AMERICANS IN UKRAINE: A MODERN-DAY ABRAHAM LINCOLN BRIGADE

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INTRODUCTION

On February 24, 2022, Russia invaded Ukraine in what U.S. President Joe Biden declared to be an "unprovoked and unjustified" attack.[1] This act of aggression was met with condemnation from 141 United Nations member states and demands that Russia withdraw its forces from Ukraine.[2] Russia has ignored these demands and instead continues to fight in an armed conflict that persists today, over two years after the initial invasion in February of 2022.[3] This enduring conflict has garnered support through billions of dollars of funding and weaponry from member nations of the North Atlantic Treaty Organization (NATO) to aid Ukraine in fighting Russian forces.[4] Additionally, private citizens from many of these nations, including the United States, have been inspired by the conflict and

1. Ctr. for Preventive Action, *War in Ukraine*, COUNCIL ON FOREIGN RELS.: GLOB. CONFLICT TRACKER (Oct. 16, 2024), https://perma.cc/CF6M-BTJP.

2. *Id.*

3. *Id.*

4. Isaac Tang, *The Latest in a Long Line: Ukraine's International Legion and a History of Foreign Fighters*, HARV. INT'L REV. (Sept. 2, 2022), https://perma.cc/8G6L-2D4Q.

have traveled to Ukraine of their own volition to fight alongside Ukrainian forces.[5] While the U.S. government has discouraged American citizens from joining the fight in Ukraine, it has not utilized the potential criminal penalties available under current U.S. law to stop them.[6] Should the U.S. government decide to enforce its current body of federal criminal law, many of these American citizens could face prosecution.[7]

This Note begins by analyzing the applicable U.S. statute, stemming from its origin in the Neutrality Act of 1794.[8] Part I discusses the background and circumstances that led to the creation of the Neutrality Act and leads into a discussion of how the Act has evolved into its current codification in the United States Code. Part II then discusses the limited prosecution, selective enforcement, and ambiguity in the language of the Act that has led to unpredictable outcomes in an area of the law that is underdeveloped and does not reflect society's current landscape.[9] Part II continues by exploring the general trend toward nonenforcement, as exemplified by the Abraham Lincoln Brigade's involvement in the Spanish Civil War.[10] U.S. citizen involvement in the present conflict in Ukraine is then compared to the Abraham Lincoln Brigade and further evaluated within the scope of the Neutrality Act. Part II concludes by analyzing different approaches to reformation considered by other legal scholars and contrasts these approaches with an ultimate recommendation to repeal the Neutrality Act. Finally, this Note concludes by discussing Congress's current response to U.S. citizen involvement in Ukraine.

I. BACKGROUND

Part I of this Note analyzes the history of the Neutrality Act of 1794 before turning to its present-day codification.

A. History of the Neutrality Act of 1794

The Neutrality Act, in its current form, derives from the Neutrality Act of 1794.[11] The present-day codification of the Act embodies its original intent, with only minor changes, leaving the language largely intact.[12] The original Act revolutionized domestic

5. *See id.*

6. *See* Brendan E. Ashe, Note, *Quelling the Urge to Go Abroad "In Search of Monsters to Destroy": Revising the Neutrality Act of 1794 to Meet the Twenty-First Century Challenge of Privatized Warfare*, 39 WIS. INT'L L.J. 145, 148–51 (2022).

7. *See id.*

8. *Id.* at 148.

9. *See infra* Sections II.A–C.

10. *See infra* Section II.D.

11. Ashe, *supra* note 6, at 148.

12. *See* United States v. Hart, 74 F. 724, 726 (C.C.S.D.N.Y. 1896). While the Neutrality Act's current codification derives from its 1794 counterpart, several

policy and established a global precedent as the first domestic law to address private expeditions by a country's citizens against a foreign state.[13] The Act was passed in the United States in response to President George Washington's Proclamation of Neutrality on April 22, 1793.[14] Washington's Proclamation was inspired by the recently initiated war between Great Britain and France.[15]

In the spring of 1793, Edmond Charles Genet became the French Minister in the United States.[16] Genet began recruiting American citizens to fight in the war against Great Britain by issuing them commissions into the French military and creating plans for these citizens to invade Spanish territory in North America.[17] Given the French's pivotal role in helping Americans secure their independence from Great Britain during the American Revolution and many Americans' ideological alignment with the aspirations of the French Revolution, Genet was very successful in the early stages of his efforts to recruit Americans to fight alongside the French military.[18] In light of the diminished power of the U.S. military following the American Revolution, Washington issued his Proclamation of Neutrality in an attempt to restrain the overwhelming American support for the French cause and ultimately preserve American neutrality.[19]

In his Proclamation, Washington instructed American citizens to remain neutral during this conflict and reinforced this directive by threatening violators with prosecution.[20] He urged American citizens to "adopt and pursue a conduct friendly and impartial towards the belligerent powers."[21] Furthermore, he declared that U.S. citizens will be "liable to punishment or forfeiture under the laws of nations, by committing, aiding, or abetting hostilities against any of the said powers."[22] Finally, Washington reinforced this declaration by stating

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additional provisions were not enacted until 1917. *See* Overview of the Neutrality Act, 8 Op. O.L.C. 209, 210 n.2 (1984). Here, all provisions are collectively referred to as the Neutrality Act, unless otherwise noted.

13. *See* HENRY WHEATON, ELEMENTS OF INTERNATIONAL LAW § 438, at 534 (Richard Henry Dana, Jr. ed., 8th ed. 1866).

14. 32 WRITINGS OF GEORGE WASHINGTON 430 (J. Fitzpatrick ed., 1939).

15. *See* Cabinet Opinion on Washington's Questions on Neutrality and the Alliance with France (Apr. 19, 1793), *in* 25 PAPERS OF THOMAS JEFFERSON 570, 570–71 (John Catanzariti ed., 1992), https://perma.cc/777M-SV9A.

16. Jules Lobel, *The Rise and Decline of the Neutrality Act: Sovereignty and Congressional War Powers in United States Foreign Policy*, 24 HARV. INT'L L.J. 1, 13 (1983).

17. *Id.*

18. *See* Application of the Neutrality Act to Official Government Activities, 8 Op. O.L.C. 58, 59 (1984) (citing CHARLES G. FENWICK, THE NEUTRALITY LAWS OF THE UNITED STATES 16–23 (Carnegie Endowment for Int'l Peace ed. 1913)).

19. *See id.*

20. WRITINGS OF GEORGE WASHINGTON, *supra* note 14, at 430.

21. *Id.*

22. *Id.*

that he had "given instructions to those officers to whom it belongs, to cause prosecutions to be instituted against all persons, who shall, within the cognizance of the Courts of the United States, violate the law of nations."[23]

Shortly after Washington's Proclamation, Congress passed the Neutrality Act on June 2, 1794, to memorialize Washington's directive to the American people.[24] The Act was passed by a vote of 48–38 in the House of Representatives, but it faced greater opposition in the Senate with a 12–12 split that required Vice President John Adams's tiebreaking vote in favor of the Act.[25]

B. Present-Day Codification of the Neutrality Act

The Neutrality Act was originally intended as a temporary measure in 1794 but was later made permanent in the Act of April 24, 1800.[26] The Act's language was revised slightly in the Neutrality Act of 1818, but this change had little effect on how the Act functioned.[27] Finally, the Neutrality Act was codified in the United States Code in 1948 and significantly resembles the Act's original form in 1794.[28]

The original Act criminalized five different behaviors: "(1) accepting a commission in a foreign military, (2) enlisting in a foreign military, (3) fitting out a vessel to serve any belligerent, (4) 'augmenting' a vessel to serve any belligerent, and (5) private military expeditions."[29] Given the Act's original intent to criminalize these actions, it now resides within Title 18 of the United States Code, which houses statutes pertaining to "Crimes and Criminal Procedure."[30]

These five provisions are now codified at 18 U.S.C. §§ 958–962.[31] The first provision of the original Act is now § 958, titled "Commission to Serve Against Friendly Nation," which prohibits a U.S. citizen "within the jurisdiction" of the United States from accepting a commission to serve a foreign country in a war against a nation "with whom the United States is at peace."[32] The second provision is now § 959, titled "Enlistment in Foreign Service," which forbids any U.S.

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23. *Id.* at 430–31.
24. 4 ANNALS OF CONG. 745, 757 (1794).
25. S. JOURNAL, 3d. Cong., 1st Sess. 47 (1820).
26. *See* Application of the Neutrality Act to Official Government Activities, 8 Op. O.L.C. 58 (1984).
27. United States v. Hart, 74 F. 724, 726 (C.C.S.D.N.Y. 1896).
28. Overview of the Neutrality Act, 8 Op. O.L.C. 209, 210 (1984).
29. Alex H. Loomis, *The Power to Define Offenses Against the Law of Nations*, 40 HARV. J.L. & PUB. POL'Y 417, 448–49 (2017) (citing Neutrality Act of 1794, ch. 50, §§ 1–5, 1 Stat. 381, 381–84 (current version at 18 U.S.C. §§ 958–962)).
30. *See* 18 U.S.C. § 958.
31. Ashe, *supra* note 6, at 148 n.20.
32. 18 U.S.C. § 958.

citizen "within the United States" who "enlists or enters himself, or hires or retains another to enlist or enter himself, or to go beyond the jurisdiction of the United States with intent to be enlisted" in a foreign state's military.[33] The third provision is now § 962, titled "Arming Vessel Against Friendly Nation," which makes it unlawful for anyone "within the United States" to outfit or furnish a vessel with the intent for it to be used by a foreign nation against a nation "with whom the United States is at peace."[34]

The fourth provision is now § 961, titled "Strengthening Armed Vessel of Foreign Nation," which makes it unlawful for anyone "within the United States" to add equipment "solely applicable to war" to another country's warship if that country is at war with a nation "with whom the United States is at peace."[35] Finally, the fifth provision is now § 960, titled "Expedition Against Friendly Nation," which prohibits anyone from knowingly taking part in, financing, or preparing for "any military or naval expedition or enterprise" from "within the United States" against a foreign nation "with whom the United States is at peace."[36] The underlying theme within almost all these provisions is found in the language "with whom the United States is at peace" and "within the United States."[37] Although these provisions do not define the term "at peace," U.S. federal courts have interpreted the term to mean "abstinence from any participation in a public, private, or civil war, and in impartiality of conduct towards both parties."[38] This definition can be understood to mean that the purpose of the provisions is to refrain from engaging in conflicts with nations that have not displayed hostilities towards the United States. Additionally, the repetition of the phrase "within the United States" reinforces that the Act was only intended to include actions within the jurisdiction of the United States.[39]

In addition to the provisions found in the Neutrality Act of 1794, U.S. neutrality laws have greatly expanded since 1917 to include several additional provisions currently codified at 18 U.S.C. §§ 956, 963–967.[40] While 18 U.S.C. §§ 963–967 are primarily concerned with detaining vessels in U.S. ports bound for hostile nations until the owner certifies that the vessel will not be used in that nation's military service,[41] § 956 is viewed as being closely related to § 960.[42]

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33. *Id.* § 959.
34. *Id.* § 962.
35. *Id.* § 961.
36. *Id.* § 960.
37. *See id.* §§ 958–962.
38. United States v. Terrell, 731 F. Supp. 473, 475 (S.D. Fla. 1989) (quoting United States v. Three Friends, 166 U.S. 1, 52 (1896)).
39. *See* 18 U.S.C. § 960.
40. Overview of the Neutrality Act, 8 Op. O.L.C. 209, 210 (1984).
41. *Id.* at 210 n.2.
42. Ashe, *supra* note 6, at 159.

Individuals are often prosecuted under both § 956 and § 960 for committing a crime that falls within the purview of the Neutrality Act.[43] Section 956 prohibits anyone "within the jurisdiction of the United States" from conspiring to murder, kidnap, or injure someone outside the United States or conspiring to damage the property of a foreign nation "with which the United States is at peace."[44] While not found within the language of the Neutrality Act of 1794, the additional provisions have since been included as part of current U.S. neutrality laws.[45]

II. ANALYSIS

Part II analyzes when U.S. citizens have been prosecuted under the Neutrality Act, the U.S. government's selective enforcement of the Neutrality Act, and the ambiguities in the language of the Neutrality Act. This Part then examines the U.S. government's treatment of the Abraham Lincoln Brigade during the Spanish Civil War, compares this historic example to the present-day conflict in Ukraine, and dissects how the Neutrality Act is applicable to American citizens fighting in Ukraine. Finally, this Part concludes with a recommendation to repeal the current Neutrality Act.

A. Prosecution Under the Neutrality Act

While the statutory provisions associated with the Neutrality Act remain valid law, they have rarely been enforced by the U.S. government to penalize American citizens who violate them.[46] In fact, there have only been seven federal cases that have cited 18 U.S.C. § 960, the most utilized provision of the Neutrality Act,[47] since its most recent codification in Title 18 of the United States Code in 1948.[48] In contrast, 16,937 immigration offenses were prosecuted through the federal court system in 2021 alone.[49] While offenses related to the Neutrality Act likely occur with less frequency than those relating to immigration, the overwhelming disparity in federal prosecutions between violations of the Neutrality Act over seventy-six years and immigration related offenses over the course of one

43. *See, e.g.*, United States v. Chhun, 744 F.3d 1110, 1118 (9th Cir. 2014).

44. 18 U.S.C. § 956.

45. Overview of the Neutrality Act, 8 Op. O.L.C. at 210 n.2.

46. *See* cases cited *infra* note 48.

47. Ashe, *supra* note 6, at 148.

48. *See, e.g.*, *Chhun*, 744 F.3d at 1114; United States v. Khan, 309 F. Supp. 2d 789, 796 (E.D. Va. 2004); United States v. Terrell, 731 F. Supp. 473, 474 (S.D. Fla. 1989); Sanchez-Espinoza v. Reagan, 770 F.2d 202, 209 (D.C. Cir. 1985); Dellums v. Smith, 577 F. Supp. 1449, 1450 (N.D. Cal. 1984); United States v. Leon, 441 F.2d 175, 176 (5th Cir. 1971); Casey v. United States, 413 F.2d 1303, 1303 (5th Cir. 1969).

49. U.S. SENT'G COMM'N, OVERVIEW OF FEDERAL CRIMINAL CASES: FISCAL YEAR 2021, at 18 (2022).

fiscal year may raise doubts as to (1) the objectivity with which these offenses are prosecuted and (2) the political undertones that may be guiding the allocation of U.S. federal government resources. These two areas of the law both govern how the United States interacts with citizens of foreign countries, but the stark contrast in prosecution rates may suggest a policy-driven agenda behind the government's exercise of prosecutorial discretion. While the federal government is afforded a wide range of latitude in deciding whether to prosecute a particular case,[50] the limited instances in which the Neutrality Act is enforced may have the undesired effect that the Act was designed to avoid: signaling to other nations which conflicts the United States supports, despite the United States not taking an official stance.

The seven federal prosecutions involving 18 U.S.C. § 960 since 1948 seem to share a common characteristic: The actions taken by individuals in these cases were not viewed by the U.S. federal government as furthering its foreign policy agenda.[51] This theme is exemplified in these seven cases through the U.S. government's express disdain for these individuals' actions by categorizing their attempts to replace a foreign government as "terrorist" activities.[52] This condemnation is sharply contrasted by the U.S. government's choice not to prosecute U.S. citizens fighting to overthrow the Spanish government during the Spanish Civil War in 1936.[53] The clear difference in enforcement between these cases establishes a dangerous precedent that signals which nations and conflicts the United States openly supports. As a result, the U.S. government's neutrality façade is precariously eroded by these actions in a manner that forces unnecessary strain upon foreign relations.

B. Selective Enforcement of the Neutrality Act

As discussed above, the U.S. government's determination to only prosecute select cases involving malicious acts by U.S. citizens against foreign nations with which the United States is at peace undermines the neutrality that the Act seeks to maintain.[54] These enforcement trends are analogous to a public statement by the U.S. government indicating its partisan views on foreign conflicts between nations with which the United States is not currently at war. These actions ultimately hinder U.S. foreign relations by tainting what might otherwise portray an unblemished message of neutrality that would enable the United States to abstain from involvement in unwanted foreign conflicts, avoid devoting unnecessary resources, and refrain from risking servicemembers' lives for a matter that

50. Rebecca Krauss, *The Theory of Prosecutorial Discretion in Federal Law: Origins and Developments*, 6 SETON HALL CIR. REV. 1, 4 (2009).

51. *See* cases cited *supra* note 48.

52. *See, e.g.*, *Chhun*, 744 F.3d at 1116; *Khan*, 309 F. Supp. 2d at 796.

53. *See infra* Section II.D.

54. *See* WHEATON, *supra* note 13.

would otherwise not concern the United States. To contextualize the potential financial costs associated with a foreign conflict, a single overseas military base, before accounting for the cost of equipment and personnel, costs American taxpayers between $50 million and $200 million per year.[55] These tremendous expenses may be avoided if the United States can more effectively retain its neutrality by conveying a clearer message through more consistent application of U.S. laws.

In addition to broadcasting an undesired message to foreign nations, the selective enforcement of the Neutrality Act establishes a precedent that laws may be disregarded by U.S. citizens and the government. With such inconsistent application of the Neutrality Act, citizens may feel emboldened to disobey these enforceable laws. The U.S. government has established a precedent that it will rarely, if ever, penalize American citizens for failing to adhere to the Act.[56] While this precedent has led American citizens to dismiss the Neutrality Act during the ongoing conflict in Ukraine,[57] it may eventually affect American citizens' regard for other areas of the law as well. Such a trend has the potential to develop into a selective pattern of adherence to U.S. laws that, in an extreme form, may resemble certain aspects of the sovereign-citizen movement: an ideology the FBI classifies as a "domestic terrorist movement."[58] The U.S. government's pattern of rarely enforcing the Neutrality Act creates uncertainty that could lead to disorder within the United States.

The selective enforcement of the Neutrality Act has been further exacerbated through an intentional decrease in enforcement over the past eighty years.[59] The U.S. government has made clear that this pattern of nonenforcement is the result of a conscious policy.[60] In fact, when asked about the Neutrality Act's applicability to the Bay of Pigs invasion, Attorney General Robert Kennedy asserted that "[c]learly, [the neutrality laws] were not designed for the kind of situation which exists in the world today."[61] Kennedy's proclamation that the Neutrality Act was not applicable to present-day society in 1968 has

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55. John Glaser, *Withdrawing from Overseas Bases: Why a Forward-Deployed Military Posture Is Unnecessary, Outdated, and Dangerous*, CATO INST. (July 18, 2017), https://perma.cc/MB9T-MX9G.

56. *See* cases cited *supra* note 48.

57. *See infra* Section II.E.

58. FBI's Counterterrorism Analysis Section, *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement*, FBI: LAW ENF'T BULL. (Sept. 1, 2011), https://perma.cc/DUR9-VYDN (describing the sovereign-citizen movement as an ideologically based movement that does not recognize U.S. laws).

59. *See* Lobel, *supra* note 16, at 44.

60. *Id.*

61. Statement of Att'y Gen. Robert F. Kennedy to the Press (Apr. 20, 1961), *reprinted in* 11 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 231 (1968).

only been reinforced in the fifty-six years since his statement to the press.[62] As our society continues to evolve, the laws relating to the Neutrality Act remain rigid and unchanged, creating the incompatibility with today's society that Kennedy referenced.[63] To further corroborate the notion that the Neutrality Act has failed to adapt to our changing society, these laws were "premised on a reciprocal respect for sovereignty."[64] This meant that the United States would respect the sovereignty of other nations, so long as those nations would reciprocate this behavior towards the United States.[65]

Given the weakened state of the U.S. military in 1794, this concept was imperative to protect the United States from attack by other nations.[66] However, the United States now has one of the strongest militaries in the world and no longer needs to rely as heavily on a reciprocal respect for sovereignty to protect its citizens.[67] Furthermore, the increasing prevalence of collective security agreements has generally eroded the respect major powers have exhibited for the sovereignty of other countries—particularly when these powers believe their collective security interest is in jeopardy.[68] In addition to diminishing the respect major powers have for the sovereignty of other states, these collective security agreements have created an interdependence between nations that no longer relies as heavily upon the language of the Neutrality Act to mitigate potential conflicts.[69] Due to these changes in our society since the Neutrality Act's inception in 1794, its language is no longer as applicable and has resulted in the conscious pattern of nonenforcement discussed in this paragraph.

C. Ambiguity in the Language of the Neutrality Act

The selective use of the Neutrality Act and the uncertain precedent that it establishes are intensified by the ambiguous language of its associated provisions.[70] This ambiguity is illustrated through the inconsistent outcomes various courts have reached through their different interpretations of the Act's language.[71] These

62. *See* Lobel, *supra* note 16, at 44.
63. *See id.* at 44 n.243.
64. *Id.* at 50.
65. *See id.*
66. *See id.* at 21, 50.
67. *These Countries Have the Strongest Militaries*, U.S. NEWS (2024), https://perma.cc/XB3R-L5E6.
68. *See* Lobel, *supra* note 16, at 50.
69. *See id.*
70. *See, e.g.*, 18 U.S.C. §§ 956, 958–967.
71. *See, e.g.*, Wiborg v. United States, 163 U.S. 632, 659–60 (1896); Jacobsen v. United States, 272 F. 399, 404 (7th Cir. 1920); United States v. Sander, 241 F. 417, 420 (S.D.N.Y. 1917); United States v. Murphy, 84 F. 609, 611–14 (D. Del. 1898).

divergent readings of the Act and controlling case law have created an incoherent body of law that has led scholars to demand reformation and clearer guidance from the U.S. government about the Neutrality Act's proper interpretation and application.[72]

One of the most contested—yet most utilized—provisions in the Neutrality Act governs expeditions against friendly nations.[73] Specifically, it forbids anyone from knowingly taking part in, financing, or preparing for "any military or naval expedition or enterprise" from "within the United States" against a foreign nation "with whom the United States is at peace."[74] The phrase "expedition or enterprise" is not defined in the statute.[75] While these terms may appear to be commonplace words with clear definitions, their use in the "military" context can be convoluted.[76] *The Merriam-Webster Dictionary* defines an expedition as "a journey or excursion undertaken for a specific purpose"[77] and an enterprise as "a project or undertaking that is especially difficult, complicated, or risky."[78] Neither of these definitions clearly relates to military activity, and they both require further interpretation to cogently apply the Neutrality Act.

Given the need for guidance about the statute's proper scope, the U.S. Supreme Court issued an opinion in 1896 that provided an open-ended definition for what constitutes a "military expedition or enterprise."[79] The Court began by distinguishing a "military expedition" from a "military enterprise."[80] The Court defined a "military expedition" as "a voyage by a company or body of persons, having the position or character of soldiers, for a specific warlike purpose."[81] In this case, the Court found that the use of armaments contributed toward its finding of a "military expedition," but stated that "it is not necessary" that individuals be armed to satisfy the requirements of a "military expedition."[82] The Court then defined a "military enterprise" as "a martial undertaking involving the idea of a bold, arduous, and hazardous attempt."[83]

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72. *See, e.g.*, Ian Brownlie, *Volunteers and the Law of War and Neutrality*, 5 INT'L & COMPAR. L.Q. 570, 573–75 (1956); Lobel, *supra* note 16, at 8, 25 n.137, 46, 68; Robert M. Twiss, *National Security: The Impact on U.S. Foreign Policy Arising from Private Actions Initiated Against Foreign Nations from Within the United States*, 3 CREIGHTON INT'L & COMPAR. L.J. 54, 84–85, 98–99 (2012).

73. 18 U.S.C. § 960.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Expedition*, THE MERRIAM-WEBSTER DICTIONARY (rev. ed. 2022).

78. *Enterprise*, THE MERRIAM-WEBSTER DICTIONARY (rev. ed. 2022).

79. Wiborg v. United States, 163 U.S. 632, 650 (1896).

80. *Id.*

81. *Id.*

82. *Id.* at 653–54.

83. *Id.* at 650.

While the U.S. Supreme Court recognized that the two terms were often used synonymously, the Court asserted that "every word should be presumed to have some force and effect" and that an "enterprise" was broader than an "expedition."[84] As a result, the term "enterprise" expanded the statute's scope beyond the definition of an "expedition" alone.[85] The Court's definition of a "military expedition or enterprise" in this case is vague, open-ended, and provides a limited framework for defining the terms 102 years after the Neutrality Act was enacted.[86] Over 120 years later, this case remains the controlling U.S. Supreme Court precedent for the definition of a "military expedition or enterprise."[87] The lack of clarity provided in this definition has established limited guidance as to what actions fall within the scope of the Neutrality Act. Without a clear national standard, lower courts have been left to devise their own interpretations of what is included within the statute—often resulting in different outcomes.[88]

Lower-court interpretations of what is included within the scope of the Neutrality Act have expanded over time. In 1898, *United States v. Murphy*[89] greatly expanded the definition of a "military enterprise."[90] This definition only requires that the "military enterprise" begin within the United States.[91] This definition explicitly states that the enterprise does not need to be perfected within the United States.[92] It also asserts that members of the enterprise do not need to be "in personal contact with each other within the limits of the United States" or leave the United States "at the same point."[93] In 1917, *United States v. Sanders*[94] further expanded the definition of a "military enterprise" to include actions taken by "single individuals" rather than requiring concerted action by a group of individuals.[95] Finally, in 1920, *Jacobsen v. United States*[96] expanded the scope of the statute to include a conspiracy to partake in a military enterprise, so long as it "was a part of the intent and purpose of those engaged in the conspiracy."[97] *Jacobsen* stated that the statute only requires someone begin a military enterprise, and not the actual existence of a military enterprise, because something "that is only begun is not

84. *Id.*
85. *Id.*
86. *See id.*
87. *See id.*
88. *See* cases cited *supra* note 71.
89. 84 F. 609 (D. Del. 1898).
90. *See id.* at 614.
91. *Id.*
92. *Id.*
93. *Id.*
94. 241 F. 417 (S.D.N.Y. 1917).
95. *Id.* at 420.
96. 272 F. 399 (7th Cir. 1920).
97. *Id.* at 404.

the completed thing."[98] While not creating binding precedent for the entire nation, these lower courts have greatly expanded the scope of the Neutrality Act through their interpretation of what constitutes a "military enterprise." This expansive definition emphasizes the desperate need for clear guidance from the U.S. Supreme Court or Congress.

D. Application to the Abraham Lincoln Brigade

As discussed in Section II.B, the Neutrality Act has been selectively enforced, if at all, since its enactment—ultimately establishing a precedent that it can be disregarded by American citizens.[99] This precedent is exemplified by the U.S. government's conscious decision to not enforce the Neutrality Act in response to the Abraham Lincoln Brigade's actions during the Spanish Civil War.[100]

The Spanish Civil War erupted in 1936 when General Francisco Franco, the Spanish military leader, led a coup d'état against the democratically elected government.[101] Franco helped champion the spread of fascism and was supported in this rebellion by Hitler and Mussolini.[102] The United States established a firm stance of neutrality during this conflict, which was reinforced through the State Department's ban on American travel to Spain.[103] However, 2,800 American citizens were moved by the Spanish Republic's call for help and traveled to Spain to fight the spread of fascism, despite openly violating the Neutrality Act and the State Department's ban on travel to Spain.[104] Having been inspired to take action in this politically charged conflict by the hardships experienced during the Great Depression, the Americans who traveled to Spain came from all walks of life, including students, miners, lumberjacks, and athletes.[105] Once organized in Spain, the Americans named their units the Abraham Lincoln Battalion, George Washington Battalion, and John Brown Brigade.[106] These units joined British, Irish, and Canadian citizens to form the Fifteenth International Brigade, which was later coined the Abraham Lincoln Brigade.[107] After years of sustained fighting in Spain, the American members of the Abraham

98. *Id.*
99. *See supra* Section II.B.
100. *See* Sam Sills, *The Abraham Lincoln Brigade of the Spanish Civil War*, UPENN: CTR. FOR PROGRAMS CONTEMP. WRITING (June 5, 2021), https://perma.cc/NM9F-WLWF.
101. *Id.*
102. *Id.*
103. *See id.*
104. *See id.*
105. *See id.*
106. *Id.*
107. *Id.*

Lincoln Brigade returned home in 1939 as "heroes of the anti-fascist cause."[108]

The U.S. government's decision to not prosecute American members of the Abraham Lincoln Brigade for disobeying the provisions of the Neutrality Act highlights its pattern of selective enforcement. The U.S. government has generally not enforced the Neutrality Act when American citizens have taken actions that align with U.S. foreign policy goals.[109] While the U.S. government seemingly took a stance of neutrality during the Spanish Civil War, U.S. foreign policy sought to stop the spread of fascism.[110] It was certainly no coincidence that the U.S. government chose not to prosecute individuals who acted in a manner consistent with U.S. foreign policy goals[111] while electing to penalize individuals in other instances who did not act accordingly.[112] Although the U.S. government stated that it would remain neutral during the Spanish Civil War, the Neutrality Act's lack of enforcement signaled to foreign nations which side the U.S. government aligned with during this conflict.[113] In addition to cutting against the government's intended message of neutrality, this incident established a strong precedent that the Neutrality Act does not need to be obeyed by American citizens, including those currently fighting in Ukraine.

E. Application to the Current Conflict in Ukraine

Since Russia's invasion on February 24, 2022, an intense and bloody war has persisted in Ukraine.[114] Similar to the American citizen response in the Spanish Civil War, Americans have answered Ukrainian President Volodymyr Zelenskyy's call for help and traveled to Ukraine in support of the battle against Russian aggression.[115] American citizens have organized with citizens from other countries to form the International Legion and fight alongside the Ukrainian military.[116] Like the members of the Abraham Lincoln Brigade, American citizens have traveled to Ukraine of their own accord and openly defied the U.S. government's discouragement from joining the fight in Ukraine.[117] Furthermore, the United States has refused to send military forces to fight in Ukraine in an attempt to avoid becoming decisively engaged in this conflict.[118] However, like the U.S.

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108. *Id.*
109. *See id.*
110. *See id.*
111. *See id.*
112. *See* cases cited *supra* note 48.
113. *See* Sills, *supra* note 100.
114. Ctr. for Preventive Action, *supra* note 1.
115. *See* Tang, *supra* note 4.
116. *Id.*
117. *See id.*
118. *See id.*

government's response to American involvement during the Spanish Civil War, American citizens who have joined the fight in Ukraine have not been prosecuted for violating the Neutrality Act.[119] This response follows the established pattern of not enforcing the Act because American citizens' actions align with the U.S. government's condemnation of Russia's actions.[120]

1. The International Legion

The International Legion is comprised of "more than 20,000 foreign volunteers from over 52 different countries" that have organized together to fight alongside the Ukrainian military.[121] Of these volunteers, hundreds are American citizens.[122] A U.S. Customs and Border Protection report identified multiple American citizens traveling to fight in Ukraine who were stopped for questioning at John F. Kennedy International Airport (JFK Airport) from January to March 2022.[123] One of the individuals was a retired U.S. Marine veteran traveling to Poland with "gauze, pain killers, tourniquets[,] . . . handcuffs, a gas mask, and a fixed blade knife" with stated intentions of traveling to a recruitment center in Ukraine.[124] Another individual was a retired U.S. Army veteran traveling to Poland and then Ukraine with "military style clothing, . . . hearing protection, one armor plate carrier with three rifle magazine pouches attached, and one Aimpoint Micro T-2 Red Dot Reflect sight."[125] Later that month, this individual was "featured in a media article regarding U.S. veterans training Ukrainians" with "multiple photos [of him] training Ukrainians in weapons handling and tactical maneuvers" and stated "his reason for being in Ukraine and volunteering to fight."[126] These encounters clearly depict U.S. citizens leaving the United States to fight alongside Ukraine in violation of the Neutrality Act.

2. Application of the Neutrality Act to Americans in Ukraine

Despite the U.S. government's nonenforcement of the Neutrality Act, American citizens currently fighting in Ukraine are in direct violation of the Act. While it may be argued that "lawful combatant

119. *See id.*

120. Ctr. for Preventive Action, *supra* note 1.

121. Tang, *supra* note 4.

122. *See* Andrew Hay, *After Treatment at US Military Hospital, Volunteers for Ukraine Return to Fight*, REUTERS (Oct. 12, 2023), https://www.reuters.com/world/after-treatment-us-military-hospital-volunteers-ukraine-return-fight-2023-10-12.

123. U.S. CUSTOMS & BORDER PROT., INTELLIGENCE NOTE: UNITED STATES CITIZENS JOINING THE FIGHT FOR UKRAINE 1 (2022).

124. *Id.* at 2.

125. *Id.* at 3.

126. *Id.* at 3–4.

immunity" prevents these individuals from being prosecuted, the American citizens currently fighting in Ukraine do not qualify for such protection from the law. This immunity "forbids prosecution of soldiers for their lawful belligerent acts committed during the course of armed conflicts against legitimate military targets."[127] Although these individuals' actions are "during the course of armed conflicts against legitimate military targets" as they are fighting Russian combatants, these citizens are acting as mercenaries, not "soldiers," and are not participating in "lawful" acts as they are in direct violation of U.S. laws.[128] Given their lack of immunity, American citizens fighting in Ukraine are in violation of the Neutrality Act and, depending on their involvement, may be prosecuted under 18 U.S.C. §§ 956, 958–960.

To begin, § 958 forbids a U.S. citizen "within the jurisdiction" of the United States from accepting a commission to serve a foreign country in a war against a nation "with whom the United States is at peace."[129] In the context of the war in Ukraine, a violation of this statute would include an American citizen who accepted a commission as an officer in the Ukrainian military, including the International Legion, while within the United States. The U.S. Customs and Border Protection report previously mentioned includes another individual at JFK Airport who may have acted in violation of § 958.[130] This person was a retired U.S. Army veteran traveling to Poland and then Ukraine.[131] This individual stated that he had "visited the Ukrainian Embassy in Washington, D.C., to obtain instructions on how to join" the International Legion.[132] Although there are limited details available about this individual's actions, if this U.S. citizen accepted a commission as an officer in the International Legion and was traveling to Ukraine in exercise of this commission, this person would be in violation of § 958.

Additionally, the scope of § 959 is far more expansive than § 958, as § 959: (1) only requires that someone enlist or enter the service of a foreign military rather than commission as an officer; (2) applies to an individual that gets someone else to enlist or enter without enlisting or entering themselves; (3) applies to individuals that leave the United States with the intent to enlist or enter the service of a foreign military; and (4) does not require that the United States be at peace with that other nation.[133] This statute would likely capture the majority of American citizens who are currently members of the International Legion, as they would have either joined while in the

127. United States v. Lindh, 212 F. Supp. 2d 541, 553 (E.D. Va. 2002).
128. *Id.*; *see* 18 U.S.C. §§ 956, 958–967.
129. 18 U.S.C. § 958.
130. U.S. CUSTOMS & BORDER PROT., *supra* note 123, at 2.
131. *Id.*
132. *Id.*
133. *See* 18 U.S.C. § 959.

United States or left the country with the intent of joining. While this statute has a broad scope, things become more complicated when internet usage is considered.

The Ukrainian government launched a website on March 5, 2022, to recruit people to join the International Legion.[134] This website provides instructions on how to join the Legion and recommends that people contact the Ukrainian embassy in their country.[135] The U.S. Customs and Border Protection report previously mentioned states that as of March 3, 2022, "the Ukrainian Embassy in Washington, D.C., received more than 3,000 applications from U.S. citizens . . . hoping to fight for Ukraine."[136] Likewise, this same report identified another individual at JFK Airport traveling to Turkey and then Ukraine due to an interaction he had "on a Ukrainian fighting group chat on a social media site."[137] He had "a 5.56 style ammo speed loader, military style gear, . . . and a not-serialized Sig Sauer red dot sight" in his luggage.[138] The question raised by the use of the recruiting website and social media site is whether American citizens have entered into, or agreed to enter into, the International Legion while in the United States. Both instances are likely subject to 18 U.S.C. § 959, as regardless of where the individual entered into the foreign nation's military service, that person would have left the United States with at least the intent to enter into the other country's service and would therefore fall within the scope of the statute.[139] Section 958, however, creates an additional complication when dealing with these online interactions.

To first address the social media site, if the American citizen who interacted with the site accepted a commission as an officer in the International Legion during this interaction, then that individual would have done so while in the United States and fall within the scope of § 958.[140] The recruiting website, on the other hand, creates an additional complication that hinges upon whether it is "active" or "passive" as depicted in *Bensusan Restaurant Corp. v. King*.[141] A "passive" website that provides instructions for how to join the International Legion, but does not enable the user to interact with the website, would not fall within the scope of § 958, as the user is not

134. U.S. CUSTOMS & BORDER PROT., *supra* note 123.
135. *Id.*
136. *Id.*
137. *Id.*
138. *Id.*
139. *See* 18 U.S.C. § 959.
140. *See id.* § 958.
141. *See* Bensusan Restaurant Corp. v. King, 937 F. Supp. 295, 299–300 (S.D.N.Y. 1996), *aff'd*, 126 F.3d 25 (2d Cir. 1997).

accepting a commission through the website.[142] Conversely, if the user was able to interact with the website and indicate their acceptance of a commission while in the United States, this activity would likely be sufficient to fall within the purview of § 958.[143]

American citizens in the United States who are planning to fight in Ukraine may also be in violation of 18 U.S.C. § 956. This statute includes anyone "within the jurisdiction of the United States" who conspires to murder, kidnap, or injure someone outside the United States or conspires to damage the property of a foreign nation "with which the United States is at peace."[144] This statute does not require that anyone has left the United States and can impose criminal penalties on someone planning with others to fight in Ukraine, so long as their plan includes "murder, kidnapping, or maiming" someone, or damaging Russian property, while in Ukraine.[145] If an individual is planning to fight in Ukraine with someone else as an armed combatant, they will likely fall within the scope of § 956 as these actions are likely part of their intended conduct while fighting in the war.[146]

Finally, 18 U.S.C. § 960 prohibits anyone from knowingly taking part in, financing, or preparing for "any military or naval expedition or enterprise" from "within the United States" against a foreign nation "with whom the United States is at peace."[147] The U.S. Supreme Court has defined a "military enterprise" in *Wiborg v. United States*[148] as "a martial undertaking involving the idea of a bold, arduous, and hazardous attempt."[149] As discussed in Section II.C, this ambiguous definition has been interpreted by lower courts to include the requirements that the enterprise (1) only needs to begin within the United States,[150] (2) can have members who are not "in personal contact with each other within the limits of the United States" or leave the United States "at the same point,"[151] (3) can include actions taken by "single individuals" rather than requiring concerted action by a group of individuals,[152] and (4) can include a conspiracy to partake in a military enterprise, so long as it "was a part of the intent and purpose of those engaged in the conspiracy."[153]

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142. *See* Phillip Yan, *Heroes or Criminals: The Legality of American Volunteers in the Russo-Ukrainian War*, COLUM. UNDERGRADUATE L. REV. (Oct. 12, 2022), https://perma.cc/TCE9-RJQF; 18 U.S.C. § 958.

143. *See* Yan, *supra* note 142; 18 U.S.C. § 958.

144. 18 U.S.C. § 956.

145. *See id.*

146. *See id.*

147. *Id.* § 960.

148. 163 U.S. 632 (1896).

149. *Id.* at 650.

150. United States v. Murphy, 84 F. 609, 614 (D. Del. 1898).

151. *Id.*

152. United States v. Sanders, 241 F. 417, 420 (S.D.N.Y. 1917).

153. Jacobsen v. United States, 272 F. 399, 404 (7th Cir. 1920).

This incredibly expansive view of the definition is likely to capture a large portion of the actions taken by American citizens fighting in Ukraine.

For example, the U.S. Customs and Border Protection report previously mentioned discusses another individual who was a retired U.S. Marine veteran traveling with "a tactical plate carrier, four body-armor plates, a gun sling, and a combat belt" to Poland and then Ukraine.[154] This individual was planning to meet another American citizen he had met on a social media site that was leaving from Chicago.[155] This person's actions would likely fall within the scope of § 960.[156] He began a military enterprise within the United States in his individual capacity and through his coordination with the other person,[157] despite not leaving from the same place or having personal contact with the other person while in the United States.[158] Even if this individual was detained at the airport and unable to continue on to Ukraine, he still would have satisfied the requirements for a military enterprise.[159] As a result, American citizens currently fighting in Ukraine, and even those who are planning to join the fight but have not yet left the United States, can likely be prosecuted under the Neutrality Act.

3. Comparison to the Abraham Lincoln Brigade

Consistent with the U.S. government's response to the Abraham Lincoln Brigade's actions during the Spanish Civil War, the American citizens currently fighting in Ukraine have not been prosecuted for violating the Neutrality Act because their actions align with U.S. foreign policy goals.[160] This comparison helps to illustrate the U.S. government's pattern of selective enforcement of the Neutrality Act over the past eighty-five years.[161] In both cases, U.S. citizens violated enforceable U.S. laws, and in both cases, the U.S. government has elected not to enforce those laws.[162]

In analyzing these two instances, they involve strikingly similar fact patterns. Both examples involve foreign nations engaged in conflicts with thousands of international citizens organizing to fight with that nation against a common enemy while the United States establishes a neutral position by refusing to engage its military in the fighting.[163] In both instances, American citizens left the United States

154. U.S. CUSTOMS & BORDER PROT., *supra* note 123.
155. *Id.*
156. *See* 18 U.S.C. § 960.
157. *See Sanders*, 241 F. at 420.
158. *See id.*
159. *See* Jacobsen v. United States, 272 F. 399, 402 (7th Cir. 1920).
160. *See* Tang, *supra* note 4.
161. *See* Sills, *supra* note 100; *see also* Tang, *supra* note 4.
162. *See* Sills, *supra* note 100; *see also* Tang, *supra* note 4.
163. *See* Sills, *supra* note 100; *see also* Tang, *supra* note 4.

of their own volition and defied the U.S. government's instructions not to fight in the war. Like the Abraham Lincoln Brigade, many of the International Legion members are ideologically motivated to combat Russian oppression and stop the spread of authoritarianism throughout the region.[164] However, unlike the American students, lumberjacks, and miners fighting in the Spanish Civil War, many of the American members of the International Legion are military veterans with prior training.[165] This experience may provide the International Legion with greater organization, planning, tactics, and decision-making than the Abraham Lincoln Brigade enjoyed.[166]

Other major changes to the battlefield since 1939 include advancements in technology, like the invention of the internet and other means of communication.[167] These advancements have further complicated the scope of the Neutrality Act and created more uncertainty for American citizens when determining the legality of their actions domestically and abroad.

F. Recommendations for Reform

As discussed in Section II.E, the current state of the Neutrality Act desperately requires guidance from the U.S. government to clarify its scope and application to American citizens fighting in Ukraine.[168] While some scholars have called for revisions to the Act,[169] the most effective method of maintaining U.S. neutrality would be to repeal the Act entirely. In addition to the issues previously discussed, the Neutrality Act's current enforcement trends cut against its original intent and create additional ambiguities in its application while the Act's scope extends beyond what it originally aimed to accomplish. By repealing this archaic Act, the U.S. government would alleviate these issues and more effectively maintain its neutrality when faced with foreign conflicts.

To begin, the Neutrality Act's current application does not accomplish its original intent of maintaining U.S. neutrality in unnecessary foreign conflicts.[170] This intent was evidenced by Thomas Jefferson's statement that "no citizen should be free to commit his country to war" as he lobbied for the Act's original approval in 1794.[171] In furtherance of this statement, George

164. *See* Tang, *supra* note 4.

165. *See id.*

166. *See id.*

167. *A Brief History of the Internet*, UNIV. SYS. GA. (2024), https://perma.cc/5XPG-MYRL.

168. *See supra* Section II.E.

169. *See* Ashe, *supra* note 6, at 145; *see also* Dakota S. Rudesill, *American Fighters, Ukraine, and the Neutrality Act: The Law and the Urgent Need for Clarity*, JUST SEC. (Mar. 15, 2022), https://perma.cc/NM85-P8N4.

170. *See* Ctr. for Preventive Action, *supra* note 1.

171. 6 WRITINGS OF THOMAS JEFFERSON 347 (Paul Leicester Ford ed. 1895).

Washington asserted that Europe is "engaged in frequent controversies, the causes of which are essentially foreign to our concerns" and that it would be "unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics."[172] These statements clearly illustrate that the Act originally intended for the U.S. government to maintain control over its foreign relations and not become implicated in unnecessary conflicts.[173] While this concern remains incredibly important to U.S. foreign policy, the current use of the Neutrality Act is not accomplishing this desired end-state.

The Act's pattern of selective enforcement has effectively signaled the U.S. government's stance on various foreign conflicts and failed to preserve the nation's unblemished neutrality. Furthermore, society has adapted to become more interconnected using collective security agreements since the Act was originally passed in 1794, and this interconnectedness has made it more difficult, if not impossible, for the United States to remain completely uninvolved in Europe's foreign conflicts.[174] American citizens should not be punished for the law's failure to adapt to changes in society. This inevitable interconnectedness is seen with the conflict in Ukraine, as the U.S. government has refused to send conventional military forces to fight in Ukraine, but has aided Ukraine through shipments of weapons, supplies, and funding.[175] Given these developments and the selective enforcement of the Act, it would be more effective for the U.S. government to repeal the Act. The government should strongly convey the message that these individuals are not supported by the United States, rather than showing support for their actions by choosing not to prosecute their violations of the law.

Additionally, the ambiguous scope of the statute has created issues in application beyond just the definition of a "military expedition or enterprise."[176] These issues include whether the statute applies to the federal government and which types of foreign entities are included within its scope.[177] Regarding the Act's application to the government, the U.S. Attorney general stated that it did not apply to government officials "acting within the course and scope of their duties as officers of the United States"[178] while a federal district court judge disagreed and found that it applied to everyone, "including the President."[179] The U.S. Attorney General's office did not agree with this decision and discredited the holding by stating that "we

172. 35 WRITINGS OF GEORGE WASHINGTON 234 (John C. Fitzpatrick ed. 1940).
173. *See supra* notes 171–72.
174. *See* Lobel, *supra* note 16, at 50.
175. *See* Ctr. for Preventive Action, *supra* note 1.
176. *See supra* Section II.C.
177. *See infra* notes 178–79, 183.
178. Application of the Neutrality Act to Official Government Activities, 8 Op. O.L.C. 58, 58 (1984).
179. Dellums v. Smith, 577 F. Supp. 1449, 1454 (N.D. Cal. 1984).

nevertheless believe that the case was erroneously decided."[180] The law does not explicitly provide a carve out for government officials,[181] and this response exemplifies selective application of the statute by discrediting a legitimate source of law in fear of restricting the government's own power. An additional discrepancy in the Act's interpretation regards the foreign entities included within its scope.[182] This issue is exemplified through the U.S. Attorney General's statement that the Act only applies "to political entities recognized by the United States as an independent government, entitled to admission into the family of nations."[183] In distinguishing between certain types of nations and other groups of people resembling a nation, this approach creates further inconsistencies in the Act's application.[184] These disparate and arbitrary interpretations of the Neutrality Act emphasize the importance of repealing, rather than simply reforming, the Act to preserve U.S. neutrality.

Finally, the scope of the Neutrality Act currently extends beyond what it was originally intended to accomplish.[185] The Act was heavily contested when it was first enacted, as it needed the Vice President's tie-breaking vote to pass into effect.[186] This strong opposition toward the Act required that it only be passed as a temporary measure.[187] Despite its limited original intent, the antiquated form of the Neutrality Act has persisted into present-day society.[188] Furthermore, the driving motivation behind originally passing the Act was to temper the American public's overwhelming and emotional support for the French during their war against Great Britain and Holland—inspired by their support during the American Revolution.[189] Seeing as this conflict is no longer ongoing, the Act's original motivation is no longer prevalent in today's society. As a result, the Neutrality Act should be repealed from U.S. law given the Act's strong opposition in Congress in 1793, its temporary intent when enacted, and the fact that Americans are no longer emotionally inspired to support the French in a war against Great Britain.[190]

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180. Application of the Neutrality Act to Official Government Activities, 8 Op. O.L.C. at 81.

181. *See* 18 U.S.C. §§ 956, 958–967.

182. *See infra* note 183.

183. Overview of the Neutrality Act, 8 Op. O.L.C. 209, 214 (1984).

184. *Id.* at 214–15.

185. *See infra* notes 186–89.

186. *See* 4 ANNALS OF CONG., *supra* note 24, at 757–58.

187. *Id.*

188. *See id.*; 18 U.S.C. §§ 956, 958–967.

189. *See* Application of the Neutrality Act to Official Government Activities, 8 Op. O.L.C. 58, 59 (1984).

190. *See* 4 ANNALS OF CONG., *supra* note 24, at 757; Overview of the Neutrality Act, 8 Op. O.L.C. at 210; Application of the Neutrality Act to Official Government Activities, 8 Op. O.L.C. at 59.

Considering the issues with the Neutrality Act discussed in this Note, the Act should be repealed from current U.S. law. While scholars agree the Act's current state presents issues for U.S. foreign relations, some have called for its revision.[191] One view even recommends broadening the Act's scope to enable U.S. citizens to be prosecuted for a wider range of activities.[192] However, enabling further prosecution of American citizens for acting upon their beliefs imposes an unnecessary restriction on the individual liberties that the United States was founded upon and seeks to protect. Furthermore, simply reforming the Act's scope would not guarantee effective enforcement given the U.S. government's current pattern of nonenforcement against citizens acting in a manner that aligns with U.S. foreign policy. This approach signals the U.S. government's views during foreign conflicts and hinders maintaining neutrality.

CONCLUSION

This Note has explored the origins of the Neutrality Act, discussed issues with its enforcement, raised concerns for its application to American citizens currently fighting in Ukraine, and ultimately provided a recommendation to repeal the Act. The Neutrality Act was met with strong opposition when it was originally passed in 1794[193] and now faces further opposition during the conflict in Ukraine.[194] Congress recently proposed a bill to exempt U.S. citizens fighting in Ukraine from being prosecuted.[195] This bill exemplifies support for American citizens currently in Ukraine, acknowledges the Neutrality Act's application to these citizens' actions, and expresses American opposition to the Act.[196] It is imperative that the U.S. government maintain control over its foreign policy and the conflicts with which it becomes engaged. Repealing the Neutrality Act would enable the U.S. government to more effectively maintain its neutrality in foreign conflicts. This change may have implications for American citizens in Ukraine, Israel, and other present-day armed conflicts.

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191. *See* Ashe, *supra* note 6, at 145–46; Rudesill, *supra* note 169.
192. *See* Rudesill, *supra* note 169.
193. *See* 4 ANNALS OF CONG., *supra* note 24, at 757–58.
194. *See* H.R. 7039, 117th Cong. § 2 (2022).
195. *See id.*
196. *See id.*

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