2020 WL 3496302, at 75 (W.D.N.Y. June 29, 2020).

advocate for. The court held that §1226a(a) did not authorize continued detention of Hassoun because,

> [r]espondent has conceded that at this point in time, and taking into account the Court's evidentiary rulings, he cannot demonstrate—by clear and convincing evidence or even by a preponderance of the evidence—that Petitioner's release would threaten the national security of the United States or the safety of the community or any person. (*See* Dkt. 244 at 9). Accordingly, the factual predicate for Petitioner's continued detention under § 1226a(a)(6) is not satisfied and thus, even assuming § 1226a is constitutional, Petitioner cannot lawfully be detained thereunder.[38]

C. 8 C.F.R. § 241.14

This section focuses specifically on detention of aliens on account of security or terrorism concerns.[39] The courts have gone back and forth on interpreting 8 C.F.R. § 241.14, making it unclear what would happen for Trabelsi when challenging his detention on this basis.[40] What will make this particularly challenging is that *Hassoun* was never resolved because he was deported to an unidentified country prior to further appeal.[41]

In December 2019, *Hassoun* held that 8 C.F.R. § 241.14(d) is "a legal nullity that cannot authorize the ongoing, potentially indefinite detention of [Hassoun]."[42] Although the court acknowledged that neither the Supreme Court nor any circuit court had considered the validity of 241.14(d), courts have addressed 241.14(f) and reached differing conclusions regarding its validity.[43] Subsection (f) permits the potentially indefinite detention of "aliens determined to be specially dangerous" particularly, those who have committed certain enumerated crimes of violence, and who "[d]ue to a mental condition or personality disorder and behavior associated with that condition or disorder, . . . [are] likely to engage in acts of violence in the future."[44]

In July, however, the court granted a motion for a stay pending appeal to prevent Hassoun's immediate release, concluding that the government made a strong showing that was likely to succeed on the merits.[45] The court argued instead that,

> In promulgating 8 C.F.R. § 241.14(d), the Attorney General avoided the serious constitutional questions identified in *Zadvydas* by focusing narrowly on

38. *Hassoun*, 2020 WL 3496302 at 79.

39. 8 C.F.R. § 241.14(d).

40. *See, e.g.*, Hassoun v. Searls, 968 F.3d 190, 193 (2d Cir. July 30, 2020); Hassoun v. Searls, 427 F. Supp. 3d 357, 362 (W.D.N.Y. Dec. 13, 2019). The procedural history indicates that various judges have disagreed on the applicability of 8 C.F.R. § 241.14 in the case of Hassoun.

41. *See* Rosenberg, *supra* note 6.

42. *Hassoun*, 427 F. Supp. 3d at 372.

43. *Id.* at 366.

44. 8 C.F.R. § 241.14(f)(1).

45. Hassoun v. Searls, 968 F.3d 190 (2d Cir. July 30, 2020).

> those "specially dangerous individuals" implicated in "terrorism or other special circumstances" that the Supreme Court said were not subject to its holding or the limiting construction the Court imposed on the statute. . . The regulation permits continued detention only for aliens whose "release presents a significant threat to the national security or a significant risk of terrorism" and for whom "[n]o conditions of release can reasonably be expected to avoid the threat to the national security or the risk of terrorism." 8 C.F.R. § 241.14(d). In limiting the regulation's scope to this narrow class, the Attorney General ensured that it would apply "only to terrorists and criminals" and not "to [the] ordinary visa violators" for whom the *Zadvydas* Court concluded Congress did not authorize continued detention. [*Zadvydas* at 697, 691] . . . (reiterating that Congress would not have authorized continued detention "broadly [for] aliens ordered removed for many and various reasons, including tourist visa violations" rather than for "a small segment of particularly dangerous individuals" such as "suspected terrorists").[46]

II. THE LEGAL ETHICS OF REPRESENTATION

The preceding legal challenges are all ones that a defense attorney for Trabelsi will have to address when advocating for Trabelsi's freedom. In doing so, a defense attorney will also draw the ire and scrutiny of those who will claim that providing legal representation for a terrorist amounts to traitorous support.[47] To balance national security interest and assuage public safety concerns, these critics may advocate for further restrictions on defense representation.

Regardless of the desire to place limitations on defense attorneys advocating for the freedom of convicted terrorists, further limitations should not be imposed because A) sufficient limitations already exist and B) adding further limitations would unduly restrict affirmative duties to zealously represent clients and threaten defendants' constitutional rights. The limitations come from the *Model Rules* and post-9/11 regulations, such as 8 C.F.R. § 241.14 and 8 C.F.R. § 501.3. These existing rules and regulations point toward additional limits not only being unnecessary but unduly restrictive.

A. SUFFICIENT LIMITATIONS ALREADY EXIST

Concerning the representation of stateless terrorists, defense attorneys are already subject to sufficient limitations under 1) the *Model Rules* and 2) regulations. The limitations are sufficient at preventing a lawyer from endorsing a client, especially if the client is one who the lawyer knows to be a danger. The *Model Rules* that provide the limitations relevant for defense attorneys when representing stateless terrorists are Model Rule 1.2, Model Rule 3.3, and Model Rule

46. *Id*. at 199.

47. *See* Herman, *supra* note 11 ("[S]uggesting that those lawyers do not share American values and should not be working for the Department of Justice.").

1.16. These *Model Rules* help provide sufficient limitations such that concerns of national security and public safety are adequately satisfied.

An important factor to note when considering limits on defense attorneys' representation of stateless terrorist clients is that attorneys generally adhere to the guidance provided by the *Model Rules*.[48] Under Model Rule 1.2, representation of a client does not constitute an endorsement of the client.[49] It is already difficult to represent a controversial client because of the consequences of disapproval and negative reputation.[50] The decreased desire and willingness of attorneys to accept such clients only results in a "compromise of the constitutional rights that are to be guaranteed to each and every criminal defendant."[51] In addition, it is important to distinguish the client from the legal right that the client is pursuing. For example, Stephen Jones provides the hypothetical of "[t]he Nazi client [who] may be pursuing a legitimate constitutional right—the pursuit of which is not repugnant."[52] As such, it is essential that the legitimate legal rights are properly advocated for, without further limitations, even when the client is distasteful, repugnant, or unpopular as a convicted terrorist such as Trabelsi might be.

In advocating for the release of a stateless terrorist client from indefinite detention, there are a few legal arguments that must be made. One of the primary elements requires the defense attorney to argue and make a showing that the client does not "pose a danger to the safety of other persons" under 8 U.S. Code § 1226.[53] It then naturally follows to wonder whether the representation that a convicted terrorist "does not pose a danger to the safety of other persons"[54] can be adequately separated from an endorsement of the client.

The answer continues to remain in the negative. The *Model Rules* provide relevant guidance that adequately addresses the potential situation above. In outlining candor, Model Rule 3.3 requires the lawyer to take remedial measures and disclose information if the client is intending to engage in criminal conduct.[55] In addition, the lawyer cannot knowingly offer evidence that the lawyer knows to be false.[56] These

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48. *See* MODEL RULES pmbl. & scope ("The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies.").

49. *See* MODEL RULES R. 1.2(b) ("A lawyer's representation of a client, . . . does not constitute an endorsement of the client's political, economic, social or moral views or activities.").

50. *See, e.g.*, Stephen Jones, *A Lawyer's Ethical Duty to Represent the Unpopular Client*, 1 CHAP. L. REV. 105, 106 (1998).

51. *Id.*

52. *Id.* at 112.

53. Under 8 U.S.C. § 1226a(a), the "Attorney General shall take into custody any alien who is certified under paragraph (3)." If "the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons" then the alien may be released. 8 U.S.C § 1226(c)(2).

54. 8 U.S.C § 1226(c)(2).

55. *See* MODEL RULES R. 3.3(b) ("A lawyer who represents a client . . . and who knows that a person intends to engage, . . . in criminal . . . conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.").

56. *See* MODEL RULES R. 3.3(a)(3) ("A lawyer shall not knowingly offer evidence that the lawyer knows to be false.").

rules of candor extend to the dangerousness element when representing a stateless terrorist. In advocating for the freedom of the client, the defense attorney is still guided by the requirement of making no false representations of the client's dangerousness and potential plans to commit further crimes upon release.[57] These rules provide security to assure the public that limitations already exist such that a stateless terrorist's release would not be of immediate safety concern. Without further limitations imposed on the defense attorney, lawyers can advocate for their clients' freedom without needing to endorse the client's prior acts of terrorism and without concern that their representation would lead to further national security threats.

In addition to separating representation of a dangerous client with an endorsement of a client generally, when national security and public safety are at risk from the successful representation by a defense attorney, should limitations be imposed on defense attorneys? In the case that the defense attorney feels that their client will continue to pose a national security threat or maintain terrorist ties in a manner that evades mandatory disclosure, the defense attorney also has the option to withdraw from the client under Model Rule 1.16.[58] The ability to withdraw, however, rests upon the repugnant nature of the desired actions of the client, not of the client themself.[59] Therefore, the lack of withdrawal again does not mean that the attorney endorses the client or the client's past actions, but merely that the desired actions of seeking freedom from indefinite detention upon serving a complete sentence are not repugnant. In this case, the attorney must consider whether the advocacy against indefinite detention is repugnant. Certainly, an attorney can withdraw if the client's desire for freedom is rooted in the repugnant plan to continue to engage in harmful terrorists acts against national security. However, the *Model Rules* and existing regulation prevent the possibility than an attorney will successfully advocate for the release of a knowingly dangerous client.[60] As a result, an attorney who chooses to represent the stateless terrorist client should not face further restrictions or limitations.

1. DANGEROUS CLIENTS

There is a dearth of cases where a defense attorney is advocating for a stateless terrorist client's freedom from indefinite detention.[61] To apply the above

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57. *See* MODEL RULES R. 3.3(b) ("A lawyer who represents a client . . . and who knows that a person intends to engage, . . . in criminal . . . conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal."); *see* MODEL RULES R. 3.3(a)(3) ("A lawyer shall not knowingly offer evidence that the lawyer knows to be false.").

58. *See* MODEL RULES R. 1.16(b)(4) ("[A] lawyer may withdraw from representing a client if . . . the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement[.]").

59. *See* Jones, *supra* note 50, at 109, 112.

60. *See* MODEL RULES R. 3.3(b) ("A lawyer who represents a client . . . and who knows that a person intends to engage, . . . in criminal . . . conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal."); *see* MODEL RULES R. 3.3(a)(3) ("A lawyer shall not knowingly offer evidence that the lawyer knows to be false."); *see also* 28 C.F.R. § 501.3 (2001).

61. *See, e.g.*, Hassoun v. Searls, 968 F.3d 190, 194 (2d Cir. July 30, 2020); United States v. Trabelsi, 845 F.3d 1181 (D.C. Cir. 2017). *But cf.* Zadvydas v. Davis, 533 U.S. 678, 679, 715–16 (2001) (both Zadvydas and

sufficient limitations, this Note will look at cases of dangerous clients broadly, working under the assumption that a terrorist is a type of dangerous client.

Outside of terrorists, more generally, there already exists a precedent of defense attorneys advocating for the freedom of stateless dangerous clients.[62] The Ninth Circuit held in *Thai v. Ashcroft*,[63] that Section 1231(a)(6) could not be properly read to allow the indefinite detention of Thai because his mental health coupled with dangerousness cannot justify indefinite detention under *Zadvydas v. Davis*.[64] In this case, the United States government had been unable to remove Thai from the country because of a lack of a repatriation agreement between the United States and Vietnam, where Thai was a native and citizen.[65] The Fifth Circuit concluded in similar circumstances as *Thai* in *Tran v. Mukasey*[66] that "[t]he Supreme Court has twice held that § 1231(a)(6) does not authorize indefinite detention for any class of aliens covered by the statute[,]" and that "[a]ccordingly, 8 C.F.R. § 241.14,[67] which was enacted under the authority of § 1231(a)(6), cannot authorize Tran's indefinite detention."[68]

In both the cases of *Thai* and *Tran*, defense attorneys were sufficiently guided by the *Model Rules*. Thai had "established a record as a violent criminal, accumulating convictions for assault, harassment, and third-degree rape."[69] An immigration judge had concluded that "Thai's release would pose a special danger to the public[.]"[70] Tran had been convicted of firearm possession and assault and battery against his wife.[71] He was then confined to a mental hospital and ultimately released from a halfway house.[72] A day after his release, Tran murdered his wife

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Ma are stateless non-terrorists and dissent cites to stateless non-terrorist cases of Ourk v. INS, No. 00–35645 (9th Cir. 2000), Phetsany v. INS, No. 00–16286 (9th Cir. 2000), Mounsaveng v. INS, No. 00–15309 (9th Cir. 2000), Lim v. Reno, No. 99–36191 (9th Cir. 2000), Phuong Phuc Le v. INS, No. 00–16095 (9th Cir. 2000)); Tran v. Mukasey, 515 F.3d 478, 480 (5th Cir. 2008) (stateless non-terrorist); Thai v. Ashcroft, 366 F.3d 790, 792 (9th Cir. 2004) (stateless non-terrorist).

62. *See Zadvydas*, 533 U.S. at 679; *Tran*, 515 F.3d at 480; *Thai*, 366 F.3d at 792; *see also Zadvydas*, 533 U.S. 678, 715 (2001) (Kennedy, J., dissenting) (citing stateless dangerous individuals in the cases of Ourk v. INS, No. 00–35645 (9th Cir. 2000), Phetsany v. INS, No. 00–16286 (9th Cir. 2000), Mounsaveng v. INS, No. 00–15309 (9th Cir. 2000), Lim v. Reno, No. 99–36191 (9th Cir. 2000), Phuong Phuc Le v. INS, No. 00–16095 (9th Cir. 2000)).

63. Thai v. Ashcroft, 366 F.3d 790 (9th Cir. 2004).

64. *Id.* at 798; *see* Zadvydas v. Davis, 533 U.S. 678, 701 (2001).

65. *See Thai*, 366 F.3d at 792.

66. Tran v. Mukasey, 515 F.3d 478 (5th Cir. 2008).

67. *See* 8 C.F.R. § 241.14 (2001) ("The Service may . . . continue detention . . . on account of special circumstances even though there is no significant likelihood that the alien will be removed in the reasonably foreseeable future. . . . [T]he Service shall continue to detain a removable alien based on a determination in writing that . . . [n]o conditions of release can reasonably be expected to avoid the threat to the national security or the risk of terrorism[.]").

68. *Tran*, 515 F.3d at 484.

69. Thai v. Ashcroft, 366 F.3d 790, 792 (9th Cir. 2004).

70. *Id.* at 793.

71. *Tran*, 515 F.3d at 480.

72. *Id.*

in the presence of their seven-year-old daughter.[73] Evaluations by mental health professionals found that based on his mental illness, Tran would commit acts of violence in the future.[74] While representing these clients, defense attorneys operated under and were sufficiently limited by the *Model Rules*. Thai and Tran had both committed abhorrent crimes, but under Model Rule 1.2, defense representations for their release from indefinite detention was not an endorsement of their prior actions or even of their present state of dangerousness.[75] Model Rule 1.2 sufficiently limits attorneys from having to endorse these types of clients while still advocating for their legal arguments for freedom from indefinite detention. The petitioner-appellee's response brief in *Thai* does not contest the extensive criminal history or attempt to justify any prior crimes; the attorneys here state these facts and focus on the detention issues.[76] Model Rule 3.3 requires that the defense attorneys in *Thai* and *Tran* exhibit candor and to disclose evidence that showed that their clients were dangerous.[77] Clearly, when establishing an argument advocating a client be released to the public, it would be preferable to represent clients as non-dangerous. However, Model Rule 3.3 sufficiently limits these attorneys from doing so and instead requires disclosure of all such adverse facts.[78] Again, the petitioner-appellee's response brief in *Thai* concedes the dangerousness of Thai and submits additional evidence of these facts.[79] Finally, Model Rule 1.16 provides defense attorneys the freedom to withdraw representation throughout the process.[80] However, while defense attorneys have the ability to withdraw representation, these attorneys did not because although Thai and Tran were both individually repugnant, their legal rights to pursue freedom from indefinite detention in and of itself was not repugnant.

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73. *Id.*

74. *Id.*

75. MODEL RULES R. 1.2(b) ("A lawyer's representation of a client, . . . does not constitute an endorsement of the client's political, economic, social or moral views or activities.").

76. Petitioner-Appellee's Response Brief at 10, Thai v. Ashcroft, 366 F.3d 790 (9th Cir. 2004) (No. 03–35626) ("Mr. Thai has an extensive criminal history."); *see also* Brief for Petitioner-Appellee at 2, Tran v. Mukasey, 515 F.3d 478 (5th Cir. 2008) (No. 06–30361) ("[Tran] was convicted on the charge of manslaughter and sentenced to imprisonment for eighteen to twenty years.").

77. MODEL RULES R. 3.3(b) ("A lawyer who represents a client . . . and who knows that a person intends to engage, . . . in criminal . . . conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.").

78. MODEL RULES R. 3.3(a)(3) ("A lawyer shall not knowingly offer evidence that the lawyer knows to be false.").

79. Petitioner-Appellee's Response Brief at 14–15, Thai v. Ashcroft, 366 F.3d 790 (9th Cir. 2004) (No. 03–35626) ("Subsequent to this hearing, Mr. Thai's counsel engaged the services of . . . a practicing psychiatrist . . . He concluded that, . . . these mental health and personality disorders did affect Mr. Thai's behavior such that he presented a potential of violence against others . . ."); *see also* Brief for Petitioner-Appellee at 2, Tran v. Mukasey, 515 F.3d 478 (5th Cir. 2008) (No. 06–30361) ("Tran was confined to a state hospital for mental treatment for approximately two years. . . Upon his release from the halfway house, Tran killed his wife.").

80. MODEL RULES R. 1.16(b)(4) ("[A] lawyer may withdraw from representing a client if . . . the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement[.]").

Even in these cases, further limits on attorneys for the dangerous clients were not considered, nor should they have been imposed by the ABA. Not every court has agreed that dangerous stateless clients should be released.[81] However, regardless of whether these clients can or cannot be indefinitely detained, defense attorneys are required to defend their positions and advocate for their constitutional freedoms.[82] Limitations may simplify national security concerns; however, especially when the legal argument is of such magnitude, a fully uninhibited legal process should play out. Again, here in all the above cases, the client must be separated from the legal right being pursued. The only limitation that is placed on an attorney representing a dangerous client, is to disclose if the client plans to engage in criminal conduct; however, this limitation is not only applicable to dangerous clients, but is true for all clients of attorneys.[83] In fact, attorneys have discretion to disclose information concerning a client's threat of violence.[84] Discussion on limitations for attorneys of dangerous clients focus on the extent of disclosure required, not other further limitations.[85] Similarly, for stateless terrorists, attorneys are already guided by the *Model Rules* concerning disclosure of intent to engage in criminal conduct and cannot knowingly provide false evidence when the primary legal discovery will focus on the dangerousness element for indefinite detention.[86] Therefore, additional limitations on mandatory disclosure would be redundant, and further limitations would be beyond the scope of what has been considered for dangerous clients generally.

2. REPRESENTING A TERRORIST

To many, the terrorist client or terrorist defendant is different from a typical dangerous client.[87] In fact, *Thai* discusses this very distinction.[88] While the Court acknowledged that continued detention for Tran could not be authorized in spite of the concern for public safety, it noted that "in a similar circumstance where public safety was also of great concern, Congress took prompt action to address

81. *See, e.g.*, Hernandez-Carrera v. Carlson, 547 F.3d 1237, 1256 (10th Cir. 2008).

82. *See* MODEL CODE OF PROF'L RESPONSIBILITY Canon 7 (1983) [hereinafter MODEL CODE] ("A lawyer should represent a client zealously within the bounds of the law[.]"); *see also* Jones, *supra* note 50, at 109.

83. *See* MODEL RULES R. 3.3(b) ("A lawyer who represents a client . . . and who knows that a person intends to engage, . . . in criminal . . . conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.").

84. *See* Jeffrey Segal & Michael Sacopulos, *The Emotionally Liable Client: Attorney Duties When A Client Threatens Violence*, 4 ELON L. REV. 55, 56 (2012).

85. *Id.*

86. *See* MODEL RULES R. 3.3(a)(3) ("A lawyer shall not knowingly offer evidence that the lawyer knows to be false."); MODEL RULES R. 3.3(b) ("A lawyer who represents a client . . . and who knows that a person intends to engage, . . . in criminal . . . conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.").

87. *See* Herman, *supra* note 11 ("[T]error suspects—are easy to vilify and dismiss as different from us[.]").

88. Thai v. Ashcroft, 366 F.3d 790, 796 (9th Cir. 2004).

the issue."[89] National security threats were distinguished from the public safety concern of releasing a dangerous client like Tran or Thai.[90]

Beyond the *Model Rules*, other sources of limitations on defense attorneys of stateless terrorists do exist in the form of regulations. For example, federal regulations were passed in response to the terrorist attacks of September 11, 2001 that explicitly outline additional limitations on attorneys of terrorists.[91] One such regulation, 28 C.F.R. § 501.3, includes monitoring of attorney-client communications.[92] This regulation focuses on preventing abuse of the attorney–client privilege to "cause future acts of violence and terrorism."[93] Under this regulation, all communication between an inmate who has been determined by a "privilege team"[94] "to pose a serious threat of continued acts of violence and terrorism[,]"[95] and his or her attorney are subject to monitoring and review.[96]

This regulation is a serious limitation on a defense attorney's ability to secure the release of a client. Monitoring all communication between a client and their attorney has a detrimental effect on legal representation because the knowledge that communications are being monitored will make a client much more apprehensive to give details.[97] This limitation is particularly concerning because the purpose of attorney-client privilege is to "encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice."[98]

Although the regulation is detrimental in that it may discourage frank attorney-client communication,[99] it is not unduly so.[100] While all communications for a

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89. Tran v. Mukasey, 515 F.3d 478, 485 (5th Cir. 2008).

90. *Id.* ("In particular, in the field of national security, Congress enacted the Patriot Act which authorizes detention beyond the removal period of any alien whose removal is not foreseeable for additional periods of up to six months if the alien presents a national security threat. 8 U.S.C. § 1226a.").

91. Frank Kearns, Note, *Attorney–Client Privilege for Suspected Terrorists: Impact of the New Federal Regulation on Suspected Terrorists in Federal Custody*, 27 NOVA L. REV. 475, 475 (2003).

92. *See id.* at 479; 28 C.F.R. § 501.3 (2001).

93. Kearns, *supra* note 91, at 497.

94. *Id.* at 480 ("[T]he regulation sets forth procedures for the review of this information to determine whether it is privileged and confidential, or whether it should be disclosed to the investigating body. These procedures include the establishment of a 'privilege team,' which consists of independent individuals that are not involved in the investigation. This team follows monitoring procedures that minimize the intrusion of the team into the privileged communications between the inmate and the attorney.").

95. *Id.* at 497.

96. *Id.* at 479.

97. *See id.* at 496 ("This would, in turn, hurt the ability of the attorney to know as much as possible about the client's case and thus, limit the effectiveness of the attorney's representation.").

98. Upjohn Co. v. United States, 449 U.S. 383, 389 (1981).

99. *See* Kearns, *supra* note 91, at 496 ("There is no doubt that the knowledge that the government is taping the communications . . . would cause them both to closely guard their words. The client would be apprehensive about giving details that might be potentially incriminating to him. This would, in turn, hurt the ability of the attorney to know as much as possible about the client's case and thus, limit the effectiveness of the attorney's representations.").

100. *See id.* at 497 ("There is no denying that this regulation will have a detrimental effect on the inmate's legal representation, but it is not irreparable."). *But cf.* Brief for Petitioner-Appellee at 34, Tran v. Mukasey,

client like Trabelsi will likely be monitored, not all communications will be disclosed.[101] The procedures of this regulation establish a separate team to determine whether information is privileged and confidential.[102] In attorney-client privilege generally, a crime-fraud exception exists, which exempts communications used to further a future crime from privilege protections.[103] Similarly for this regulation, as long as the inmates' attorney-client communications do not fall under the crime-fraud exception, they will remain privileged.[104] To a certain degree, this limitation is merely an extension of Model Rule 3.3, which requires disclosure of a client's intent to engage in criminal conduct related to the proceedings.[105]

The potential for future harm caused by the release of the stateless clients would be the main concern of advocates of limiting defense attorneys.[106] Fortunately for those concerned, regulations, such as 28 C.F.R. § 501.3, sufficiently limit attorneys such that any attorney-client communication that discusses future criminal intent would be disclosed. While all communication is monitored, since both attorneys and clients are aware that only communication that would fall under the crime-fraud exception would be disclosed, defense attorneys can continue to advocate and represent their clients without sacrificing the public safety concerns of representing the terrorist client. The existing regulation and *Model Rules* for attorneys of terrorists should assuage those concerns and show that further limitations are unnecessary.

For defense attorneys of stateless terrorists such as Trabelsi, the *Model Rules* as outlined above and applied to dangerous clients still apply. Additionally, regulations that monitor attorney-client communications would also apply. Therefore, additional limitations should not be imposed because sufficient limitations already exist.

B. ADDING FURTHER LIMITATIONS WOULD UNDULY RESTRICT AFFIRMATIVE DUTIES TO ZEALOUSLY REPRESENT CLIENTS AND THREATEN DEFENDANTS' CONSTITUTIONAL RIGHTS

Additional limitations should not be imposed on a defense attorney's representation of a terrorist client also because adding further limitation would unduly restrict affirmative duties to zealously represent clients and threaten defendants'

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515 F.3d 478 (5th Cir. 2008) (No. 06–30361) ("On the procedural side, the regulation's most significant deficiencies are its failure to provide either a right to appointed counsel, *see* 8 C.F.R. § 241.14(g)(3)(i) . . . or a right to an independent mental evaluation from an expert not chosen by the government, *see* 8 C.F.R. § 241.14(f)(3) . . . safeguards which are critical to insuring that individuals are not erroneously deprived of their liberty and are commonly provided for in state civil commitment statutes.").

101. *See* Kearns, *supra* note 91, at 480.

102. *See id.*

103. *See* United States v. Zolin, 491 U.S. 554, 556 (1989).

104. Kearns, *supra* note 91, at 497.

105. *See* MODEL RULES R. 3.3(b) ("A lawyer who represents a client . . . and who knows that a person intends to engage, . . . in criminal . . . conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.").

106. *See* Zadvydas v. Davis 533 U.S. 678, 715 (2001) (Kennedy, J., dissenting) ("Today's result will ensure these dangerous individuals, and hundreds more like them, will remain free.").

constitutional rights.[107] The Model Code of Professional Responsibility, the Constitution, and the American Bar Association's Criminal Justice Standards all provide guidance as to why further limitations would be unduly restrictive.[108]

While some people have held antagonistic views against attorneys who represent terrorists,[109] there is a "unanimity, across political lines," to expect defense lawyers to argue for fair treatment of those detained.[110] This is because a factual distinction exists "between a lawyer representing a client who has allegedly done something harmful and lawyer who personally invites or causes harm."[111] Even if the client is an enemy of the state, lawyers are expected to zealously defend clients as part of the criminal defendant right to counsel.[112] Zealous defending of a stateless terrorist client does not represent an endorsement of the client's prior actions.

Regardless of whether the client is a stateless terrorist or not, the defendant still enjoys constitutional rights and protections. Although there is some debate as to whether foreign nationals are entitled to the same constitutional rights as citizens,[113] the Fifth Amendment due process rights and rights attaching to criminal trials all apply to "the accused," whether citizen or noncitizen.[114] Not only does there exist a constitutional right to counsel,[115] but also a duty on lawyers to defend.[116] Further limitations would unduly restrict defense attorneys from performing their duties.

Given the already difficult task of representing a controversial client, imposing further limitations would only make attorneys less willing to defend these clients.[117] The decreased desire and unwillingness of attorneys to accept such clients would only result in a "compromise of the constitutional rights that are to be guaranteed to each and every criminal defendant."[118]

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107. *See* U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."); *see also* MODEL CODE Canon 7 ("A lawyer should represent a client zealously within the bounds of the law[.]").

108. *See* U.S. CONST. amend. VI; MODEL CODE Canon 7.; *see also* A.B.A. CRIM. JUST. STANDARDS 4-2.1(c) (2017) ("Qualified defense counsel should be willing and ready to undertake the defense of a suspect or an accused regardless of public hostility or personal distaste for the offense or the client.").

109. Herman, *supra* note 11 ("[S]uggesting that those lawyers do not share American values and should not be working for the Department of Justice.").

110. *Id*.

111. *Id*.

112. U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."); *see* MODEL CODE Canon 7 ("A lawyer should represent a client zealously within the bounds of the law[.]"); *see also* Herman, *supra* note 11.

113. *See* David Cole, *Are Foreign Nationals Entitled to the Same Constitutional Rights As Citizens?*, 25 T. JEFFERSON L. REV. 367–388 (2003).

114. *Id*. at 370.

115. U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.").

116. *See* A.B.A. CRIM. JUST. STANDARDS 4-2.1(c) (2017) ("Qualified defense counsel should be willing and ready to undertake the defense of a suspect or an accused regardless of public hostility or personal distaste for the offense or the client.").

117. *See* Jones, *supra* note 50, at 106.

118. *Id*.

It is also not entirely clear what imposing further limitations would look like in practice. This Note acknowledges that not every potential limitation that could be imposed on attorneys is considered. If limitations are extreme enough that a lawyer is prohibited or otherwise cannot represent a stateless terrorist client,[119] then constitutional rights are clearly compromised. It is hard to imagine additional limitations beyond what currently exists that would be reasonable and still allow for fair representation of a client. Regulations specific to terrorists already exist to account for the nature of these clients.[120] More monitoring and a broader set of communications that are exempt from attorney-client privilege would render a defense attorney useless because the client would either not speak due to a fear of giving potentially incriminating details[121] or everything the client divulges would be directly disclosed. The release of attorney names[122] would also seemingly cause an undue amount of safety and privacy risks for the attorneys. Similarly, requiring additional divulgence of post-release plans of the client would invite safety risks for the client because divulging post-release information, such as a home address, would enable those who find the terrorist particularly despicable to take retaliatory actions.[123] These limitations, however, are not exhaustive of all possible limitations, and this Note hopes that these considerations can precipitate further discussion.

III. RECOMMENDATIONS

Stateless individuals "face a range of hardships as a result of their lack of a nationality."[124] The United Nations High Commission for Refugees reminds lawyers that "with the assistance of an immigration attorney knowledgeable in the area of statelessness . . . these hardships may be reduced[.]"[125] Nizar Trabelsi is not a typical stateless client, but he still deserves representation and assistance as

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119. *See* Herman, *supra* note 11 ("Solicitor General Elena Kagan argued that material support laws could properly be used to prosecute lawyers who filed briefs on behalf of groups designated foreign terrorist organizations: 'to the extent that a lawyer drafts a brief for the PKK [Kurdish Workers' Party, of Turkey] . . . that would be prohibited.").

120. *See, e.g.*, 8 C.F.R. § 241.14(d); 28 C.F.R. § 501.3 (2001).

121. *See* Kearns, *supra* note 91, at 496.

122. *See* Herman, *supra* note 11 ("Liz Cheney and her 'Keep America Safe' group released an ad demanding that the Attorney General release the names of seven Justice Department attorneys who were said to have represented defendants in terrorism cases, suggesting that those lawyers . . . should not be working for the Department of Justice.").

123. *Cf.* James Halpin, *Police: Woman, Boyfriend Shoot Brother for Revenge*, THE CITIZENS' VOICE (Apr. 1, 2021), https://www.citizensvoice.com/news/crime-emergencies/police-woman-boyfriend-shoot-brother-for-revenge/article_c284161c-cb78-5596-93b2-75f388002ed0.html [https://perma.cc/BUR5-FY9V]; Leigh E. Rich & Michael A. Ashby, *Crime and Punishment, Rehabilitation or Revenge: Bioethics for Prisoners?*, J. BIOETHICAL INQUIRY 269 (2014), https://link.springer.com/article/10.1007/s11673-014-9569-5 [https://perma.cc/E6SB-LXQU] (showing an example of a retaliatory act and the uncomfortably mainstream acceptance of revenge against criminals).

124. *Representing Stateless Persons Before U.S. Immigration Authorities*, UNHCR 4 (Aug. 2017), https://www.unhcr.org/59e799e04.pdf [https://perma.cc/5U4R-R4ET].

125. *Id.*

a part of his constitutional rights.[126] In order to help reduce the hardships of a stateless client such as Trabelsi, additional limitations should not be imposed on his defense attorneys.

Trabelsi's attorneys should argue for his freedom from indefinite detention while adhering to the *Model Rules* and regulations regarding attorney-client privilege for terrorists. In doing so, they should still zealously advocate for his freedom, separating the legal argument from any endorsement of his prior actions.

Hassoun outlined many of the likely challenges and arguments Trabelsi's attorneys will have to make and is therefore a model. However, the lack of other precedent and the fact that questions were left unanswered in that case means that Trabelsi's attorneys will have to approach advocating for Trabelsi using some of the generic arguments for stateless dangerous clients that were covered in *Thai* and *Tran*.[127]

Trabelsi's defense attorneys should also make the constitutional argument challenging the Patriot Act's authority to indefinitely detain, which was left unanswered in *Hassoun*. This should be fully challenged as a legal argument and not as an endorsement of terrorism. It must be made clear that any constitutional challenge is not saying that all terrorists should be free from detention. To clarify, this argument is for stateless terrorists who cannot be deported and who have already finished serving the sentences for their committed crimes.

This Note is also not exhaustive. Further research and discussion on limitations on representing stateless terrorists will be necessary, especially as similar cases continue to manifest.[128] With growing cases of terrorism and an increasingly globalized world, issues of statelessness and discussions on how stateless terrorists are dealt with in the United States will be watched by other judicial systems around the world.

CONCLUSION

No further rule or exception should be made to limit a lawyer representing a terrorist, even if the individual is stateless and cannot be deported. Sufficient guidelines exist through the *Model Rules* and through regulations such as 28 C.F.R. § 501.3. Additional rules or regulations would unduly restrict a lawyer's affirmative duties to zealously represent clients.

These clients, although they are both stateless and perpetrators of serious crimes, deserve release after completing their sentences. They have served their sentences for their crimes and although deportation would be ideal, stateless

126. *See* Cole, *supra* note 113, at 370.

127. *See* Hassoun v. Searls, 968 F.3d 190, 193 (2d Cir. July 30, 2020); Tran v. Mukasey, 515 F.3d 478, 480 (5th Cir. 2008); Thai v. Ashcroft, 366 F.3d 790, 792 (9th Cir. 2004).

128. *Cf.* Donald Kerwin, Daniela Alulema, Michael Nicholson & Robert Warren, *Statelessness in the United States: A Study to Estimate and Profile the US Stateless Population*, 8(2) J. ON MIGRATION & HUM. SECURITY 150, 151 (2020) (with an increasing stateless population in the United States, legal issues regarding stateless people, including terrorists, will continue to become a growing topic).

individuals have no countries that would accept them. Rather than keeping these individuals detained indefinitely, they should be released and allowed to live in the United States. However, regardless of one's own views on the correct policy for dealing with the freedom of stateless terrorists, it does not change the duties that lawyers owe to these defendants for the reasons outlined in this Note.

Although making the arguments to advocate for a convicted terrorist to live freely may not be a pleasant task, as discussed, the *Model Rules* already outline that representation of a client does not constitute endorsement. Existing articles already touch on distasteful and dangerous clients. This Note has extended the analysis to terrorists who cannot be deported and has concluded that further limitations should not be imposed.