

SAVING LIVES OR SPREADING FEAR: THE TERRORISTIC NATURE OF ECO-EXTREMISM

By
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Much debate has surfaced surrounding so-called “eco-terrorism.” Some commentators argue that such activity is not and should not be called terrorism. This Comment analyzes these extremist activities through the lens of federal terrorism laws and argues that, while these activists’ goals are laudable, their methods are often terroristic. Consequently, those activities that go too far are—and should be—classified as terrorism.

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I. INTRODUCTION

Imagine the following scenario: More than a dozen civilians meet in secret over a five-year period. Together they strategically plan a series of attacks. They discuss techniques and tactics for bypassing security measures. They conspire about the production and placement of

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explosives. They form smaller covert groups, calling them “cells.” They collect intelligence, conduct reconnaissance, and complete practice runs of their missions. And when ready, those individuals don disguises—false identification, masks, gloves, and dark clothes—and, under the cloak of darkness, disperse to their various targets. The result is damage to dozens of government properties, agricultural and other private properties, and service locations—including at least one police station and a high voltage energy tower with lines across several states. Shortly after the attacks, the group sends communiqués claiming responsibility.

If the scene just described evokes thoughts of terrorism, it should: It is terrorism. But it is probably not the type of terrorism traditionally considered. Rather, this scenario comes from the prosecution of about a dozen members of the Animal Liberation Front (ALF) and the Earth Liberation Front (ELF).¹ For the past few decades, the ALF and ELF have been actively pursuing their goals of advancing animal rights and preventing environmental misuse.²

According to the Federal Bureau of Investigation (FBI), animal rights and environmental extremists have committed more than 2,000 criminal acts since 1979.³ This has caused an economic impact of more than \$110 million.⁴ But despite the seriousness of this type of extremism, FBI efforts since 2005 have produced indictments against only thirty individuals.⁵ While the FBI treats animal rights and environmental extremism of this sort as tantamount to terrorism, it is not clear to everyone that such behavior qualifies as terrorism under federal definitions. In fact, since 2006 and the passage of the Animal Enterprise Terrorism Act, many critics have surfaced, challenging the government’s decision to label this type of activity as terrorism.⁶

¹ 1 See *U.S. v. Tankersley*, 537 F.3d 1100, 1103–05 (9th Cir. 2008) (describing the acts for which the defendant was prosecuted). This is a slight dramatization, however; the facts of this case are accurate, but the attacks themselves were actually carried out over a period of several years.

² See Animal Liberation Front, *ALF History*, http://www.animalliberationfront.com/ALFront/Premise_History/History-index.htm (last accessed Mar. 30, 2010) (providing information on the history of the ALF); Earth Liberation Front, *Earth Liberation Front*, <http://www.earth-liberation-front.org> (last accessed Mar. 30, 2010) (providing information on the history of the ELF).

³ Press Release, Federal Bureau of Investigation, *Putting Intel to Work against ELF and ALF Terrorists* (June 30, 2008) (available at http://www.fbi.gov/page2/june08/ecoterror_063008.html (last accessed Mar. 7, 2010)).

⁴ *Id.*

⁵ *Id.*

⁶ See e.g. Will Potter, *Statement from Kucinich on the Animal Enterprise Terrorism Act*, <http://www.greenisthenewred.com/blog/kucinich-aeta-statement/174> (Dec. 1, 2006) (last accessed Mar. 30, 2010) (expressing concern “about painting everyone with the broad brush of terrorism”); Kimberly E. McCoy, *Subverting Justice: An Indictment of the Animal Enterprise Terrorism Act*, 14 *Animal L.* 53 (2007) (criticizing the use of the terrorist label); Oscar A. Morales Lugo & Isabelle C. Oria Calaf, “Don’t Shoot the Messenger!”: *First Amendment Implications of the Animal Enterprise Terrorism Act*, 42 *Rev. Juridica U. Inter. P.R.* 407 (2008) (also criticizing the use of the terrorist label); Rebecca

In addition to the obvious stigma involved, a number of substantive and procedural implications accompany the terrorist label. Notably, the terrorist identifier provides law enforcement officers with additional investigative tools while providing suspects with fewer procedural safeguards and an increased range of punishment.

This Comment argues that animal rights and environmental extremism is a form of terrorism, and that law enforcement should fight it as such.⁷ In addition, this Comment contends that some of the statutory tools currently used to battle international terrorism—specifically sentencing enhancements and proscriptions against providing material supporting for terrorism—should apply in the fight against animal rights terrorists as well. Part II briefly identifies some of the prominent, legitimate organizations in the animal protection movement and then offers a brief history of the ALF in order to demonstrate some salient differences between them. Part III examines the two major statutory responses to this type of extremism and their effectiveness. Next, Part IV addresses the main question presented here: Is extremism carried out in the name of animal and environmental rights in fact terrorism? Concluding that it is, Part V responds to some of the prudential arguments against labeling these groups terrorists and their actions terrorism. This Comment closes by noting the consequences of carrying the stigma of terrorism as well as the difficulty of combating this form of terrorism.

II. THE HISTORY OF ANIMAL WELFARE, ANIMAL RIGHTS, AND THE RISE OF EXTREMISM

A. *Major Players in the Animal Protection Movement*

Some trace the history of the animal rights movement back to biblical writings.⁸ For purposes of this Comment, however, the relevant history begins much more recently. This Section focuses on the major organizations responsible for shaping the animal rights movement over the last century.

K. Smith, "*Ecoterrorism*": A Critical Analysis of the Vilification of Radical Environmental Activists as Terrorists, 38 *Envtl. L.* 537 (2008) ("examin[ing] the economic and political framework behind the 'ecoterrorist' brand, and suggest[ing] that the brand is inappropriate because it diminishes the true meaning of the word terrorism, stifles political dissent, and is being used as a pretext to ensure the protection of private economic gains at the expense of efforts to protect the environment").

⁷ This Comment focuses specifically on the Animal Liberation Front. But because the organization, mission, and methods are modeled after and are sufficiently similar to the ALF, the arguments made for determining that ALF members are terrorists applies to members of the Earth Liberation Front as well.

⁸ See e.g. Denise R. Case, *The USA PATRIOT Act: Adding Bite to the Fight Against Animal Rights Terrorism?*, 34 *Rutgers L.J.* 187, 190 (2002) (noting the argument that the animal rights ideology began with such writings—specifically citing Genesis: "Every creature that lives shall be yours to eat; as with the green grasses, I give all you these"—and noting that God later restricted the animals that humans may eat).

The oldest animal protection organization in the United States is the American Society for the Prevention of Cruelty to Animals (ASPCA).⁹ Established in 1866, the ASPCA began as a New York based local organization and has since expanded to become a national organization.¹⁰ It was the first animal protection organization authorized by the government to investigate and make arrests for crimes against animals and is “wholly dedicated to fulfilling the ASPCA mission through nonviolent approaches.”¹¹

Founded in 1954, the Humane Society is the largest animal protection organization in the United States.¹² It boasts a membership of 11 million Americans.¹³ Like the ASPCA, the Humane Society fights against animal cruelty, exploitation, and neglect.¹⁴ The Humane Society operates mainly through “legislation, litigation, investigation, education, science, advocacy, and field work.”¹⁵ Additionally, the Humane Society strictly denounces the use or support of violence in furtherance of its goals.¹⁶

Another organization prominent in the field of animal protection is the Animal Legal Defense Fund (ALDF).¹⁷ The ALDF, established in 1979, is an organization active in fighting against animal cruelty through the American legal system.¹⁸ It is supported by hundreds of attorneys and over 100,000 members nationwide.¹⁹ While the ALDF does not directly participate in activism on behalf of animals, it does provide a set of basic legal principles that apply with respect to activism.²⁰ In its *Legal Guide for Advocates*, the ALDF specifically notes that “acts of violence are never protected.”²¹ Moreover, the ALDF—like the Humane Society—also lobbies legislatures to create laws

⁹ Am. Socy. for the Prevention of Cruelty to Animals, *About the ASPCA*, <http://www.aspc.org/about-us/about-the-aspc.html> (last accessed Mar. 1, 2010).

¹⁰ *Id.*

¹¹ *Id.*; see also N.Y. Agric. & Mkts. Law § 371 (McKinney 2004) (granting this enforcement authority).

¹² Humane Socy. of the U.S., *About Us: Overview*, <http://www.humanesociety.org/about/overview/> (Sept. 30, 2009) (last accessed Mar. 30, 2010).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Humane Socy. of the U.S., *Frequently Asked Questions About the Humane Society of the United States*, http://www.humanesociety.org/about/contact/frequently_asked_questions.html (June 4, 2009) (last accessed Mar. 30, 2010).

¹⁶ Humane Socy. of the U.S., *Statement Against Violence*, http://www.humanesociety.org/about/policy_statements/statement_against_violence.html (July 15, 2009) (last accessed Mar. 30, 2010).

¹⁷ Animal Legal Defense Fund, *About Us*, <http://www.aldf.org/section.php?id=3> (last accessed Mar. 30, 2010).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Animal Legal Defense Fund, *Legal Guide for Activists*, <http://www.aldf.org/article.php?id=663> (last accessed Mar. 30, 2010) (providing a legal guide for animal activists).

²¹ *Id.* The Guide also notes that under the Animal Enterprise Terrorism Act (AETA), non-violent civil disobedience still might qualify as terrorism under certain circumstances.

friendlier to animals and provide harsher punishment for those convicted of animal cruelty.²²

Another widely recognized animal protection group is People for the Ethical Treatment of Animals (PETA).²³ PETA was founded in 1980 and is currently led by Ingrid Newkirk.²⁴ It is an international animal rights organization dedicated to “establishing and defending the rights of all animals.”²⁵ Its stated principle is that “animals are not ours to eat, wear, experiment on, or use for entertainment.”²⁶ PETA distinguishes its mission, “animal rights,” from that of other animal protection organizations: the promotion of “animal welfare,” i.e. minimizing cruelty to and mistreatment of animals (the cause of the ASPCA and Humane Society).²⁷ PETA argues that animals, like humans, “have interests that cannot be sacrificed or traded to benefit others.”²⁸

Whereas the ASPCA and the Humane Society unequivocally denounce violence in pursuit of their cause,²⁹ PETA’s view is not quite so absolute.³⁰ When discussing the use of terrorist-like tactics, rather than rejecting those methods, PETA instead tries to explain them: “One of the central beliefs shared by most animal rights activists is that we should not harm any animal—human or otherwise. All large movements, however, have factions that believe in the use of force.”³¹ The explanation continues by offering a defense of activities typical of the ALF; it emphasizes that the ALF only tries to bomb *empty* buildings, and it notes that ALF raids and attacks often reveal legitimate violations of federal animal welfare laws that might otherwise have gone unexposed.³² For PETA, these ends appear to justify such means, though PETA seems unwilling to adopt such means itself.

These groups all share a willingness to work within the confines of civil society and the rule of law, although PETA tolerates those who do not. In all, these groups have had some success achieving their goals, especially in Congress. Legislation such as the Animal Welfare Act,³³

²² See Case, *supra* n. 8, at 205 (discussing ALDF’s role in passing a law in Washington state).

²³ People for the Ethical Treatment of Animals, *PETA’s History: Compassion in Action*, <http://www.peta.org/factsheet/files/FactsheetDisplay.asp?ID=107> (last accessed Mar. 30, 2010).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ People for the Ethical Treatment of Animals, *General FAQs*, <http://www.peta.org/about/faq.asp> (last accessed Mar. 30, 2010).

²⁸ *Id.*

²⁹ Humane Socy. of the U.S., *Statement Against Violence*, *supra* n. 16; Am. Socy. for the Prevention of Cruelty to Animals, *Guiding Principles*, <http://www.aspc.org/about-us/policy-positions/guiding-principles.html> (last accessed Mar. 30, 2010).

³⁰ People for the Ethical Treatment of Animals, *General FAQs*, *supra* n. 27.

³¹ *Id.*

³² *Id.*

³³ Pub. L. No. 89-544, 80 Stat. 350 (1966) (codified as amended at 7 U.S.C. § 2131 et seq. (2006)).

the Endangered Species Act,³⁴ and a host of state-level criminal provisions outlawing animal cruelty³⁵ demonstrate that traditional methods of advocacy have been at least somewhat effective at securing additional protections for animals. But not all share this long-term view of the struggle for the interests of animals. The next section describes one such group.

B. *Animal Rights Extremism: The Animal Liberation Front*

The Animal Liberation Front (ALF) traces its roots to the hunt saboteur movement that began in England in the 1970s, where groups formed to further animal protection by sabotaging hunters.³⁶ One of these groups, the "Band of Mercy," later expanded to target other "animal exploitation industries."³⁷ One of the leaders of the group, Ronnie Lee, was arrested in 1974.³⁸ After his release, he founded the new organization: the Animal Liberation Front (ALF) in 1976.³⁹ The ALF operates as an expansive series of small but loosely connected cells which independently plan, prepare, and execute attacks, but claim responsibility on behalf of the whole organization.⁴⁰

Members of one cell often are unaware of the identity of members of other cells.⁴¹ Additionally, the group appears to have no official hierarchical structure.⁴² This organizational structure is neither new, nor confined to the United States.⁴³ It has existed across history and national boundaries.

³⁴ Pub. L. No. 93-205, 87 Stat. 884 (1973) (codified as amended at 16 U.S.C.A § 1531 et seq. (2006)).

³⁵ See e.g. Tex. Penal Code Ann. § 42.092 (2007) (outlawing cruelty to non-livestock animals in Texas).

³⁶ Animal Liberation Front, *History*, http://www.animalliberationfront.com/ALF-Front/Premise_History/ALF_History.htm (last accessed Mar. 30, 2010).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Animal Liberation Front, *History*, *supra* n. 36. While there is no official structure, it seems likely that some individuals—like Ronnie Lee—would undoubtedly wield influence over other members.

⁴³ Although prior cell groups often existed within a pyramid structure, where there was some form of hierarchy or leadership, cell groups without a leader began to gain popularity in the 1960s among anti-communist groups and white supremacists. The concept of leaderless resistance was reportedly created by Colonel Ulius Louis Amoss as a contingency plan in the event of a communist takeover. Louis Beam, *Leaderless Resistance*, 12 *The Seditonist* (Feb. 1992) (available at <http://www.louisbeam.com/leaderless.htm> (Feb. 1992) (last accessed Mar. 30, 2010)). Amoss might have coined the term and Louis Beam—a white supremacist—might have popularized it, but the basic concept of resistance cells existed long before. See Simson L. Garfinkel, *Leaderless Resistance Today*, 8 *First Monday* 3 (Mar. 3, 2003), <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/1040/961> (last accessed Mar. 30, 2010) (noting that other modern activist groups use the leaderless cell structure, such as the ELF, racial supremacists, and even some Islamic terrorists).

By their own admission, members of the ALF strive to weaken industries, cause economic damage, and use intimidation to influence behavior.⁴⁴ In order to join the ALF, individuals or small groups are required only to carry out an attack—what they call direct action—in accordance with group guidelines.⁴⁵

The scenario described above—taken from *United States v. Tankersley*⁴⁶—provides a good example of activities typical of ALF and ELF members.⁴⁷ In *Tankersley*, over a dozen individuals planned, organized, and executed dozens of acts of arson over the course of several years.⁴⁸

III. LEGISLATIVE RESPONSES TO THE ECO-EXTREMIST MOVEMENT

The two primary legislative responses to eco-extremism came in the form of the Animal Enterprise Protection Act (AEPA) of 1992⁴⁹ and the Animal Enterprise Terrorism Act (AETA) of 2006.⁵⁰

A. *The Animal Enterprise Protection Act of 1992*

The AEPA was passed “to protect animal enterprises.”⁵¹ The AEPA created a new federal crime of “animal enterprise terrorism.”⁵² The law applies to anyone who causes physical disruption to the function of an animal enterprise causing damages in excess of \$10,000.⁵³ Unlike prosecution for arson or similar crimes, which punishes defendants for activities causing property destruction, the AEPA punishes activities that cause economic disruption.⁵⁴ Specifically, it prohibits activity that “intentionally causes physical disruption to the functioning of an animal enterprise by intentionally stealing, damaging, or causing the loss of, any property . . . and thereby causes economic damage”⁵⁵ The statute includes a savings clause that specifically excludes economic disruption resulting from legal activities.⁵⁶

Under the AEPA, an animal enterprise is a “commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing.”⁵⁷ The term also includes zoos,

⁴⁴ Animal Liberation Front, *History*, *supra* n. 36.

⁴⁵ Animal Liberation Front, *The ALF Primer*, <http://www.animalliberationfront.com/ALFront/ALFPrime.htm> (last accessed Mar. 30, 2010).

⁴⁶ 537 F.3d 1100 (9th Cir. 2008).

⁴⁷ 537 F.3d at 1103–05.

⁴⁸ *Id.*

⁴⁹ Pub. L. 102-346, 106 Stat. 928 (1992) (codified at 18 U.S.C. § 43 (2006)).

⁵⁰ Pub. L. 109-374, 120 Stat. 2652 (2006) (codified at 18 U.S.C. § 43 (2006)).

⁵¹ Pub. L. 102-346, Preamble, 106 Stat. 928 (1992).

⁵² *Id.* at § 2.

⁵³ *Id.* at § 2(a).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Pub. L. 102-346 at § 2(a).

aquariums, circuses, rodeos or “other lawful competitive animal event[s]” as well as events “intended to advance agricultural arts and sciences.”⁵⁸

The AEPA was intended to be a first step in fighting eco-extremism, but it has been largely ineffective. The sentencing provision offers substantial imprisonment only for serious bodily injury or offenses resulting in death, but provides comparatively little punishment for the remainder of the crimes.⁵⁹ For economic damage exceeding \$10,000 in the absence of serious bodily injury or death, the AEPA provides for fines, a maximum of only one year in prison, or both.⁶⁰ Under the AEPA, it seems causing millions of dollars in economic damage only calls for misdemeanor-level punishment. Even the more serious offenses in the Act invoke comparatively lenient sentences. For example, the AEPA punishes violations that cause serious bodily injury with no more than ten years in prison.⁶¹ Violations causing death result in punishment of life in prison—or any number of years.⁶² At least one researcher has noted the “timidity” of the act, arguing that its provisions, while seemingly good in theory, are insufficient.⁶³

So far, there have been few successful prosecutions under the AEPA. One example of a successful prosecution resulted from a series of extremist actions in 2000 and 2001, where several individuals associated with Stop Huntingdon Animal Cruelty (SHAC)⁶⁴ were indicted

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Edward J. Walsh, *The Animal Enterprise Protection Act: A Scientist's Perspective Brings the Law into Focus*, 29 *Lab Animal* 2 (Feb. 2000) (available at <http://www.naiaonline.org/articles/archives/animalenterprise.htm> (last accessed Mar. 5, 2010)). Walsh explores the specific sentencing provisions to show the Act's “virtual impotence as a prosecution tool.” He argues that when an act of animal enterprise terrorism results in death, the punishment should fit the crime—it should include the possibility of the death penalty, rather than just life in prison or any term of years:

Murder perpetrated for the purpose of revolution, even if the killing is unplanned, escalates the social meaning of the action and defines a far greater threat to the status quo than do capital offenses committed in every other category I can think of. It may, therefore, serve society to condemn crimes with revolutionary overtones in clear, unambiguous terms.

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⁶⁴ For information about SHAC, see SHAC, *Stop Huntingdon Animal Cruelty*, <http://www.shac.net> (last accessed Mar. 30, 2010). Huntingdon Life Sciences (HLS) is a contract research organization founded in the United Kingdom in 1952; it focuses on nutrition, veterinary, biomedical, and pharmaceutical research and assessment. Huntingdon Life Sciences, *Huntingdon Life Sciences*, <http://www.huntingdon.com/index.php?currentNumber=0¤tIsExpanded=0> (last accessed Mar. 30, 2010).

for conspiracy to violate the AEPA.⁶⁵ The defendants were accused of running a website that organized and orchestrated a number of attacks against various targets.⁶⁶ After conviction, the defendants appealed to the Third Circuit Court of Appeals, challenging the constitutionality of the act.⁶⁷ The Third Circuit upheld the constitutionality of the Act against facial and as-applied challenges for vagueness, and dismissed the overbreadth challenge as moot.⁶⁸

Additionally, the defendants argued that the Act amounted to a violation of their First Amendment rights because their actions constituted political speech.⁶⁹ Rejecting that argument, the court found that some of the communications at issue on the SHAC website went beyond mere political speech and instead rose to the level of inciting unlawful activity that was likely to occur.⁷⁰ The court also noted that there were other “true threats” that removed the speech from the protection of the First Amendment.⁷¹

B. *The Animal Enterprise Terrorism Act of 2006*

In 2006, Congress updated the AEPA by passing the AETA.⁷² It aimed “to provide the Department of Justice the necessary authority to apprehend, prosecute, and convict individuals committing animal enterprise terror.”⁷³

The AETA added to the list of activities constituting the animal enterprise terror offense.⁷⁴ It provides that a violation occurs not only when an act physically disrupts an animal enterprise, but also when the purpose of the act is to damage or destroy real or personal property belonging to an enterprise or businesses or individuals having a connection with an enterprise.⁷⁵ While the AEPA only proscribed economic disruption against an animal enterprise itself, the AETA includes damage to real or personal property that belongs to an enterprise’s employees or business associates.⁷⁶ The law now also proscribes threats: It is a crime to intentionally place a person in reasonable fear

⁶⁵ *U.S. v. Fullmer*, 584 F.3d 132, 151 (3d Cir. 2009).

⁶⁶ *Id.* at 153.

⁶⁷ *Id.* at 137.

⁶⁸ *Id.* at 151.

⁶⁹ *Id.* at 153.

⁷⁰ *Id.* at 155.

⁷¹ *U.S. v. Fullmer*, 584 F.3d at 156. Interestingly, the court noted that while the specific violent acts occurring on the animal enterprises were attributed to “anonymous activists” and “unaffiliated organizations,” the government presented sufficient evidence at trial for a jury to infer a link between SHAC and the ALF, including evidence suggesting that members of SHAC were themselves members of the groups responsible for the attacks. *Id.* at 155–56.

⁷² Pub. L. 109-374.

⁷³ *Id.* at preamble.

⁷⁴ *Id.* at § 2(a).

⁷⁵ *Id.*

⁷⁶ *Id.*

of death or of serious bodily injury or to similarly threaten an immediate family member of that person.⁷⁷

In addition to the scope of activities prohibited, the Act also increases the punishment; as the amount of damage to the property increases so too does the time in prison for the felon convicted of the crime.⁷⁸ The AETA provides for variable ranges of punishment at different levels of damage.⁷⁹ Where \$100,000 of damages would result in one year of imprisonment under the AEPA, the AETA punishes the same level of damage at up to five years in prison.⁸⁰ Finally, the AETA expands the definition of an animal enterprise to include those commercial or academic enterprises that sell animals, including pet shops, breeders, and furriers.⁸¹

The AETA has met wide criticism among many animal rights groups and in legal academic scholarship.⁸² Many have leveled challenges of unconstitutionality against the Act.⁸³ Those critics typically argue that the Act is void because it is vague, overbroad, and unconstitutionally infringes on free speech.⁸⁴ While no court has yet ruled on the constitutionality of the AETA, one recent federal court decision noted above has upheld the constitutionality of the AEPA against similar challenges.⁸⁵ Unfortunately, because the AETA is still comparatively new, and because identifying and apprehending eco-extremists is inherently challenging, it is difficult to ascertain whether the AETA will be more effective or useful than its predecessor.

These Acts demonstrate that Congress has, to some extent, taken the problem of eco-extremism seriously. While Congress chose to use this special legislation to label this type of activism as terrorism, it is not entirely certain whether existing criminal provisions label it as terrorism, or if the terrorism label *should* apply. The next section addresses those issues.

⁷⁷ *Id.*

⁷⁸ Pub. L. 109-374 at § 2(a).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See e.g. *supra* n. 6 (listing examples of criticism of the AETA).

⁸³ See e.g. *supra* n. 6 (listing examples of criticism of the AETA); *Fullmer*, 584 F.3d 132 (challenging the AEPA for vagueness and violations of the First Amendment). Challenges to the validity of the AEPA and AETA are common, especially through animal law and animal activist literature. Legal challenges run similar to those alleged in *Fullmer*, but so far *Fullmer* is the only real judicial response to those arguments. For a discussion of the pragmatic challenges, see *infra*, Section IV(B).

⁸⁴ See e.g. *Fullmer*, 584 F.3d at 151–53 (challenging the AEPA for vagueness and violation of the First Amendment).

⁸⁵ *Id.* at 137; but see Order Denying Mot. To Dismiss, *U.S. v. Buddenberg*, 5:09-cr-00263-RMW (N.D. Cal. Oct. 28, 2009) (available at http://www.indybay.org/uploads/2009/10/28/order_denying_motion_to_dismiss.pdf (Oct. 28, 2009) (last accessed Apr. 4, 2010)) (denying a motion to dismiss alleging that the AETA is facially unconstitutional for vagueness and overbreadth filed by four individuals—the “AETA 4”—charged under the AETA).

IV. LEGAL AND PRUDENTIAL ARGUMENTS FOR LABELING ECO-EXTREMIST ACTIVITY AS TERRORISM

A. *Legal Definitions of Terrorism*

The question remains: Does this form of animal and environmental activism actually constitute terrorism? To answer this question, it is useful to turn to various federally provided definitions of terrorism. Among the myriad definitions available, only a few require mentioning here: the FBI's definition, the definition provided by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, and the "Federal Crime of Terrorism."⁸⁶

The federal regulations that outline the scope of the FBI's investigative and enforcement duties define terrorism as "the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives."⁸⁷ Of the available definitions, the FBI definition seems the broadest and most likely to encompass the extremist activities at issue here. The FBI has not only declared such conduct to be terrorism,⁸⁸ but declared those groups—the ALF and the ELF—and that form of activism one of the greatest domestic terrorism threats facing the United States today. It has even gone so far as to put one Animal Liberation Front (ALF) member—Daniel Andreas San Diego—on the Most Wanted Terrorists list.⁸⁹

Under this definition, eco-extremism clearly qualifies as terrorism. Arson, one of the primary tools of the ALF and ELF, is an unlawful act using force and violence.⁹⁰ Additionally, acts committed by ALF and Earth Liberation Front (ELF) members are, at a minimum, intended to intimidate or coerce a segment of the population—specifi-

⁸⁶ See 28 C.F.R. § 0.85(l) (2009) (providing the FBI definition); USA PATRIOT Act of 2001, Pub. L. 107-56, § 802, 115 Stat. 272, 376 (2001) (codified at 18 U.S.C. § 2331(5) (2006)) (providing the definition of domestic terrorism); 18 U.S.C. § 2332b(g)(5) (2006) (defining the federal crime of terrorism). Other definitions were excluded because they track the definition provided by the USA PATRIOT Act. See e.g. Homeland Security Act of 2002, Pub. L. 107-296, § 2(15), 116 Stat. 2135, 2141 (codified at 6 U.S.C. § 101(16) (2006)) (providing a similar definition of terrorism). Some are overinclusive. See e.g. Immigration and Naturalization Act, 8 U.S.C. § 1182(a)(3)(B)(iii) (2006) (including such actions as "[t]he use of any . . . firearm, or other weapon . . . (other than for personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property). For an expansive look at the problem of defining terrorism, see Nicholas J. Perry, *The Numerous Federal Definitions of Terrorism: The Problem of Too Many Grails*, 30 J. Legis. 249 (2004).

⁸⁷ 28 C.F.R. at § 0.85(l).

⁸⁸ Press Release, Federal Bureau of Investigation, *New Most Wanted Terrorist: First Domestic Fugitive Added to List* (Apr. 21, 2009) (available at <http://www.fbi.gov/page2/april09/wanted042109.html> (last accessed Mar. 5, 2010)).

⁸⁹ *Id.*

⁹⁰ See *Taylor v. U.S.*, 495 U.S. 575, 587 (1990) (noting Congress's intent to classify arson as a violent felony).

cally the segment dealing with animal or agricultural industries.⁹¹ Finally, the definition requires that the acts be in furtherance of political or social objectives.⁹²

Additionally, the self-proclaimed goal of both the ALF and the ELF is to achieve social change—the former by intimidating individuals and companies so they stop engaging in or working with those who engage in animal exploitation and the latter to stop individuals and industries from damaging the environment.⁹³ The ALF and ELF actions seem clearly to fall within this definition of terrorism.⁹⁴

The USA PATRIOT Act of 2001 defines domestic terrorism as any activity that involves an act “dangerous to human life [and in] violation of the criminal laws of the United States or of any State.”⁹⁵ The act must also appear to be intended to “intimidate or coerce a civilian population,”⁹⁶ “influence the policy of a government by intimidation or coercion,”⁹⁷ or “affect the conduct of a government by mass destruction, assassination, or kidnapping.”⁹⁸ In addition, the acts must “occur primarily within the territorial jurisdiction of the United States.”⁹⁹

This definition of terrorism seems likely, although slightly less so, to encompass ALF and ELF activity. Arson is clearly a crime,¹⁰⁰ and arson is an act dangerous to human life.¹⁰¹

The groups appear to intend for such crimes to intimidate or coerce a civilian population—or at least part of a civilian population. While challengers to the labeling of eco-extremists as terrorists under the USA PATRIOT Act might argue that a “civilian population” is broader than the specific subgroup that eco-extremists seek to influ-

⁹¹ See Animal Liberation Front, *Activist Index*, <http://www.animalliberationfront.com/ALFront/Activist%20Tips/ARActivFAQs.htm> (last accessed Mar. 30, 2010) (noting ALF tactics such as destruction of property with the purpose of forcing businesses to stop exploiting animals); Animal Liberation Press Office, *Frequently Asked Questions About the North American Animal Liberation Press Office*, <http://www.animalliberationpressoffice.org/faq.htm> (last accessed Mar. 30, 2010) (noting that ALF acts have caused the closure of mink farms, a slaughterhouse, and laboratories).

⁹² 28 C.F.R. § 0.85(l).

⁹³ Animal Liberation Press Office, *Frequently Asked Questions About the North American Animal Liberation Press Office*, *supra* n. 91 (describing the ALF’s use of property destruction to save animals and force abusing companies out of business); Earth Liberation Front, *Earth Liberation Front*, *supra* n. 2 (describing the ELF’s history and goal of defending and protecting the environment).

⁹⁴ While this is not the definition the government will eventually use to prosecute eco-terrorists, qualifying under this definition remains important. Because this is the definition the FBI uses to investigate terrorism, satisfying it likely triggers statutory tools for combating terrorism not otherwise available.

⁹⁵ 18 U.S.C. § 2331(5)(A).

⁹⁶ *Id.* at § 2331(5)(B)(i).

⁹⁷ *Id.* at § 2331(5)(B)(ii).

⁹⁸ *Id.* at § 2331(5)(B)(iii).

⁹⁹ *Id.* at § 2331(5)(C).

¹⁰⁰ 18 U.S.C. § 81 (2006).

¹⁰¹ See *Smith v. Goguen*, 415 U.S. 566, 594 (1974) (noting that arson statutes safeguard “the government’s substantial interest in preventing the destruction of property by means dangerous to human life”).

ence, no federal court has ruled on what precisely constitutes a “civilian population.”¹⁰² It seems unlikely, however, that the definition would require an act to target every member of the population.¹⁰³

Even if the term “civilian population” requires an intent to intimidate or coerce a broader class of the population than ALF and ELF target, however, the groups’ conduct might still satisfy the definition if it attempted to influence or affect government policy.¹⁰⁴

In addition, statements emerging from ALF and ELF attacks indicate that some of their vitriol is targeted towards affecting policy. The factual recitation in *United States v. Tankersley* demonstrates that some of the defendants’ messages expressed a desire to get back at or “pay back” those who support or allow the type of animal exploitation that goes on in the targeted facilities.¹⁰⁵ Because the permission to engage in research and otherwise use animals in various ways stems from laws and federal regulations,¹⁰⁶ one can infer a desire to get revenge on, and attempt to alter, the government’s policy with respect to animal-related activities.

Additionally, one of the stated goals of the ALF is to change animals’ status as property.¹⁰⁷ Because property is a series of legally protected rights,¹⁰⁸ to change something’s status as property necessarily involves changing those legal rights. The way to change the legal status of something is to effect change in the judiciary or in the legislature. One can infer that, if the ALF’s goal is to change the property status of animals, its actions are meant to influence those individuals and bodies responsible for making that determination: the government.

Finally, the federal crime of terrorism is defined as an offense “calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct” that is in violation of any of a number of delineated offenses.¹⁰⁹ Several of the

¹⁰² *But see Muhammad v. Kelly*, 2008 WL 4360996 (E.D. Va. 2008) (discussing the definition of “civilian population at large”). In this case, the defendant argued that the term in the Virginia terrorism statute “civilian population at large” was impermissibly vague. *Id.* at *11. The court noted that the term refers to the whole of a given community rather than a small subset. *Id.* Noting further that the Virginia statute was nearly identical to the federal definition of domestic terrorism, and that no court had found federal use of “civilian population” unconstitutionally vague, the court rejected the constitutional challenge. *Id.* at **12–13.

¹⁰³ It may be meaningful that the drafters of this provision did not include “or segment thereof.”

¹⁰⁴ 18 U.S.C. § 2331(5)(B)(ii)–(iii).

¹⁰⁵ 537 F.3d at 1105. The communiqué warned that “this action is payback and it is a warning to all others responsible . . .” *Id.*

¹⁰⁶ See e.g. the Animal Welfare Act, Pub. L. No. 89-544, 80 Stat. 350 (codified as amended at 7 U.S.C. § 2131 et seq.) (regulating the use of animals).

¹⁰⁷ Animal Liberation Front, *Mission Statement*, http://www.animalliberationfront.com/ALFront/mission_statement.htm (last accessed Mar. 30, 2010).

¹⁰⁸ See *U.S. v. Gen. Motors Corp.*, 323 U.S. 373, 377–78 (1945) (indicating that a citizen’s rights regarding property also include the “right to possess, use and dispose of it”).

¹⁰⁹ 18 U.S.C. § 2332b(g)(5).

criminal acts listed apply here. These acts include, for example, arson of government property in a manner that creates a substantial risk of injury to any person.¹¹⁰ Also included are acts of arson against property used in interstate commerce.¹¹¹ Additionally, the definition encompasses crimes involving intentionally transmitting information to a computer that causes damage.¹¹²

Members of the ALF commit all of the above crimes. They destroy and burn government buildings and property.¹¹³ They damage and attack property used in interstate commerce.¹¹⁴ Additionally, members of Stop Huntingdon Animal Cruelty (SHAC), arguably affiliated with the ALF,¹¹⁵ have engaged in what members call "electronic civil disobedience."¹¹⁶ This involved a coordinated effort to overload websites, e-mail accounts, and telephone lines with a high volume of activity.¹¹⁷ They also encouraged supporters to send "black-faxes"¹¹⁸ and repeatedly called toll-free numbers to try to increase costs to the target companies.¹¹⁹ These activists clearly satisfied the criminal act element of the terrorism definition.

Challengers to the terrorist label might make similar arguments with this definition—that the acts of the ELF and the ALF are not calculated to influence or retaliate against the government, but are meant only to intimidate a series of industries involved in the exploitation of animals and the environment. But as argued above, some ALF activities do indicate an intent to retaliate against the government. Also as argued above, one of the ALF's objectives is directly related to influencing policy regarding the status of animals as property. Consequently, ALF activities appear to satisfy all of the elements of the federal crime of terrorism.

B. *Response to Prudential Arguments Counseling against Labeling Eco-extremists as Terrorists*

One of the main arguments against calling eco-extremist activity terrorism—specifically against the Animal Enterprise Terrorism Act (AETA)—is that it "does a complete disservice to the public, as it inspires unwarranted fear and imposes a misdirected burden on efforts to combat true terrorism."¹²⁰ The argument asserts that comparing

¹¹⁰ *Id.* at 2332b(g)(5)(B)(i).

¹¹¹ *Id.* Note that this offense lacks the requirement of a substantial risk of injury to a person.

¹¹² *Id.*; 18 U.S.C. § 1030(a)(5)(A)(i) (2006).

¹¹³ *U.S. v. Tankersley*, 537 F.3d at 1102.

¹¹⁴ *Id.* at 1103 n. 2.

¹¹⁵ *U.S. v. Fullmer*, 584 F.3d at 139.

¹¹⁶ *Id.* at 141.

¹¹⁷ *Id.*

¹¹⁸ *Id.* "Black-faxes" are sheets of black paper faxed repeatedly to a target location to waste the target's ink, paper, and other communication resources. *Id.*

¹¹⁹ *Id.*

¹²⁰ McCoy, *supra* n. 6, at 67.

“vegetarian advocacy groups” to the Taliban “is a clear indication that things have gone too far.”¹²¹ Further, critics argue that anti-terrorism resources would be better focused on other groups—anarchists, the Ku Klux Klan, and extremist anti-abortion activists—engaged in significantly more violent and deadly acts.¹²²

These arguments miss the mark. The ALF ideology encourages members to instill fear in those who engage in the activities that the ALF opposes: fear of harm to themselves and their families, and fear of personal and professional economic loss.¹²³ Additionally, these arguments assume that “true terrorism” is fundamentally different from animal rights terrorism.¹²⁴ While it is true that animal rights terrorism, as a whole, does not engage in the same scale of violence as other extremist groups, those working in academia, research, agriculture, and food service industries are no less fearful when their homes and workplaces are firebombed; violent tactics can instill fear even when they are used infrequently.

Further, characterizing the comparison as one between “vegetarian advocacy groups” and the Taliban is itself misleading.¹²⁵ What makes ALF members terrorists is not that they advocate for vegetarianism, but that they advocate the use of illegal and violent methods. Other animal protection organizations—such as the Humane Society—similarly encourage vegetarianism and veganism,¹²⁶ but because they do not engage in violent attacks aimed at forcing others to adopt their viewpoint, they are not classified as terrorists.

The argument that eco-extremists are not terrorists because they are not as violent as other groups must similarly fail. Other movements do use methods more likely to kill or injure.¹²⁷ That the government has chosen to deal with eco-extremism as a terrorist threat before dealing with other groups does not itself invalidate that choice. Courts have established, in other areas, that the government is not required to correct a problem in its entirety all at once; rather, it may

¹²¹ *Id.*

¹²² *Id.* at 67–68.

¹²³ See e.g. Adam Warner, *The Siege of Darley Oaks Farm*, <http://news.bbc.co.uk/2/hi/business/4708677.stm> (last updated July 25, 2005) (last accessed Mar. 30, 2010) (detailing “a systematic campaign of intimidation” by ALF activists including threats against a business owner’s family and attacks against business property).

¹²⁴ McCoy, *supra* n. 6, at 67.

¹²⁵ *Id.*

¹²⁶ See e.g. Humane Society International, *Humane Eating*, http://www.hsus.org/hsi/farm_animals/humane_eating (last accessed Mar. 6, 2010) (advocating vegetarianism and veganism).

¹²⁷ See e.g. Dane E. Johnson, *Cages, Clinics, and Consequences: The Chilling Problems of Controlling Special-Interest Extremism*, 86 *Or. L. Rev.* 249, 264 (2007) (providing a table that compares animal rights and abortion extremist violence between 1977 and 1993).

try to attack the problem piecemeal.¹²⁸ The same reasoning should apply here.

Some activist supporters argue that civil disobedience should not be synonymous with terrorism. This argument suggests that dealing with the animal rights movement like terrorists—as the AETA does—would replace appropriate sanctions for civil boycott or disobedience with unjustifiably harsh ones.¹²⁹ This argument, too, is flawed. For the argument to hold true, the acts in question must necessarily constitute civil disobedience. Civil disobedience is “a deliberate but nonviolent act of lawbreaking to call attention to a particular law or set of laws believed by the actor to be of questionable legitimacy or morality.”¹³⁰ Hence, civil disobedience assumes nonviolence and admits that its goal is to effect legal change. The ALF actions are frequently violent, however.¹³¹

Additionally, opponents argue that branding eco-extremists as terrorists stifles political dissent.¹³² While it might prove true that branding with the terrorist label will stifle dissent that takes the form of violent and dangerous attacks, it seems unlikely that calling ALF activity terrorism will decrease the activity of legitimate organizations that proceed through traditional advocacy channels.

Moreover, history teaches that extremist-group violence tends to escalate if the group’s tactics fail to achieve the desired result.¹³³ And although the ALF does not yet urge the outright use of violence against individuals, other eco-extremist groups currently use such tactics.¹³⁴

Having established both that eco-extremist activity qualifies as terrorism under multiple definitions and that eco-extremists *should* receive the terrorist label, the question remains: So what? The following section answers that question, explaining a few of the important consequences of receiving the “terrorist” label.

¹²⁸ See *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955) (noting that “[e]vils in the same field may be of different dimensions and proportions, requiring different remedies,” and “the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind”). It seems that when Congress has provided the Executive with statutes upon which to act in addressing an “evil,” the Executive similarly has discretion to prioritize those “evils” and handle them in the way it considers best for national security.

¹²⁹ Lugo & Calaf, *supra* n. 6, at 422.

¹³⁰ *Black’s Law Dictionary* 280 (Bryan A. Garner ed., 9th ed., West 2009).

¹³¹ See e.g. *U.S. v. Tankersley*, 537 F.3d 1100 (providing examples of such actions); Press Release, Federal Bureau of Investigation, *Putting Intel to Work against ELF and ALF Terrorists*, *supra* n. 3 (discussing the “violent rhetoric and tactics” of these groups).

¹³² See Smith, *supra* n. 6, at 569–70 (arguing that use of the label diminishes the true meaning of the word terrorism and stifles political dissent).

¹³³ Mitchell Mobley, *The New Wave of Radical Environmentalism: America’s Inaction and Reaction to Domestic Ecoterrorism*, 1 *Appalachian J.L.* 19, 29 (2002).

¹³⁴ Animal Liberation Press Office, *Frequently Asked Questions About the North American Animal Liberation Press Office*, *supra* n. 93.

V. CONSEQUENCES OF THE TERRORIST LABEL

A. Increased Monitoring and Investigative Tools

Under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, law enforcement officers investigating terrorist activity may apply to a Federal judge for authorization to place suspected terrorists under increased surveillance when the information intercepted might provide evidence of one of a variety of listed crimes.¹³⁵ In fact, the USA PATRIOT Act's reauthorization specifically provided for such increased surveillance authority in order to investigate crimes covered by the Animal Enterprise Terrorism Act (AETA).¹³⁶ Because it appears likely that Animal Liberation Front (ALF) activity constitutes a federal crime of terrorism in addition to a violation of the AETA, such authority would have been applicable even without the AETA reauthorization additions.

This increased authority to supervise communications provides a useful tool, but one with the potential for abuse. Allowing the FBI or other law enforcement agencies to intercept e-mail and phone conversations might lead to the revelation of important information, but because identifying members of the ALF will likely remain difficult, there is little guarantee that investigators will not be targeting innocent individuals.¹³⁷

The USA PATRIOT Act created additional anti-terrorism tools applicable against the ALF and Earth Liberation Front (ELF). Specifically, the Act eliminated the statute of limitations on certain terrorism crimes,¹³⁸ provided funds for information sharing with other jurisdictions,¹³⁹ and made it easier to get search warrants.¹⁴⁰ Suspected eco-terrorists are generally elusive, and removing the time restriction to locate suspects increases the likelihood that those who commit eco-terrorist crimes will face prosecution. Additionally, attacks are not always conducted by persons who live in the federal judicial district where the attack takes place.¹⁴¹ Consequently, having the ability to gain a search warrant for suspects in various states from a single magistrate would likely speed up law enforcement attempts to collect the necessary evidence and secure persons of interest.

¹³⁵ 18 U.S.C. § 2516(1) (2006).

¹³⁶ *Id.* at § 2516(1)(c).

¹³⁷ See Smith, *supra* n. 6, at 564–65 (making further arguments on this point).

¹³⁸ 18 U.S.C. § 3286(b) (2006). The normal statute of limitations on a crime like arson is ten years after the date of the offense. 18 U.S.C. § 3295 (2006).

¹³⁹ 42 U.S.C. § 3796h(a)–(b), (d) (2006).

¹⁴⁰ Fed. R. Crim. P. 41(b)(3) (West 2009) (granting magistrates the authority to issue search warrants for any person or property—whether inside or outside the district—if the terrorist activity being investigated occurred within the district).

¹⁴¹ See *e.g.* *U.S. v. Tankersley*, 537 F.3d at 1103 (discussing many people acting across several states).

B. Increased Sentencing

If members of the ALF are considered terrorists, and their activity meets the requirements of a federal crime of terrorism, then terrorism enhancements under the Federal Sentencing Guidelines terrorism apply.¹⁴² The application of these enhancements can cause a drastic increase in the sentences given for the underlying offenses.¹⁴³

For arson, the Federal Sentencing Guidelines provide for a minimum sentence range of between thirty-three and forty-one months.¹⁴⁴ Including an enhancement for terrorism, however, increases the sentence to between 210 and 262 months for arson of a non-governmental, non-dwelling structure.¹⁴⁵ An offense targeting a government facility—like some of those involved in *Tankersley*—could increase the punishment to between 324 to 405 months, or about twenty-seven to thirty-four years.¹⁴⁶

Moreover, even if the federal crime of terrorism would not apply—if, for example, the group is not sufficiently targeting the government or attempting to affect policy—the increased penalties under the terrorism enhancements would still apply under Application Note 4 of the Guidelines.¹⁴⁷ Note 4 authorizes application of the enhancement to conduct that attempts to influence a civilian population.¹⁴⁸

C. Penalizing Material Support

While the increased penalties provided in the federal sentencing guidelines affect those convicted of terrorist acts, the terrorist label has implications beyond those convicted. Providing certain material support to terrorists is a federal crime,¹⁴⁹ thus any individual or group who provides such support to members of the ALF, ELF, or other similar groups would be guilty of providing material support to terrorists. The law states that anyone who provides material support or resources—defined to include property, money, financial services, housing, and similar benefits¹⁵⁰—with the knowledge or intent that the funds will be used to help terrorists perpetrate or prepare for certain

¹⁴² *U.S. Sentencing Guidelines Manual* § 3A1.4 (2008).

¹⁴³ *Id.*

¹⁴⁴ *Id.* at § 2K1.4.

¹⁴⁵ *Id.* at §§ 3A1.4, 2K1.4(a)(2).

¹⁴⁶ *Id.*; see also *U.S. v. Tankersley*, 537 F.3d at 1102 (describing the targeting of government facilities).

¹⁴⁷ *Id.* at § 3A1.4 n.4; see also *U.S. v. Jordi*, 418 F.3d 1212, 1216–17 (11th Cir. 2005) (noting that commentary in the Guidelines Manual is authoritative unless it violates the Constitution and that the language in Note 4 was clear and unambiguous, and therefore must be given its plain meaning).

¹⁴⁸ *U.S. Sentencing Guidelines Manual* § 3A1.4 n. 4.

¹⁴⁹ 18 U.S.C. § 2339A(a) (2006).

¹⁵⁰ *Id.* at § 2339A(b).

terroristic acts, or evade capture, is guilty.¹⁵¹ Providing material support can be punished by a fine and up to fifteen years in prison.¹⁵²

This possibility might have a profound effect on some otherwise legitimate organizations. Some connection exists, for example, between PETA and members of the ALF and ELF, and other animal rights extremists and eco-extremists.¹⁵³ PETA has given money to several individuals implicated in violent, extremist activity.¹⁵⁴ If PETA continues to provide money and other support to those, or similar individuals, it might be held liable under federal law for providing material support for terrorists.¹⁵⁵ While not denying this financial support, PETA asserts that it is only supporting the legal defense funds for the accused.¹⁵⁶

D. Asset Seizure

In addition to potentially implicating those who give money to the ALF, the ALF's assets might be subject to seizure. Federal law states that "[a]ll assets, foreign or domestic, of any individual, entity, or organization engaged in planning or perpetrating any Federal crime of terrorism . . . against the United States, citizens or residents of the United States, or their property" are subject to forfeiture.¹⁵⁷ Because the ALF has no hierarchy and no centralized organizational structure, this provision likely has little direct effect on the whole of the ALF, but it would still apply to those individuals who are caught and charged with the terrorist acts.

E. Critical Responses

Critics of the Animal Enterprise Protection Act (AEPA) and the AETA—and generally of the government's attempt to treat eco-extremism as terrorist activity—argue that these provisions are nothing more than scaremongering.¹⁵⁸ They say, "The real targets of this McCarthyist legislation are above-ground activists who seek to abide by

¹⁵¹ *Id.* at § 2339A(a).

¹⁵² *Id.*

¹⁵³ See The Center for Consumer Freedom, *FBI, meet PETA*, http://www.consumerfreedom.com/news_detail.cfm/h/1706-fbi-meet-peta (Dec. 11, 2002) (last accessed Mar. 30, 2010) (noting instances where PETA has given money to those engaging in violent terrorist acts); Govt.'s Senten. Memo., *U.S. v. Coronado*, No. 1:97-CR-116 (W.D. Mi. 1995) (on file with *Animal Law*) (noting other connections between PETA and ALF).

¹⁵⁴ Dean Schabner, *Should Ecoterror be Treated Like al Qaeda?: Some Want to Target High-Profile Activists in Battle on Ecoterror*, <http://abcnews.go.com/US/story?id=90153&page=1> (Feb. 26, 2002) (last accessed Mar. 14, 2010); Testimony of James F. Jarboe, Domestic Terrorism Section Chief, Counterterrorism Division, FBI, Before the House Resources Comm., Subcomm. on Forests & Forest Health (Feb. 12, 2002).

¹⁵⁵ See 18 U.S.C. § 2339A (2006) (federal crime of Providing Material Support to Terrorists).

¹⁵⁶ *ABC's 20/20* (ABC Apr. 2, 2001) (TV broad.) (statement of PETA president and cofounder Ingrid Newkirk).

¹⁵⁷ 18 U.S.C. § 981(a)(1)(G).

¹⁵⁸ McCoy, *supra* n. 6, at 68.

the law.”¹⁵⁹ And if the government demonstrates an inability to confine its use of anti-terrorist tools to the pursuit of those like the ALF—whose activities fall within the definition of terrorism—and instead begin targeting the peaceful, legitimate activists, then perhaps critics’ fears will hold true.¹⁶⁰ Until then, however, the government should use the statutory tools necessary to combat the continuing threat of eco-terrorism.

VI. CONCLUSION

While radical members of the eco-extremist movement do not pose the same external threat to national security that come from other, more violent organizations such as Al Qaeda, members of the Animal Liberation Front and the Earth Liberation Front still constitute a threat to a large number of Americans, as well as to industries important to the U.S. economy. While many could empathize with the animal protection movement’s goals of preventing cruelty, that empathy does not extend to its extremist elements.

Eco-extremists act with a specific desire to intimidate and coerce. They use methods both violent and dangerous. In their desire to save the lives of animals, they unduly risk the lives and livelihoods of Americans, and as long as their methods continue to include fire and fear, they will continue to warrant the terrorist label.

¹⁵⁹ *Id.* at 69.

¹⁶⁰ Given the government’s history in dealing with extremist elements, like with the communist menace, these fears may well bear truth. See Patrick Renshaw, *The IWW and the Red Scare 1917-24*, 3 J. Contemporary Hist. 63 (1968) (describing how unions and socialist organizations and individuals were investigated and charged with crimes relating to non-violent activity). For an example of how the government might be overreaching, see Or. Denying Def. Mot. to Dismiss, *U.S. v. Buddenberg*, No. CR-09-00263 (N.D. Cal. Oct 28, 2009) (applying the AETA to individuals who allegedly made threatening demonstrations at the homes of animal researchers).