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# COUNTERING DOMESTIC TERRORISM: EXAMINING THE EVOLVING THREAT

## HEARING

BEFORE THE

## COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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# COUNTERING DOMESTIC TERRORISM: EXAMINING THE EVOLVING THREAT

**WEDNESDAY, SEPTEMBER 25, 2019**

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
*Washington, DC.*

The Committee met, pursuant to notice, at 10 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Portman, Romney, Scott, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

## OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Well, good morning. This hearing of the Senate Committee on Homeland Security and Governmental Affairs will come to order.

I want to thank the witnesses. We talked back in the cloakroom. Excellent testimony on a very topical issue here. The Department of Homeland Security (DHS) has just released their Strategic Framework on basically domestic terror, targeted terror.

What the witnesses are going to be testifying to really ties in very nicely with what the Department is trying to do as well. We are working with the Department quite honestly right now on kind of the data part of this. If we can get some language codifying some of the things they are talking about here into the National Defense Authorization Act (NDAA), we will try and do that. Otherwise, we have another opportunity with the Intelligence Authorization Act. Otherwise, we will just move it before our Committee. So, again, this is an incredibly timely hearing.

Normally I just enter my written statement into the record,[1] but I actually want to read my opening statement because I want to be precise here. So, again, thank you for your attendance. The first and what I expect will be a series of hearings examining domestic acts of terrorism. Although we must always remain vigilant, the defeat of the territorial caliphate of the Islamic State of Iraq and the Levant (ISIS) and focused counterterrorism efforts have resulted in the recent decline in the number of ISIS-inspired terrorist attacks in the United States and worldwide. Unfortunately, the increase in domestic attacks has kept our Nation on edge and forced

[1] The prepared statement of Senator Johnson appears in the Appendix on page 43.

a re-evaluation of how law enforcement can and should deal with different kinds of threats.

In May, Ranking Member Peters and I sent letters to the Department of Homeland Security, the Federal Bureau of Investigation (FBI), and the Department of Justice (DOJ) requesting basic information about their efforts to track, counter, and prevent all forms of domestic terrorism. From the outset of our inquiry, it has been clear that there is a lack of consistent and reliable data concerning domestic terrorism.

A quick little side note. It is not an easy issue. How do you find these things? How do you track these things? I think that will be coming out, but, again, that is what we are trying to do, potentially in a piece of legislation to codify this.

But if the Federal Government is not accurately tracking the threats and outcomes, it is exceedingly difficult for agencies and Congress to properly allocate resources and/or determine if additional authorities are required.

In allocating law enforcement resources and considering new authorities, it is important to put the threat and human cost of terrorism into perspective. In the 51 years from 1967 through 2017, there were 938,000 murders committed in the United States—an average of about 18,393 murders per year, or about 183,000 per decade. According to the Washington Post and their definition, since August 1, 1966, there have been 167 mass shootings in which 1,207 individuals were killed—an average of approximately 228 per decade. And Study of Terrorism and Responses to Terrorism (START) Global Terrorism Database (GTD) reports 3,774 deaths from terrorist attacks in the United States over the last five decades starting in 1970. If you exclude 9/11's death toll of 2,996, terror-related deaths since 1970 equal 778—an average of 156 per decade.

In citing these statistics, I am in no way minimizing the human cost of terrorism or mass shootings. Every murder, regardless of the cause, is a tragedy that takes an incalculable toll on the lives of those affected. As a result, public policy, operating within the bounds of constitutional government and limited resources, should be designed to prevent as many of these tragedies as possible. The purpose of this hearing is to explore the many issues raised in attempting to achieve that worthy goal.

We need to understand how authorities differ in addressing international terror versus domestic terrorism. What is the proper role of Federal versus State governments? What definitions need to be developed and what data needs to be gathered? What can be done to prevent online radicalization? And maybe the most fundamental and vexing question is: How does a free and open society deal with someone who is "not guilty yet"?

One final thought. Although I took no offense from any of the testimony because I know none was intended, I do want to challenge the use of "far-right" and "far-left" as descriptive adjectives for hate groups like white supremacists, anti-Semites, or environmental terror groups. I realize this has become accepted terminology, but I believe we need to break that habit. There is an acknowledged political spectrum ranging from left to right that is a useful shorthand description of one's general political philosophy.

But hate groups not only fall far outside that spectrum, they also advocate and use violence to advance their political aims—a radical rejection of the norms that permit America to be a free and self-governing country. Those of us who abide by the fundamental rejection of political violence do not want to be, nor should we be, associated with such despicable views and evil behavior. So let us drop the far-right/far-left descriptors, and simply call a hate group a "hate group" and a terrorist a "terrorist."

Again, we have assembled a highly qualified panel of witnesses to discuss these and other issues. I thank you again and look forward to your testimony.

With that, I will turn it over to Senator Peters.

## OPENING STATEMENT OF SENATOR PETERS[1]

Senator PETERS. Thank you, Mr. Chairman. I am certainly grateful to the Chairman that today, for the first time, this Committee is holding a hearing that gives us the opportunity to focus on white supremacist violence, a form of terror that is older than our Nation itself.

Since September 11, 2001, this Committee has held more than 50 hearings focused on terrorism. We have been, and we remain, rightly focused on the threat posed by foreign terrorists and their homegrown imitators.

Unfortunately, over that time, we have not adequately grappled with white supremacist violence. Over the last decade it has become, by far, the deadliest form of domestic violence that we face.

Its trademark racist rhetoric and dehumanizing language has embedded itself in our public discourse. And it is amplified around the world at the speed of light via social media platforms.

In Charleston, the shooter who took the lives of nine African American churchgoers as they gathered in prayer had self-radicalized online and regularly espoused racist rhetoric on his own website.

The terrorist who ran down a crowd of peaceful protesters in Charlottesville drove hundreds of miles to join in the largest and most violent gathering of white supremacists in decades.

The extremist who murdered 11 worshippers at the Tree of Life synagogue, the deadliest attack on the Jewish community in our Nation's history, regularly posted anti-immigrant and anti-Semitic conspiracy theories on white supremacist online platforms.

A white supremacist in Southern California was inspired by the horrific Christchurch mosque attack—which was livestreamed and shared virally—and the Tree of Life massacre. He failed in his attempt to burn down a mosque but succeeded in shooting up a synagogue, killing one and injuring three, including the rabbi.

The perpetrator in El Paso, who killed 22 people and wounded dozens more in the deadliest attack on the Latino community in our Nation's history, also cited the Christchurch attack and spewed familiar hateful rhetoric about a "Hispanic invasion" in a manifesto that he posted online.

White supremacy is a homeland security threat. That is why Chairman Johnson and I have launched one of the first bipartisan

[1] The prepared statement of Senator Peters appears in the Appendix on page 45.

efforts in Congress to address it. In May, we asked the Department of Homeland Security, the FBI, and the Department of Justice this question: How many Americans have been killed or injured in domestic terrorist attacks since 2009, broken out by ideology?

It took DHS 2 months to tell us they did not know. After 4 months, the FBI and the Justice Department have simply failed to respond. Last week, in response to our pressure, DHS finally released a policy paper acknowledging the growing white supremacist threat.

But we cannot effectively address a threat that we cannot measure. We need data to track and assess this rapidly evolving threat so that we can ensure that our resources are aligned with the threats that we face.

Today we will have a discussion about a path forward. We need to confront the scourge of domestic terrorism, and any solutions we consider must be based on facts and sound data.

But even the most well-intentioned policies can have harmful, unintended consequences. Looking back on our response to September 11th, I am acutely aware of how our policies were wrongfully used to cast suspicion on entire communities, primarily Arab Americans and Muslim Americans—including vibrant, patriotic communities that I am blessed to represent in Michigan. As we work to tackle the threat posed by domestic terrorism and white supremacist violence, we cannot repeat the mistakes of the past.

I hope that today's hearing will be an important step toward meaningfully addressing the growing threat of white supremacist violence. We must be clear-eyed about the challenges that we face, focus our resources according to accurate threat assessment, and make sure that all Americans feel safe where they live, where they work, and where they pray.

Mr. Chairman, I would also like to add that I have heard from countless stakeholders in Michigan and nationwide who care deeply about our efforts today, and I have received statements from the American Civil Liberties Union (ACLU), Professor Shirin Sinnar of Stanford Law School, the Arab Community Center for Economic and Social Services, the Muslim Public Affairs Council, and the Leadership Council on Civil and Human Rights, and I ask that they be entered into the record.[1]

Chairman JOHNSON. Without objection.

Thank you, Senator Peters.

Senator PETERS. Thank you.

Chairman JOHNSON. It is the tradition of this Committee to swear in witnesses, so if you will all stand and raise your right hand. Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BRANIFF. I do.

Mr. WATTS. I do.

Mr. CHESNEY. I do.

Mr. SELIM. I do.

Chairman JOHNSON. Please be seated.

[1] The information referenced by Senator Peters appear in the Appendix on page 114.

Our first witness is Professor William Braniff. Professor Braniff is the director of the National Consortium for the Study of Terrorism and Responses to Terrorism at the University of Maryland. Prior to his work at START, Professor Braniff was director of practitioner education and instructor at West Point's Combating Terrorism Center. Professor Braniff, a graduate of the U.S. Military Academy, began his career as an armor officer in the U.S. Army. Professor Braniff.

**TESTIMONY OF WILLIAM BRANIFF,[1] DIRECTOR, NATIONAL CONSORTIUM FOR THE STUDY OF TERRORISM AND RESPONSES TO TERRORISM (START), AND PROFESSOR OF THE PRACTICE, UNIVERSITY OF MARYLAND**

Mr. BRANIFF. Chairman Johnson, Ranking Member Peters, and esteemed Members of the Committee, I would like to thank you on behalf of the START Consortium for inviting us to testify before you today.

START data from a number of relevant datasets demonstrate the following:

In the U.S. over the last decade, domestic terrorists are more numerous, active, and lethal in gross numbers than international terrorists, including what the U.S. Government refers to as "homegrown violent extremists (HVEs)".

Among domestic terrorists, violent far-right terrorists are by far the most numerous, lethal, and criminally active. Far-right extremists conducted over 50 percent of the successful attacks in 2017 and 2018.

There were six lethal attacks in the United States in 2018. All six lethal attacks shared far-right ideological elements, primarily white supremacy, and, in at least two cases, male supremacy. And we observed this general pattern to continue in 2019.

Looking back over a longer time horizon, between 1990 and 2018, the violent far-right was responsible for 800 failed or foiled plots, and 215 homicide events, compared to 350 failed or foiled plots and 50 homicide events emerging from HVEs.

They have pursued chemical and biological weapons more frequently than HVEs, albeit very infrequently, thankfully. And they were more active in the illicit financial world, with nearly 1,000 far-right extremists engaging in over 600 terror financing schemes and generating over $1 billion in damages to the U.S. Government between 1990 and 2013.

Furthermore, between 80 and 90 percent of the hate crime perpetrators in START's new Bias Incidents and Actors Study (BIAS) dataset conformed to the ideological tenets of violent far-right extremism, broadly defined.

The composition of far-right targets has changed, with anti-immigrant and anti-Muslim attacks increasing in frequency. Over the last 10 years of data, 22 percent of violent far-right offenders were motivated at least partly by anti-immigrant or anti-Muslim sentiment compared to only 3 percent in the 10 years prior, and this percentage spiked to 37 and 38 percent in 2016 and 2017, respectively.

[1] The prepared statement of Mr. Braniff appears in the Appendix on page 47.

Now, despite the fact that more domestic terrorists are arrested than HVEs in gross numbers, 62 percent of far-right offenders and 78 percent of far-left terrorists succeeded in their violent plots compared to only 22 percent for HVEs. This is due to a combination of pragmatic and political factors that collectively reduce resource allocation to domestic terrorism.

There are several challenges to the U.S. Government's ability to maintain, share, analyze, and make public data on U.S. persons involved in domestic extremism. I will share just three of them.

One set of challenges emerges because domestic terrorism and international terrorism are handled separately within and between executive branch agencies and departments, leading to bifurcated threat assessments, bifurcated situational awareness, which undermines risk assessments and rational resource allocation decisions. To reflect reality, violent extremism has to be understood, and data has to be collected globally.

The second set of challenges results from the civil rights and civil liberties protections that the Constitution affords us. The U.S. Government is limited in its ability to maintain data on ideologues, propagandists, and recruiters, for example, who are not acting in violation of current law. Researchers outside of the government are often better able to examine domestic extremist movements as a result.

Now, the FBI Counterterrorism Division maintains high-quality data on individuals under investigation and uses that data to manage risk across their portfolio of both domestic and international investigations. That information is highly granular, but there are limitations to how broadly case information on known or suspected domestic terrorists can be shared outside of the FBI. That information is not included in our interagency watchlisting efforts, for example.

The next set of challenges speaks to a criminal's journey through the criminal justice lifecycle. There has historically been a breakdown of information, once these perpetrators enter the correctional system and again when they exit the correctional system.

The final set of challenges speaks to politics. Given the inherently political nature of terrorism, defining, tracking, and reporting data on terrorism is subject to biases, subtle pressures, or even manipulation.

It is clear that domestic terrorism, and specifically far-right extremism, require greater attention and resource allocation. This is not to say that the U.S. Government should replicate its response to HVEs as it responds to domestic terrorism.

Congress should pass the Domestic Terrorism Documentation and Analysis of Threats in America (DATA) Act or similar legislation, including the continued funding of unclassified, objective, and longitudinal data collection and dissemination through the DHS Centers of Excellence apparatus. That language was stripped out of the House Homeland Security version of the bill, and it should be reinserted.

The Homeland Security Grants Program, responsible for things like Urban Areas Security Initiative (UASI) grants, should incorporate these objective data.

The U.S. Government should scale up the DHS Office of Targeted Violence and Terrorism Prevention and specifically replicate the program being run out of Denver quite quietly which has succeeded in over 40 interventions, many of which deal with the violent far right.

The government should take a public health approach to violence prevention and invest in programs that build community resilience, programs that foster non-criminal justice interventions for at-risk individuals, and programs that foster rehab and reintegration for domestic extremists. A parallel grants program to the Homeland Security Grants Program should be run out of an organization like the Department of Health and Human Services (HHS) to support these public health programs.

Thank you.

Chairman JOHNSON. Thank you, Professor.

Our next witness is Clint Watts. Mr. Watts is a distinguished research fellow at the Foreign Policy Research Institute and a senior fellow at the Center for Cyber and Homeland Security. A graduate of the U.S. Military Academy, he began his career as an infantry officer in the U.S. Army. Mr. Watts later became a Special Agent in the Federal Bureau of Investigation where he was part a Joint Terrorism Task Force (JTTF). After leaving the FBI, he served 1 year as executive officer at West Point's Combating Terrorism Center and returned to the FBI as a consultant from 2007 to 2009, when he advised the Counterterrorism Division and National Security Branch. Mr. Watts.

**TESTIMONY OF CLINT WATTS,[1] DISTINGUISHED RESEARCH FELLOW, FOREIGN POLICY RESEARCH INSTITUTE**

Mr. WATTS. Chairman Johnson, Ranking Member Peters, and Members of the Committee, thanks for having me here today.

Today both international terrorists and domestic terrorists congregate, coordinate, and conspire online, often without having any direct connection or physical interactions with a terrorist organization or fellow adherents.

Domestic terrorists differ from international terrorists in two critical ways that vex law enforcement efforts. First, domestic terrorists, for the most part, do not operate as physical, named groups in the way that al-Qaeda and the Islamic State have in an international context. And, second, law enforcement pursues domestic terrorists via different rules and structures separate from international terrorists. Investigators must pass higher thresholds to initiate investigations and have fewer tools and resources at their disposal. In sum, domestic counterterrorism remains predominantly a reactive affair in which investigations respond to violent massacres and then pursue criminal cases.

There is more to discuss than I can capture during these brief opening remarks, but I will focus on what I believe to be critical gaps in countering domestic terrorists.

First, if we cannot define the threat, then we cannot stop the threat. Countering al-Qaeda and the Islamic State is no easy task, but foreign terrorist organization (FTO) designations allow law en-

[1] The prepared statement of Mr. Watts appears in the Appendix on page 79.

forcement to pursue investigations according to the Attorney General (AG) Guidelines, organize their agencies and allocate resources, centrally manage cases across the country helping connect associated perpetrators and plots, and measure investigative performance and return on investment.

Without a designation by group or violent ideology and the pursuit of investigations limited to criminal codes, nationwide we are essentially just pursuing cases as individual one-off cases, maybe not recognizing the collaboration and communication that goes on in the online space.

Second, if we do not understand the threat, we cannot defeat the threat. After 9/11, agencies dramatically increased their staffing of intelligence analysts and committed research funds for understanding terrorist ideologies helping to identify key influencers, ideological justifications for violence, and radicalization pathways for those enticed to join terrorist groups.

With domestic terrorism, threat knowledge comes anecdotally from the experience of the most seasoned investigators. Few if any personnel and resources can establish a collective picture of which violent ideologies perpetrate violence, why they do it, and how they overlap, which I think is particularly significant today.

If we cannot see the threat, then we cannot preempt the threat. To reduce the frequency and scale of international terrorism in the United States, we sought to connect the dots between extremists through all source analysis and targeted outreach with community partners and online interventions.

In the online space, Federal agencies might look to rapidly increase their partnerships with groups like Moonshot Countering Violent Extremism (CVE) which employs innovative approaches for spotting and engaging vulnerable individuals via social media in both international and domestic contexts. Similarly, terrorism task force officers should extend their "See Something, Say Something" strategies to domestic terrorism threats and create community partner engagement strategies with nongovernmental groups.

Fourth, if we do not resource the defenders, we will keep losing to the offenders. International terrorist threats brought about a whole-of-government approach by which Federal resources created terrorism task forces synchronizing information sharing and actions across the country to defeat distributed terror networks. We have intelligence fusion centers stretched across the country designed to detect international terrorism that now seek out more missions. The Federal Government could lead the way to not only help State and local law enforcement do more than simply respond to attacks, but also help them to employ effectively their manpower and resources for preempting domestic terror attacks.

And, finally, my fifth point I really would like to stress is if we only look at what is happening in the United States, we will miss the dangerous global connections that are currently occurring around the world. Our homegrown terrorists, at times, appear to be lonely, but they are not alone in their motivations, and their connections extend far beyond U.S. borders. Over the last decade, we worried about the global networking, State sponsorship, and facilitation of jihadist terrorism.

Today we should worry equally about foreign connections and influences on domestic terrorist threats. The social media posts and manifestos of recent domestic attackers point to the international inspiration and global connections of violent ideologies. These connections extend beyond the Internet leading to physical movement across international boundaries to attend training or execute attacks.

In Sweden, two of three bombers from the Nordic Resistance Movement received military training in Russia before returning home to attack. The Christchurch mosque attacker was not from New Zealand but Australia. And just this week, the FBI conducted an arrest of an individual in Kansas, at Fort Riley, Kansas, who wanted to travel overseas to join a "militant group," as one way to define it.

So, in conclusion, with these remarks I have only addressed gaps that I believe, if closed, would reduce the frequency of domestic terrorist attacks. These remarks do not address how we could reduce the impact, the number of dead and wounded, arising from each domestic or international attack.

Thank you for having me here today, and please accept my full remarks into the record.

Chairman JOHNSON. They will be entered in the record,[1] as everyone's will.

Thank you, Mr. Watts.

Our next witness is Professor Robert Chesney. Professor Chesney is the James A. Baker III Chair in the Rule of Law and World Affairs at the University of Texas at Austin School of Law. He is also the co-founder of the Lawfare blog and a prolific author on legal issues and national security policy. Professor Chesney is a graduate of Harvard Law School. Professor Chesney.

**TESTIMONY OF ROBERT M. CHESNEY,[2] JAMES A. BAKER III CHAIR IN THE RULE OF LAW AND WORLD AFFAIRS, AND DIRECTOR, ROBERT STRAUSS CENTER FOR INTERNATIONAL SECURITY AND LAW, UNIVERSITY OF TEXAS AT AUSTIN SCHOOL OF LAW**

Mr. CHESNEY. Thank you, sir. Chairman Johnson, Ranking Member Peters, distinguished Members of the Committee, thank you for the opportunity to appear before you today to talk about this important topic.

I want to talk about the steps that might or might not be desirable as we work to increase the orientation toward prevention in the domestic terrorism context, and I want to do that by taking lessons by comparison to what we have done over the past two decades in the international terrorism context.

As an initial matter, I think it helps to frame our engagement with this issue by distinguishing among some broad categories of how we might alter what we are currently doing.

First of all, we have the authorities we use to incapacitate threats, and in the domestic terrorism setting, we are mostly there talking about the charging options that are available to prosecutors

[1] The prepared statements of the Witnesses referenced by Senator Johnson appear on pages. 47, 79, 84, and 98.

[2] The prepared statement of Mr. Chesney appears in the Appendix on page 84.

and bases for arrest. But let me flag—and here I am drawing a lot on the recent experience we have had in Texas where I have had some involvement in our State's response to the tragedy in El Paso. We need to keep one eye on the potential for early stage interventions that are not criminal in nature, and here I will reference my colleague Professor Braniff's remarks.

There are things in the nature of wellness checks and other more aggressive measures that when a family member or friend of a person who is disturbed and the family member or friend can tell that this person may be dangerous, there are ways of conducting threat assessment that the Secret Service, among others, trains local law enforcement on. We need to support and surge resources toward that training to make sure that every State is thoroughly organized and equipped to be able to take advantage of that information in advance of harm occurring, in any event, capacities or authorities to intervene, to neutralize the threat a dangerous person poses.

Second, separate but related to that, investigative authorities. Do investigators have the right tools?

And then, third, distinct from both of those, resourcing both in terms of personnel, financial resources, and the policy will at all levels of the relevant institutions to make sure that the line officials, the agents and the line prosecutors, fully understand the range of things that existing law already enables them to do if they are ready to commit to certain approaches.

A few notes on each of these things.

First of all, it is important to underscore that we do have Federal terrorism statutes, and I mean parts of Title 18, Subchapter 113B-Terrorism, that are applicable in the domestic terrorism context. It is often said that we do not have a domestic terrorism law. We do not have one as such. We do not have a single statute that says everything, however conducted, that counts as domestic terrorism is a Federal offense. But we do have a lot of more specific terrorism-labeled laws that are applicable, and the one I will highlight here, although it is only one, is the so-called weapons of mass destruction (WMD) law, which sounds really narrow. It is terribly mislabeled. It covers ordinary explosives. It can be used and has been used in a number of cases, and I will cite the recent conviction of Cesar Sayoc, who tried to send mail bombs with nails in them. He was convicted under this, among other charges.

So we do have some such statutes. Where is the gap, then? When it comes to conduct, the gap has to do with attacks on non-Federal personnel where the weapon of choice is a gun, an edged weapon, or a vehicle—things that are not explosives. That gap can and should be closed. I think the best argument for closing it is to assert the moral equivalence or perhaps the equal immorality of political violence. As the Chairman said, regardless of the ideological background, political violence is unwelcome and intolerable in our system.

Skipping ahead to the topic of designated domestic terrorist organizations, because we have the foreign designation process, I am against creating a formal system of this kind for a number of reasons.

First, I will mention the constitutional can of worms that would open up under the First Amendment. Now, I am happy in the question and answer (Q&A) to go into that in more detail.

Second, the thought experiment of imagining the capacity to designate a group being in the hands of officials who may be from whatever is the opposite ideological orientation or political orientation you may have, it is a Pandora's Box we do not want to get into unless the use case for doing so is clearly enough established. I think the use case for doing so, the best we can say is it would certainly provide a broad basis to clarify investigative and arrest authorities and prosecution authorities, but I think we can get there without opening this particular Pandora's Box.

Last, a few quick words on investigative authorities. The Attorney General Guideline revisions in 2002 and 2008, which were controversial at the time, expressly aimed to open the door to more proactive prevention-oriented terrorism investigations. I think if we have a problem here, it is that not enough officials are fully aware of what they do permit, and we might need to press to make sure that more advantage is being taken of those existing frameworks.

Thank you.

Chairman JOHNSON. Thank you, Professor Chesney.

Our final witness is George Selim. Mr. Selim is the senior vice president of programs for the Anti-Defamation League (ADL) where he oversees ADL's Center on Extremism and is responsible for its education, law enforcement, and community security programs. Prior to joining ADL, under President Obama Mr. Selim was the first Director of the Department of Homeland Security's Office for Community Partnerships (OCP), where he also led the Federal Countering Violent Extremism Task Force. Mr. Selim also served on President Obama's National Security Council staff, as a Senior Policy Adviser at DHS' Office of Civil Rights and Civil Liberties, and at the Department of Justice. Mr. Selim.

**TESTIMONY OF GEORGE SELIM,[1] SENIOR VICE PRESIDENT FOR NATIONAL PROGRAMS, ANTI-DEFAMATION LEAGUE**

Mr. SELIM. Mr. Chairman, Ranking Member Peters, Members of this distinguished Committee, good morning, and thank you for allowing me the opportunity to testify today. As mentioned, my name is George Selim. I serve as senior vice president of programs at the ADL, and it is an honor to be with you this morning.

For decades, ADL has fought against anti-Semitism and bigotry in all forms by exposing extremist groups and individuals who spread hate and incite violence.

Today ADL is the foremost nongovernmental authority on domestic terrorism, extremism, hate groups, and hate crimes. I have personally served in several roles in the government's national security apparatus, at the Departments of Justice, Homeland Security, and at the White House on the National Security Council staff. And I am now at ADL where I oversee these efforts to investigate and expose extremism across the ideological spectrum.

In my testimony, I would like to share with you some key data and analysis on the threat of domestic terrorism as well as identify

[1] The prepared statement of Mr. Selim appears in the Appendix on page 98.

some significant gaps in current policy and practice that, if closed, could better equip the government to counter this threat.

Understanding the threat of domestic terrorism requires us to look at the threat of white supremacy. Three of the five deadliest years of murder by domestic extremists in the period between 1970 and 2018 were in the past 5 years. Of the 50 murders committed by extremists last year, 78 percent of those were tied to the threat of white supremacy.

In the past decade, 2009 through 2018, the majority of the 427 people killed by domestic extremists were killed by white supremacists. In the last year alone, we have seen mass murder after mass murder targeting Jews, Muslims, Latino, and other immigrant communities at the hands of white supremacists that were radicalized and lauded online—on the open Net.

Unfortunately, in the last 2 years, resources have shifted away from these threats. The limited information provided by this Administration makes it difficult to determine the known prevalence of domestic terrorism and what the government is really doing to prevent it.

What we do know is that this Administration is currently not doing enough. Greater transparency is critical to understanding what the policy challenges are, and just as significantly, accurate reporting on the threats to communities can help lawmakers ensure that FBI, DHS, and other Federal agencies are applying investigative resources in line with real threats and not based on identity, political belief, or other categories.

At DHS I served as the Director of the Interagency Countering Violent Extremism Task Force and the Director of the Community Partnerships Office. Both of these offices provided support to State, local, and community groups and provided resources to help prevent and intervene in the process of radicalization to violence. The staffing and funding for these efforts has been significantly reduced or completely eliminated in the past 3 fiscal years.

Last week, DHS released its new Strategic Framework for Countering Terrorism and Targeted Violence, which called out the heightened threat environment of domestic terrorism, specifically including the threat from white supremacy. The forthcoming steps of a concrete implementation plan and associated funding request will be the ultimate test as to whether or not this framework will succeed or fail.

Looking ahead, ADL's top request is for our Nation's leaders to always use and speak out clearly and forcefully and call out anti-Semitism and bigotry in all forms at every opportunity. Beyond that, policy gaps that must be addressed include:

Increased collection and reporting of data on extremism and domestic terrorism by the Federal Government. As the Chairman mentioned, we cannot address what we cannot measure.

Resourcing the threat. Federal offices across the Executive Branch that address domestic terrorism should be codified into law and must be provided resources commensurate with the threat today and at a scale that can be impactful.

Prioritizing reporting and the enforcement of hate crimes laws, the key precursors to white supremacist terrorism, and empowering local communities to be part of that solution nationwide.

Supporting civil society, academic institutions, and the private sector to step up and play meaningful roles where the government cannot or should not.

And, undertaking an examination of whether overseas white supremacist groups meet the foreign terrorist organization designation criteria.

In conclusion, white supremacy is a very real and very deadly threat to our homeland. This is an all-hands-on-deck moment to protect our communities. Solutions will require a whole-of-government, whole-of-society impact, and ADL stands ready to serve as a constructive partner as this Committee and Members of this Congress explore these issues.

Thank you for your time this morning.

Chairman JOHNSON. Thank you, Mr. Selim.

I am going to defer my questions except for one because I think it will help our questioning. Have any of you taken a look at what DHS has published now? And if so—who has looked at it? OK. So for the Committee Members, realize that all the witnesses have reviewed what DHS just published, and, again, from my standpoint, having read the testimony, having read this, things really dovetail quite nicely here. So it looks like the Department is moving in the right direction. We can talk about resourcing, emphasis, that type of thing, prioritization. But to me, the timing of this hearing, the timing of this release is working out nicely, and it seems like we are moving in the right direction. We are acknowledging the same things, and we just have to develop that data, which we are trying to work on a piece of legislation to codify, as you said.

But, with that, Senator Peters.

Senator PETERS. Thank you, Mr. Chairman. And thank you to each of our witnesses for your testimony here today and for your presence.

Certainly, as I think we have reiterated many times already, our domestic terrorism resources and priorities should be based on an accurate assessment of the threat and really a frank assessment of the facts on the ground.

My first question to you, Mr. Selim: What is the deadliest domestic terrorism threat currently facing Americans? What should Americans know?

Mr. SELIM. The ADL has been tracking and monitoring all forms of extremism across the ideological spectrum for over three decades. We assess that today, based on publicly available, open-source data, the deadliest threat to the American homeland is the threat of ideologies that are associated with white supremacy, white nationalism, and the data to back that up is that over the past decade more American lives—specifically 73 percent of the murders and homicides committed in the homeland are associated with white supremacist ideology.

Senator PETERS. Mr. Braniff, what is your assessment of the deadliest domestic terrorism threat currently facing Americans?

Mr. BRANIFF. Ranking Member Peters, our data also looks across ideologies, and we do not use predetermined ideological categories, meaning we look for behaviors first, and once a behavior meets the threshold for inclusion, we then look at the ideological motivations, which means we are able to identify new and emergent trends and

not just be wedded to a previous understanding of what does or does not constitute terrorism.

We would also demonstrate via our data sets that violent white supremacists are the most active of the ideological groups in the United States in terms of violence by just about every empirical metric. The one exception would be fatalities per attack. Regarding fatalities per attack, Muslim extremists, those inspired by al-Qaeda or the Islamic State are marginally more lethal. But by every other measure, including the total number of individuals killed or injured, it is the violent far right, and I do fully appreciate how unsatisfactory these large umbrella categories are, but within the violent far right, the white supremacist movement.

Senator PETERS. President Trump has spoken of immigrants "invading" and "infesting" our country. Both the El Paso and Tree of Life mass murderers used that very language in announcing their imminent attacks.

Mr. Selim, what is the impact of having a President using this sort of rhetoric?

Mr. SELIM. Ranking Member Peters, thank you for your question. What we know is that when rhetoric like the form you mentioned is used by the President of the United States or any public figure, it is lauded and echoed and repeated over and over again by individuals online and offline who are openly bigoted and individuals who espouse an ideology of white supremacy or white nationalism.

The most important point here is that in times of crisis and in times of division, leaders need to lead, and whether you are the President of the United States or the president of the Parent Teacher Association (PTA) in your hometown, it is incumbent on leaders to use the bully pulpit to forcefully speak up and stand up when it comes to that form of bigoted or biased rhetoric that can tear communities apart and not pull them together.

Senator PETERS. DHS told us that they "do not track statistics" regarding the number of people killed and injured in the United States by domestic terrorist attacks. And they said that they do not have "firm statistics" on personnel and resources used to combat domestic terrorism. The Department of Justice and the FBI have provided no response to multiple inquiries that the Chairman and I have made. So either this Administration is unable or it is unwilling to provide some basic data about domestic terrorist threats.

So again to you, Mr. Selim, is the government capable of providing this information? You certainly provided an awful lot of information in your testimony. What is going on here?

Mr. SELIM. Senator, I can say based on firsthand experience, having managed and overseen both the interagency group and the office at DHS that was tasked with executing this specific mission that we are talking about today, it is absolutely possible to gather with a pretty good degree of specificity the number of Federal employees—within the Department of Homeland Security I can speak to—that are executing a piece or part of this mission as outlined in the framework that was released last week and that the previous two Administrations used to guide their work. It is something that I did as the Director of that office and certainly something that the Department has the means through which to provide this Congress based on my experience having done so several years ago.

Senator PETERS. In the absence of data, it is pretty difficult to prioritize, isn't it?

Mr. SELIM. It is extremely difficult to prioritize. It starts with the implementation of the strategy that the Chairman alluded to and associating appropriate staffing levels, resource dollars, and prioritization to drive such a strategy on a week-in and week-out basis all year long.

I should note that until this past Friday no such strategy governed DHS or the interagency's work in this regard. While the strategy released on Friday is specific to the Department of Homeland Security, it does not apply to the interagency or other parts of the Federal family that have relevant equities in this issue. My hope is that the Administration would look more broadly for a whole-of-government approach on these issues. But to date, this is an important starting point, as the Chairman noted, and my hope is that this Administration continues to build on that momentum.

Senator PETERS. Every community across the Nation obviously deserves to be kept safe from acts of terror or violence, and no one, no matter who they are, no matter where they live, should fear being attacked in their neighborhoods or at their neighborhood store or in houses of worship.

Mr. Chesney, my question to you: What are some of the concerns of impacted minority communities related to the expansion of governmental authorities to combat domestic terrorism? What have you been hearing?

Mr. CHESNEY. As you noted in your opening remarks, sir, there is a challenge that arises when there is a particular identifiable group or set of individuals that the government decides to start intervening to investigate with an eye toward prevention, where on one hand there is a huge benefit in trying to get information from people in contact with persons who share the ideology that is in question, or whatever it may be, and so there is an effort to get into that community and sometimes use of undercover informants, monitoring of events taking place in public, attending those events and so forth. And while that makes a lot of sense as a strategy—indeed, is arguably one of the most critical strategies for finding out in advance of an attack what is happening—the historical record shows it does tend to carry with it a bit of a negative reaction from communities that may feel—fairly or unfairly, but nonetheless subjectively they may feel that they are being tarred with too broad a brush.

There is no silver bullet solution to this. It is an important investigative approach. It carries with it offsetting dangers, and it has to be handled very carefully.

Senator PETERS. Thank you.

Chairman JOHNSON. Before I turn it over to Senator Portman, again, data is going to be important. We need to be very accurate.

Mr. Selim, I just want to clear up—you said 73 percent of murders were caused by white supremacists. Now, I talked about, on average, 18,000 murders. So exactly what data set are you comparing it to? What number is 73 percent of?

Mr. SELIM. Sorry, Mr. Chairman. Let me just clarify that specifically. Of murders and homicides that were committed by extremists, not writ large in the American public——

Chairman JOHNSON. And, again, that number is approximately what? You are taking 73 percent of what? Just give me the numbers. I mean, percentages are——

Mr. SELIM. Yes, 427.

Chairman JOHNSON. Over?

Mr. SELIM. Over a decade-long period, 2009 through 2018.

Chairman JOHNSON. OK. So 73 percent of that, about 300 of those were——

Mr. SELIM. Approximately.

Chairman JOHNSON. OK. Again, I just want to make sure that we are dealing with actual numbers here.

Mr. SELIM. Correct.

Chairman JOHNSON. Senator Portman.

## OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. That would not include 9/11, then.

Mr. SELIM. No.

Senator PORTMAN. First, Mr. Chairman, thanks for holding this hearing. I think it is incredibly important, and I appreciate the witnesses and their expertise.

I, as some of you know, have been focused on this issue of helping our nonprofits, particularly our religious communities, to be able to better defend themselves against domestic terrorism. It has been particularly difficult in the Jewish community because we have had a number of attacks. Synagogues, community centers, schools have been targeted. We have had some horrible incidents, as we had in Pittsburgh, and then exactly 6 months to the day later in the San Diego area.

We held an interesting conference back in Ohio about 2 weeks ago, and it was on the whole issue of how to help prepare and to be more vigilant. We had folks there from the Hindu community, the Sikh community, the Muslim community, the Jewish community, the Christian community, and very well attended. The FBI was there to give a briefing, and that was quite eye-opening. And, Mr. Watts, I want to talk to you about that if it is OK in a minute about what the FBI can and cannot do given your experience.

We also talked about the Federal Emergency Management Agency (FEMA) Nonprofit Security Grant Program that Senator Peters and I have been very involved with and trying to get reauthorized, and we got the funding up a little last year. Ohio is using that program. Several of the faith-based groups have applied for and received help there. What they get help for is cameras and sensors and even armed guards now, which they could not get previously until recently when the Administration changed its view on that, but also just best practices. A lot of it is about just trying to understand how to be able to respond more quickly should something tragic happen. So, one, hardening the institutions, but, second, to be able to respond quickly and effectively.

So I appreciate what FEMA has done in that area. We had DHS there. They had a lot of good information. People left, they told me, with a better sense of what they need to do.

On the FBI front, one thing they said was it is actually difficult for them to investigate these kinds of cases. Someone goes online,

for instance, and makes a credible threat of violence, and the FBI said that it is difficult for them to investigate all of those cases.

Can you talk a little about that, Mr. Watts, and just operationally what happens when there is a threat online?

Mr. WATTS. Yes, I think a way to sort of think about it is how you would initiate a case. In the international counterterrorism context, even if you are State and local law enforcement, if you get an indicator that ties an individual as having sympathies or supporting al-Qaeda or ISIS, that would usually initiate an assessment, which would give you the ability to assign investigative leads to an actual case, ISIS-inspired terrorism, al-Qaeda-inspired terrorism.

Once that is assigned, you would then look for indicators, and it would be managed centrally across the FBI. So for those familiar with the FBI International Terrorism Operations Section (ITOS) would take that over. They would manage it. The investigators out in your community would go. They would look at open source. They would look at social media. They might even go interview the person depending on the circumstances. And then that would be tied into the national picture so that you could understand if there is any connection, sympathies, other indicators. And it could be elevated then to a preliminary inquiry and then a full field investigation based on the status of it.

In a domestic context, I will give you——

Senator PORTMAN. Well, the first one with regard to ISIS or al-Qaeda or maybe some other specified groups, but international terrorism.

Mr. WATTS. Right, and here is a hypothetical example. I do not want to be too hypothetical, but someone has Osama bin Laden as their Facebook avatar or social media avatar. They say the infidels should be killed. That might trigger leads, which the FBI would respond to.

Senator PORTMAN. And on the domestic side?

Mr. WATTS. On the domestic side, take, for example, one of the shooters in any of these recent attacks is posting in the same way and it says we should kill all the invaders. That is not tied to any nationwide case. That might be, maybe, followed up as an assessment, but I doubt it because there is no specific crime. There is no designation around a violent ideology that opens a nationwide case. And it becomes very difficult for the FBI, or DHS, or even State and locals to understand what is the larger context of this picture. Are there global connections? Which we saw this week in one of the arrests that was undertaken. Are there other connections in these social media platforms that they are using that are increasingly more encrypted, more in the dark web pushed to the fringes? Which means human intelligence collection. It becomes very difficult not only to get a picture of that violent ideology, but to even have a reason, because it may be protected under the First Amendment, to investigate just through public records or to show up and do an interview of that person to really assess what their inclinations are toward violence.

Senator PORTMAN. So the big issue with regard to domestic terrorism is the protected speech and that line that is crossed sometimes and where does that line get drawn. Is it somebody saying

hate speech generally? Or is it somebody saying, as an example, recently in Youngstown, Ohio, there was a credible threat, a specific threat as to the Jewish synagogue there and the community center. In that case, the FBI and local law enforcement was able to intervene.

Where is that line? And where should it be drawn?

Mr. WATTS. As of right now, it is really drawn around is it specific to an actual location, a person, an incident. That is when the FBI triggers dramatically in that direction.

However, if we had pursued that in the al-Qaeda-ISIS era, we would have sustained a large number of attacks, in my opinion, across the country because we would not have been preemptively trying to move out and penetrate into those networks.

The line to me should be—I would like to see the FBI Director have the ability based on certain thresholds, open investigations, maybe incidents, tips and leads related to a specified violent ideology, to open a nationwide case such that investigators can then do their assessments without prying into people's personal information, minimum threshold, right? We are not actually going in and being intrusive, but we are looking to say is this person connected to other individuals that have concocted attacks? Are they talking about targeting in some sort of dark space on the Internet? Can we put these pieces together in a nationwide picture so we can actually go ahead and try and be preemptive rather than reactive?

Senator PORTMAN. My time is expiring, but I would say that I do not disagree with what you are saying. And I think you are right. I think we need to be more proactive to be able to preempt and to try to thwart some of these attacks.

Many of these attackers are lone wolves, though, so you are not going to see a national thread necessarily, and I think some of the recent incidents of mass shootings as an example, where there does not seem to be a connection to a national group. So you would not want to preclude that as well, right?

Mr. WATTS. Correct. I think you have to establish a threshold based on the violent ideology. For example, where do they congregate? Think if this was in the 1990s. These individuals to do these associations would have to show up physically in a place, right? And that is what our laws are built for. We see people congregating. Maybe they are doing reconnaissance, weapons training, things like that. They are picking out targets.

Today that all happens in the online space. There is no real tip or lead system for the public even to report on that because they have gone to a fringe platform that is maybe completely encrypted, totally offline, and they are communicating, they are associating. They are talking about what types of weapons to purchase or acquire.

So we have to help law enforcement come up with a way to get to that space legally where they are also not infringing on people's freedom of speech.

Senator PORTMAN. I know this Committee is eager to get your input on it because you need to help us to be able to figure out is there a legislative role here and, if so, to help draw that line properly and help to protect—and I mentioned houses of worship and other faith-based organizations, but to protect all of us.

Thank you for your testimony, everybody.

Chairman JOHNSON. As long as we have started down this line of questioning, I do want to bring up—I believe it was Omar Mateen, the Pulse Night Club shooter.

Mr. WATTS. Yes.

Chairman JOHNSON. I want to talk about the difficulty within a constitutional government about, again, the "not guilty yet." There was an FBI investigation. It was, I think, undertaken for 6 months, but then because of Justice Department guidelines, when there was not enough "there" there, they had to—could you just quickly speak to that? And, again, this is the difficult issue. What do you do with the "not guilty yet"?

Mr. WATTS. Yes, and I could probably add the Boston bombing case, as another example where oftentimes we do encounter these people. They are not a surprise necessarily to law enforcement, particularly State and local law enforcement. They tend to know. But it really comes down to those initial assessments. If we cannot do those initial assessments—for example, someone calls in and says, "My neighbor is really angry. He has been threatening to kill people or blow things up," but it is not specific to any location or event, the FBI or DHS really does not have anything to go on, right? They cannot even do that initial assessment. There is no nationwide violent ideology that it can be tied to.

Chairman JOHNSON. Talk about the guideline that really requires you to stop an investigation even though you have been undertaking something for 6 months. Just talk about that.

Mr. WATTS. Sure. I am very dated on this. I have not been in the building since 2012. But there are specific periods—it is usually 90 days—in terms of your assessment. You have to show progress if it is a preliminary inquiry. You have a little bit longer with a full field investigation. But if you cannot actually show that there is some sort of movement toward it, the case oftentimes is closed or reduced. I think that is something to remember with this radicalization process. Sometimes people become radicalized right up to the point of violence. Then they stop or move back. And then years later, they can reaccelerate again. But that is really the important bridge about our community partnerships and our online interventions that we work with partnerships.

So as I mentioned in my opening statement, we have those bridges. We have developed them. Bill and I worked together on this. George I have seen in the past. They have worked on these community partnerships which are who do we hand this off to. We see this person, they are extremely angry, they are not being specific, but they could mobilize later. How do we keep those tips and leads coming in? We have that for sure in the international context, and we have built that over the last 18 years.

In the domestic context, we do not necessarily have it, but we are starting to see it kind of naturally emerge, right? We will see in Youngstown. There was another case in Pennsylvania where somebody does call in a tip or lead, but that is kind of after the fact. They have seen lots of violence. We have not really built that out for a lot of these violent ideologies and even for mass shootings. School resource officers, in my opinion, are one of the most critical bridges across this, college campuses the same way. And even in

terms of some of the other communities we could engage in a very civil way, this creates a lot of angst with some people. But gun advocacy groups would be a great bridge to say, hey, we want to protect your Second Amendment rights, but you have to help us identify people that maybe they are moving along the spectrum to violence so that we can interdict it. Timothy McVeigh would be a classic example of that.

Chairman JOHNSON. But also First, Fourth, and Fifth.

Mr. WATTS. Right.

Chairman JOHNSON. There are constitutional differences between what we can do with domestic versus international. Senator Hassan.

**OPENING STATEMENT OF SENATOR HASSAN**

Senator HASSAN. Thank you, Mr. Chairman and Ranking Member, for having this hearing. Thank you to all of the witnesses for being here and for your expertise and commitment on this issue.

Charleston 2015, Charlottesville 2017, Pittsburgh 2018, Poway 2019, Dallas 2019, Gilroy 2019, and El Paso 2019. These are just a few of the cities impacted by domestic terrorist attacks in recent years, and they all have one thing in common: None of the perpetrators of these attacks were under FBI investigation at the time of the attack.

Earlier this year, FBI Director Christopher Wray told Congress that there is a "persistent, pervasive threat"—his words—posed by white supremacist violence. I want to piggyback a little bit on what Senator Portman and Senator Johnson were just asking you, Mr. Watts. I have deep concerns that the Federal Government does not understand the full scope of the threat and, given current legal and resource constraints, is limited in its ability to prevent future attacks.

Mr. Watts, you have written that, "Short of violence or a fully approved domestic terrorism investigation, preventing white supremacist terrorist attacks becomes nearly impossible for investigators," and that is a little bit about what you have just been talking about. So that is obviously a startling revelation, and I just want to give you an opportunity to continue the discussion that we have just started. Can you expand on how current laws may constrain domestic terrorist investigations? And how do these constraints both impact the FBI's understanding of the threat and impact resources dedicated to preventing the threat?

Mr. WATTS. Yes, thanks, Senator. So there are a couple things to consider. One, without a designation or opening of a nationwide case——

Senator HASSAN. Right.

Mr. WATTS. So you could do that either—and he will be much better, Mr. Chesney, at explaining the legal parameters around that. But without a domestic terrorist organization designation or the opening of a nationwide case based on a violent ideology, there is no central repository to collect or even count on—or do counts, measure statistics. We have to rely on Bill and George to tell us statistics because there is nothing really to harness that information. It could be civil rights in one jurisdiction. It could be a domestic terrorism viewed threat in another or a firearms violation. So

there is no way to really get your hands around what the scale or scope of the threat is.

I actually go to outside researchers. Moonshot CVE does national maps. I could pick out jurisdictions. I think I have the map even here. I brought it with me. But I could go to these jurisdictions, and I would be like none of these red dots are surprises to me. We have had many cases over the years of violence.

The same thing in the online space. I could tell you there is a significant white supremacist threat after Christchurch just in terms of the online uploads of that video.

Senator HASSAN. Right.

Mr. WATTS. 1.2 million stopped at the time of upload, I think, at Facebook; 300,000 more were taken off. I call it the "iceberg theory." That means under the surface you have a massive support network online around the world and in the United States that is helping boost that ideology, which is going to further increase the pace of attacks, which is directly what you are talking about with those incidents.

It also creates commonality around targets, so synagogues, African American churches, mosques, Hispanic locations with a Walmart. Those all have commonalities because the movement now collectively is starting to direct in terms of the targeting.

The problem for the FBI is, without some sort of designation or some nationwide case, there is no way for analysts or even investigators to report centrally in. When I was a brand-new agent, we would report all Sunni violent extremism to one operational analytical unit. They would then analyze it. They would make connections and parse out leads to other investigators. At this point it is almost impossible for a domestic terrorism investigator in the FBI or DHS who is out there on their own to really piece it together. They almost have to do it in a grassroots way throughout the organization. So there has to be some sort of designation and measurement, but also to help those investigators be more preemptive.

I think the other part is we know where they are at, right? It is not just these locations. It is Gab. It is Telegram. And if I were trying to close on those, I would not ask anybody in government. There are researchers outside in public that I would go to that could tell me exactly what is going on in those environments. I feel like the Federal investigators are way more limited in that regard.

Senator HASSAN. That is helpful, and I am going to submit for the record[1] a question to you too about the way we could improve information sharing, State, local, Federal, similar to what we do do for foreign terrorism.

But I wanted to turn to Mr. Chesney because you had referenced him, Mr. Watts, about the legal impediments we have that make it so hard for us not only to gather the information but then to really prevent this kind of terrorism. I would just like you to expand on your previous answers and help us understand that.

Mr. CHESNEY. Thank you, Senator. I would argue that it is not really a legal constraint. It is a question of commitments. It is cultural perceptions within the agencies about what is in scope, what is out of scope, and so forth. And here is why I say that. Maybe

[1] The questions from Senator Hassan appears in the Appendix on page 159.

we should disaggregate the problems a little bit. One of the questions is: Can we get the national coordination that we need to have in some though definitely not all cases, but in some cases? There is not a legal obstacle to doing that, I believe. There is nothing in the Constitution that would preclude that. I do not think we have any statutory obstacles.

Senator HASSAN. Right.

Mr. CHESNEY. It is an internal organizational question about——

Senator HASSAN. I think what I am trying to get at, though, is in your testimony you have indicated that there are gaps in terrorism law that impact domestic terrorism charges. So can we focus on that?

Mr. CHESNEY. Sure. OK. So setting aside investigation.

Senator HASSAN. Yes.

Mr. CHESNEY. I argue in my testimony, in my remarks, that we should close the gap in the scope of substantive Federal criminal law to reach gun-based terrorist attacks that would have been, if carried out with explosives, within the scope of the so-called and misnamed WMD statute. That is the major gap. I also argue that actually the scope of Federal criminal law is much broader in this area than many people appreciate already.

Senator HASSAN. OK. That is helpful. I have more questions, but with only 30 seconds, I think I will turn it back to the Chair.

Chairman JOHNSON. Senator Carper.

**OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. Some of us wanted to hear those other questions, but I will go ahead.

Our thanks to all of you for joining us today. My thanks to our Chair and to our Ranking Member for pulling this together.

It was not that many years ago—I think it was 2016—that the Chairman and I worked with the Department of Homeland Security and stakeholders on a bill to address violent extremism, and our legislation would have done a number of things. It would have created an Office for Partnerships Against Violent Extremism, as Mr. Selim will recall, within the Department of Homeland Security.

Building on Mr. Selim's work in the Obama Administration, our bill would have established an office reporting directly to the Secretary to lead the government's efforts to counter violent extremism. And, further, our bill would have put in place important accountability measures to protect civil rights and civil liberties and ensure congressional oversight of Administration efforts to counter violent domestic terrorism.

That bill passed out of this Committee. I think it was on a voice vote, but it passed without opposition, as I recall, over 2 years ago, but it was not taken up by the full Senate. Since then, the current Administration has rescinded grants administered by that office, cut its budget, renamed it not once but twice, and created additional reports between the Director and the Secretary.

Now, I would just ask you, Mr. Selim, could you just share with us today some of your thoughts, please, on the need for congressional oversight of Administration efforts to counter domestic terror and violent extremism? And the second half of my question would be: Do you think that statutory authorization, including strong re-

porting requirements such as were required in our bill, are a good first step?

Mr. SELIM. Senator Carper, thank you for your question, and I am grateful for the opportunity of having appeared before both you and Chairman Johnson before on this specific issue, and I appreciate the diligence and the sincerity which you and other Members of this Committee have given this over the years. So thank you for your question. I think it reflects some of the history that you and this Committee have brought to this issue specifically.

Two initial points to start to answer your question. It is important to point out, as a number of Members of this Committee have noted already, data drives policy, and it is so important when we are making policy in the homeland security or in the national security space to have the data that drives and depicts the accurate—the threat or risk that we as a country face.

One of the pieces of legislation that is pending right now that would support achieving a clearer picture is the DATA Act that I think is pending before both the House and soon to be the Senate. This is a key piece of legislation that I think can fill some of the critical gaps, and I would urge this Committee to help——

Senator CARPER. There have been several DATA Acts, even in recent years. Do you recall the prime sponsors in the Senate?

Mr. SELIM. I will put that in my written response if that is OK, Senator.

Senator CARPER. Thanks.

Mr. SELIM. I have it here in my notes, but I do not want to waste too much of your time.

The second thing to address your question specifically is a pending piece of legislation currently titled the "Domestic Terrorism Prevention Act." This does, again, what a number of Members of this Committee have noted in terms of codifying into law the resources tailored to the threat picture today. As this Committee attempted to do several years ago and is interested in engaging on again today, having an accurate picture to make data-driven policy and programmatic decisions, coupled with statutory appropriations and authorizations of offices that require reporting on an annualized basis, can help give this Committee and this Congress a better sense of where these trends are going year in and year out and where resources can be more accurately applied.

Senator CARPER. Alright. Thanks very much.

Mr. Braniff, a question for you, if I could. Tragically, in recent years we have seen an increase in targeted violence, especially gun violence perpetrated in our country. In horrific instances, we have seen domestic terrorist attacks against minorities. They have occurred against people of color in Charleston, South Carolina, against immigrants in El Paso, Texas, last month, and against religious groups in places of worship such as mosques all around our country and in synagogues and any number of places from Poway, California, to the Tree of Life synagogue in Pittsburgh, Pennsylvania.

Mr. Braniff, you lay out your extensive data graphs in your testimony highlighting the rise of domestic terrorism in the United States, looking back I think as far as the 1970s. And we have seen these attacks surge in just the last couple of years. Could you just

highlight for us what you believe to be the main reasons for the most recent spike in domestic terrorism in this country? The main reasons for the most recent spike in domestic terrorism in this country.

Mr. BRANIFF. Thank you, Senator Carper. We should note that domestic terrorism is a persistent threat in the United States, so there has been an uptick in recent years, but it is not like it came out of nowhere. There is a very large population of individuals who have espoused violence to advance a political agenda in the United States, and that is more of an enduring fact than a recent trend.

In recent years, we have seen an uptick in violence emerging from those extremist movements, and I think there are probably a host of reasons. We are talking about political violence, and political violence and politics are interrelated. That is uncomfortable and true. There appears to be an emboldened movement in the United States over the last several years, and we see things like targeting preferences shift according to political rhetoric. So the anti-immigrant verbiage or political rhetoric is reflected in anti-immigrant targeting.

We also see social media or online platforms that enable the most virulent of these individuals to find each other online and to exacerbate one another's tendencies. Researchers might call this the "gamification of violence," where one individual seeks to one-up another that he or she has never met, but tries to get a higher body count in their next violent attack. This kind of deviant behavior facilitated online allows individuals to group-think themselves into greater and greater levels of violence.

You are correct in your question when you referenced firearms. The availability of firearms, although that is not new, is interrelated with the level of violence, and we see in the United States by far firearms are involved in most lethal terrorist attacks—and the most lethal terrorist attacks involve firearms.

Senator CARPER. Thank you for, I thought, an excellent answer to a pretty good question. Thank you.

Chairman JOHNSON. Senator Rosen.

**OPENING STATEMENT OF SENATOR ROSEN**

Senator ROSEN. Thank you to Senators Johnson and Peters for holding this important hearing, and I want to thank the witnesses, of course, for being here today to talk about this incredibly important and extremely challenging issue.

And so the recent rise of extremism and domestic terrorism we know is a serious threat. We have seen far too often across our Nation, from El Paso to Pittsburgh, from our houses of worship to our schools, and it requires a concerted effort on the part of Congress and our State and local partners.

As I said in last week's Commerce Committee hearing on online extremism, however, we cannot ignore the fact that the absence of sensible, common-sense gun safety measures like background checks is allowing hate-filled individuals who wish to commit acts of terror to access dangerous weapons far too easily.

I hope that, alongside this important push for gun violence prevention, today's hearing on this rapidly evolving homeland security threat helps us better tackle this Nation's ongoing challenge with

white supremacy, anti-Semitism, and other hate-filled domestic terrorism.

But I would like to turn to UASI reform for a moment. As we approach the 2-year anniversary of the October 1st shooting in Las Vegas—I represent Nevada; I live in Henderson, not very far from where the shooting was, as a matter of fact, the deadliest mass shooting in modern American history—we in Nevada are not only reminded of the pain our community felt but how the threat posed by mass violence is present now, and we hope not but possibly in the future.

So despite this and despite the fact that Las Vegas had more visitors than any other year last year in history, the Department of Homeland Security's principal program for funding urban security, the UASI grant, does not take into account the unique challenges faced by a city like Las Vegas. The UASI funding formula—I want to explain this to you. If you have ever been to Las Vegas, we have the beautiful Las Vegas Strip, great downtown area. It treats those 30 major hotels, casinos, on the Las Vegas Strip as one entity. Our airport, of course, right next to where the shooter was on October 1st, another piece of critical infrastructure. We have a vast convention meeting space, all of them soft targets. Although we only have about 3 million people in Nevada, about 2 million in Las Vegas, nearly 50 million people come there each year. So between the Strip and downtown Las Vegas, over 100,000 hotels rooms, critical infrastructure.

We have Hoover Dam, Nellis Air Force Base (AFB) just a few miles off the Las Vegas Strip, major data storage centers, our Nevada test and training range, and our Nevada national security site. So, in statute, UASI does not consider this.

What I want to ask you is this, and whoever would like to take it, please feel free. How should we re-evaluate what constitutes a possible domestic terrorist target? And how should we rethink our definition of critical infrastructure as the terrorism threat evolves? And do we consider in Nevada that Nellis Air Force Base, the training range, the nuclear test site, Hoover Dam, and 50 million visitors are all within a small space? How do we add that to the formula? Please.

Mr. SELIM. Senator, if I may, I would like to maybe attempt to start to answer your question. Thank you for outlining a number of those key issues. I am very familiar with the UASI formula, and I want to make two important points before I get to that that you accurately touched on in your statement as well.

Two data points to share with you: that over the past 10 years, firearms were used in 73 percent of domestic extremist-related killings in the United States. So in a major metro area like Las Vegas or other parts of Nevada, the preferred weapon of choice to commit an attack is, in fact, without question a firearm.

And you also mentioned in your opening remarks addressing the hate and bias and anti-Semitism and bigotry that is often the underlying issue that drives many of these attacks. It is so important for there to be increased training, resources, and engagement with State, local, and community-based partners to help address what is often the precursor to much larger incidents.

One of the things that we have looked at very closely and that ADL is supporting is a current piece of legislation known as the "NO HATE Act." I think this does provide a significant increase in resources to State, local, and community-based organizations to incentivize the reporting and training and engagement on hate-and bias-motivated incidents. I think as we start to think through making better risk-based decisions for resources, having better data to drive that information is a key starting point.

I would offer that as something for you to consider.

Senator ROSEN. So we need risk-predictive analytics, would you say?

Mr. SELIM. Yes, Senator.

Senator ROSEN. Please, Mr. Watts.

Mr. WATTS. Senator, so when we are doing a risk-based assessment, we would usually do two types of assessment. One would be a vulnerability assessment, which Las Vegas could be applied pretty consistently across a wide range. And that is where you are looking at the potential targets. But that would be matched with a threat assessment. We did not do this very well 10 years ago, so oftentimes I would be on a Joint Terrorism Task Force training team. Bill and I worked together on this. We would go out to—I will give you an example—Louisville, Kentucky, to talk to them about al-Qaeda, and they would be like, "We have no interest in this, but we have other interests in other threats we are interested in."

So along with just allocation in terms of resources, I think it is making a menu or options for how you allocate UASI funding for different things that are needed by those locations. It is not just an even map. The vulnerability assessment of Las Vegas is going to be wildly different from New York City just in terms of how it lays out as a city——

Senator ROSEN. But would you think that categorizing the Las Vegas Strip as one entity does not seem correct on its face?

Mr. WATTS. No. My vulnerability assessments would be based on the type of venues, types of structures; transportation nodes are extremely important. But then on the threat assessment, too, it would be wildly different for Las Vegas than it would be possibly for New York City or Charlotte, North Carolina, or any of these locations.

So rather than making a very cookie-cutter "everybody gets the following," I would like to see UASI allocation on both the vulnerability and threat assessment side be allocated in a way that makes sense for local jurisdictions. And I think that is bringing in State and local partners. We have fusion centers now which really under——

Senator ROSEN. We sure do——

Mr. WATTS. Tons of them, right? Which understand these threats at a local level better. New Jersey State Police and the Office of Homeland Security there I have worked with for about a decade, and they have done a pretty good job of twisting that. But their UASI funding is coming out of New York City predominantly. That is how they are doing it. And so there are constant battles about what to allocate on, and oftentimes it is the Federal Government

pushing down, this is what you need to focus on, and State and locals saying, "But this is what my problem is."

I would like to see better risk integration from State and local up to the Federal level.

Senator ROSEN. I look forward to working on that. Our fusion center brings together about 27 groups, and that was the reason the October 1st tragedy was not worse than it was. And so I look forward to working with you on re-evaluating the formulas in the future.

Thank you.

Chairman JOHNSON. Senator Scott.

**OPENING STATEMENT OF SENATOR SCOTT**

Senator SCOTT. Thank you, Mr. Chairman. Thank you for holding this hearing today. And thank you all for being here.

I just finished 8 years as Governor of Florida, and we experienced a variety of shootings. We had the Pulse Night Club. We had an individual whose father was an FBI informant who was, my understanding, supposed to be under FBI investigation or surveillance, who killed 49 people.

Then we had an individual from Anchorage that went to the FBI office in Anchorage and said, "I should not have a gun," and then they gave it back to him, and then he came to Florida and pulled his gun out of his checked suitcase and killed five people in an airport.

Then we had 17 people killed at Parkland. The FBI had a YouTube video 18 months before it happened. He said he was going to be a professional school shooter, and his name was Nikolas Cruz, the shooter, and nothing happened.

Then I think 35 days before the shooting, the FBI, the tip line, somebody called and said this guy—the shooter, was going to shoot up a school, and it was never passed on to local law enforcement.

Finally, right before I finished, as Governor three people were killed in a yoga studio, and the information had gone to the FBI hotline but not to the locals.

I worked a lot with our fusion centers on a variety of issues at the State level. We were working with the FBI and other agencies, the U.S. Attorney, the Florida Department of Law Enforcement. They really did a good job. But there is something that is not working at the Federal level that there was prior knowledge, and we had four mass shootings, and, the lives of so many families have been completely changed because of this.

So what ideas do you all have that we should be doing at the Federal level? Is there something different that the FBI should be doing that they are not doing to try to stop this? Because in those four cases, there was prior knowledge in Washington, but it did not make it to the local level. Mr. Watts or Mr. Braniff, do you want to start?

Mr. BRANIFF. Thank you, Senator, for the question. So what we have been discussing today is the fact that the threshold, the legal threshold that allows the FBI to conduct investigations is quite high for these kinds of general or vague threats that may result in violence. So if the threshold for legal action is quite high, logically

we need more tools in the pre-criminal space, in the civilian space to receive that information.

One problem is people often hear things, and they either do not take it seriously or they are afraid to call the FBI with that information. They do not want to get somebody in trouble. So, one, we need a place to capture those tips that is a non-criminal justice entity to increase reporting.

Two, when people do call the FBI but it does not hit the threshold for an assessment or a preliminary or full investigation, the FBI needs to know it can turn to a civilian-led intervention team. We do not invest in that.

Chairman JOHNSON. Let me just stop here. Stop the clock. I want to ask the question: What Senator Scott just talked about, did it meet that threshold or was it under the threshold?

Mr. BRANIFF. A general statement that "Jews should be killed," that "I want to become a school shooter," may not make a legal threshold for an investigation by the FBI. And, in fact, if we put everybody under investigation who made a statement——

Chairman JOHNSON. "I have a gun, and I should not have it"?

Mr. SELIM. Can I answer that, Mr. Chairman?

Chairman JOHNSON. Sure.

Mr. SELIM. If I may, just 10 seconds. If it may not reach the threshold for a Federal criminal investigation or assessment, it should absolutely meet the threshold for perhaps a nongovernmental organization (NGO) or State and local authorities to conduct the type of things that this panel has mentioned of interviews, engagements, mental health, social service, education providers, meeting and making contact——

Chairman JOHNSON. So, again, the question—I do not want to put words in your mouth, but there was a failure here. Do we acknowledge there was a failure? You can sit there and go, "Hey, we need more resources." But here are some examples where I would think we had legal authority, we could have done something. We did not. And I think the key question there is: Why not? And how do you prevent those types of law enforcement failures?

Again, I am not trying to beat up on anybody, but I think Senator Scott is laying out a pretty convincing case.

Mr. CHESNEY. May I contribute something from the recent experience in Texas with the El Paso shooting, my home State? The mother of the shooter had called local authorities, and it is a small police department with limited resources, limited training, had not gotten that push toward how do you do proper threat assessment in a situation like this. But the local officers went by and had a conversation. There was no basis for arresting somebody. At least in Texas we do not have red flag laws that might enable a process of civil action to remove someone's gun from their possession. That is a big part of this story. We have not talked about that. We all understand how hard the politics are in that, but that is a big part of the story as well.

It was not a civil commitment situation yet. There was not enough evidence for that. And yet, in retrospect, it is clear. There was the tip; there was the warning; there was the opportunity for engagement.

And I want to reinforce what Professor Braniff said. One of the things we could be doing, that Congress could do effectively, is to surge resources into the threat assessment mechanisms that are being developed, in some places deployed very effectively. I believe the Secret Service works closely with local school officials and school resource officers, as Mr. Watts mentioned. Those sorts of early warning signal systems are critical. And, of course, we are now spread far beyond just terrorism.

Chairman JOHNSON. But, again, we had the early warning. Again, I apologize to Senator Scott. I just could not constrain myself. Senator Scott.

Senator SCOTT. So you really believe that if somebody has a video and they say they are going to be a professional school shooter, that should not get sent down to the locals?

Mr. BRANIFF. It is not a "should." It is not a belief statement. When we look at our data, over 60 percent of domestic terrorist violent plots succeed. So they are not being interdicted by the criminal justice process. So I am agreeing that——

Senator SCOTT. But don't you think that they should have called the local FBI office in all those cases? I have been asking for more transparency of how they handled this stuff, and I have not gotten it from the FBI yet. Take Parkland. When you have the video, and you have a hot tip that it is going to happen, and it is somebody that has been arrested 49 times locally, and he was told he could not bring a backpack into school because everybody believed he was going to be a school shooter, that one, no one should have looked into it?

Mr. BRANIFF. Senator, please, I do not want to be misunderstood. Certainly there were opportunities for an interdiction. I would just like us to consider that not all interdictions are going to be possible via a criminal justice interdiction and that we should think very hard about how aggressive we want our Federal law enforcement community to be in investigating freedom of speech and freedom of association. This is one of the tensions within our Constitution, is that it affords a lot of speech, including hate speech, including speech that encourages violence. And this is a really challenging debate for us to have. How aggressive do we want to be?

Senator SCOTT. Well, what we did afterwards is we passed risk protection orders, where only law enforcement can do it. The process has to go through the courts. You have to constantly review it so we do not believe we have impacted somebody's due process rights. But we have to figure out—and what does not make sense to me is why can't I get information? That is more money, because I have now been in this process now as a Governor and here, and everybody wants more money. I get that. That is what they do. Everybody comes to my office asking for more money. I get that part. But why wouldn't we want to fix a system? The cases that happened in Florida, that ought to be fixed. And I do not think just saying throw more money at it and have lower standards is the right fix. It seems to me that those cases, that is a big enough deal that the information should have been sent down locally.

Mr. WATTS. Senator, can I quickly add to that? I do not disagree at all. That is a mistake. But I would also say that you might be shocked at the volume of tips and leads that come in to any FBI

office or DHS location, a fusion center, to where there is no real assessment mechanism. In international terrorism, we did do this. We did very rigorous assessment, even down to scoring systems overseas about who has the potential to be violent based on several factors. It is not done for mass shootings or suspects. We have not gone back through that.

The same thing, we did the Militant Ideology Atlas. We looked at all of these factors in terms of what people were citing. We looked at all the evidence. It has not been done because there has not been a designation of a case or a terrorist group at the domestic level, so it is hard to put that together.

So when you go to triage, it really just depends on who is on shift that day and what the backlog is. Sometimes that backlog, particularly after a violent incident like El Paso, more soar to 100 leads a day in an FBI office, which could create a lag that is enormous. And then you are just going through shifts. There is no real rigorous system for assessment, and it is just based on that person that day and what they think they should go through.

The other thing is with the social media part, I do not agree with this, but there is pushback that you are ruining the lives of young people whenever you aggressively go after them for one posting they have done in social media. And so if I actually went out on the Internet and sucked in every YouTube of a young person making a violent threat or some claim, we would maybe run down hundreds of young people every day. I agree, there were many warnings and indicators there. Omar Mateen is another example. We should have had some handoff mechanism with State and local to make that transition.

I also feel like we have made those triage systems and a good method to hand-off to State and locals so that they would know. That could be the Boston bombing, Omar Mateen, Las Vegas, a thousand different examples. And so we could help them do that, but I think clearly defining what to look for around these threats, whether it is a school shooter, workplace shooter, white supremacist, incel, which is this whole brand-new branch that has come up, I think that is extremely important to do.

Senator SCOTT. Thank you.

Chairman JOHNSON. Before I turn it over to Senator Sinema, I think, again, the whole purpose of this hearing is to understand the problem so we can determine do we need additional authorities, different allocation, or more resources. So, again, I will ask the question. You said "mistake." I would call this—it seems to me, I think, Senator Scott, this was a failure to use existing authorities. First of all, is that true?

Again, let us just talk about Parkland. Here you had a video. You had a long history. And, listen, I understand the volume. I do not think you have 100 threats like the perpetrator of Parkland come into the office. I would think that would be, like hair on fire, alarms going off with that one. Maybe I am wrong. Mr. Watts?

Mr. WATTS. Yes, I would just say each assessment, regardless of how serious it seems when it first comes in the door, takes the same amount of time. So I just recall certain day when somebody would post something on the news and say this person may be in the United States, and you are done for the day.

Chairman JOHNSON. But, again, that is like one notice. This was multiple notices over a very long period of time. So, again, you would admit that is a failure to utilize existing authorities that is just glaring. Again, I am really not——

Mr. WATTS. Right.

Chairman JOHNSON. I understand how difficult this is.

Mr. WATTS. Senator, I understand.

Chairman JOHNSON. So we do not need to pass a new law to address that. We just need to make sure that we use existing authorities. Is that true?

Mr. WATTS. Yes. I think it also comes down to what the FBI would investigate. Much of what the FBI gets pumped in terms of information, Parkland would be an example, maybe is not something that they are immediately going to move on, but it would be for State and local law enforcement. So I think it comes down to how does the assessment process get recorded and put into databases and managed, and then how is that triaged and transmitted down to State and local.

Chairman JOHNSON. And, Senator Scott, I am going to join you in additional oversight letters to get this information from the FBI, because we need to know what happened to assess this.

Senator SCOTT. Yes, because you want to get better—so what I did, after Pulse, what we did is we added 46 counterterrorism experts at the State level. We added, I think it was, about six or seven different offices for State law enforcement. But, again, in my State, the fusion centers work, but the information to get there first. They work really well.

Chairman JOHNSON. We are not beating up on—we are just asking these legitimate questions. By the way, law enforcement by and large is a State function. Senator Sinema.

**OPENING STATEMENT OF SENATOR SINEMA**

Senator SINEMA. Thank you, Mr. Chairman, for holding this important hearing.

The only way our Nation can successfully tackle a challenge such as domestic terrorism is by working together, so it is not a problem that the FBI can solve alone, nor is it something we can leave just to our local police and sheriff departments. But by sharing information, working together, identifying areas for improvement, and then actually coming up with solutions, we can actually make progress here. So I think we cannot let ourselves get caught up in arguments about what the perfect definition of "domestic terrorism" is, but instead we need to focus on solutions that improve Federal, State, and local efforts in this space.

I know the police departments in Arizona cities like Phoenix and Tucson are fully integrated into Federal task forces which are addressing this problem right now, and the Arizona law enforcement community wants to do whatever they can to help stop, prevent, and prosecute crimes that fall under domestic terrorism, so I am hoping we can continue to talk about how we improve our existing Federal and local partnerships.

My first question is for Mr. Selim and Mr. Watts. In Arizona, the FBI leads task forces related to domestic terrorism, and the Tucson police departments report these task forces are a great tool. But

both of these departments are large, and they can assign officers full-time to the task force. That is not the case for smaller departments in my State.

So what changes to the existing FBI task force efforts related to domestic terrorism need to be made so that smaller local law enforcement departments can access needed information and share what they are seeing on the ground with the appropriate Federal authorities?

Mr. SELIM. I will start with just a very short response, and then my co-panelists can jump in. Senator, thank you for your question, for your very important question about—I understood your question as the need for better integrated information sharing across the law enforcement spectrum, irrespective of the size of that department. And I would just add to that that the information sharing that is so critical that you are alluding to in your question happen not just with the size of State and local law enforcement, but as the other witnesses at this table have mentioned, the information sharing needs to happen outside of law enforcement circles as well, especially with individuals who may hold some position, school resource officer, mental health, social service, education providers, et cetera. It is really that integrated information-sharing platform that is what is missing when we are thinking about this issue holistically.

Mr. WATTS. I agree with George, and I do a lot of trainings with State and local law enforcement, and the further they are from a Joint Terrorism Task Force hub, the less information they are going to get naturally, and the more responsibilities they have across a wide spectrum.

The difference now compared to even 20 or 30 years ago is there are so many violent ideologies that are connected in a local rural area that a local law enforcement officer will never even be able to understand or detect or interdict.

So part of the solution is how do we quickly call them up and integrate them into these systems. We have task force officers spread all over the country. But the other part is: How do we interdict online? We do not always have to do all the work with that State and local person. Not all the interdictions have to be with community partners. We actually have people that see these things in the online space, particularly in Arizona. One, two, three would be white supremacy, incel, and even conspiracy-based violence, particularly in Arizona. I worry about all three of those. A local law enforcement officer cannot do all the criminal justice tasks there and understand all three of those that might pop up.

So how do we help them? I would like to see rapid briefings on threat, which means we have to do threat assessments first, and communicate that in a very concise way. We did this in the FBI during al-Qaeda-ISIS. We did quick cheat sheets, updates, even YouTube-type videos, short videos, which inform people on threat. And then the second part is online partners can be critical in this. There are several out there that do one-to-one engagements in both the international terrorism and domestic terrorism space, and we could lever them to do quick engagements with individuals, assess them, and then relay that information back in.

I think we tend to think always in terms of our responses being this physical task force team moving out, but there are online interventions now that we have actually honed in the jihadist space that we could use in the domestic context.

Senator SINEMA. That is very helpful.

My second question is also for the two of you. One of the great challenges that always comes up with Federal programs is, of course, information technology (IT). So task forces and other groups are important, but making sure that local departments can interface with key Federal databases is also important.

So have you come across IT challenges that hamper information sharing? For instance, one of Arizona's police departments reports that it is difficult to access certain threat profile software programs, partly because the licenses to use these programs are cost-prohibitive and there is no money to provide additional access.

Mr. WATTS. That is absolutely correct, and it is not just in terms of the databases and access. They need training in terms of how to utilize them and effectively communicate on them. And then the third part is cybersecurity, which is really a separate debate, which is if you have seen Baltimore or any of these cities right now that have been struggling with cybersecurity attacks, that is partly because they are so underresourced in the technology space and the solutions are so costly. And the larger cities can fund that both internally and through Federal grants.

So I would love to see some way to help State and local law enforcement get integrated in terms of these communication mechanisms. Right now it is still based on a phone call. That is how most of this would be communicated, and that is really tough to do, I think, and expect them to have rapid response and triage and interdicting it. I do not know how they get up to speed quickly enough that they could really understand what to do.

Mr. SELIM. Senator, thank you for your question. Let me add an important data point to this just to give you a sense of this threat environment. As of September 1, 2019, as an executive within ADL, a nongovernmental civil society organization, we are not bound by the degree and scope of information that we can retain. And so as of September 1st of this year, we had provided as a civil society organization over 400 reports or bulletins and information that has been packaged to Federal, State, and local authorities across the United States. That is just on average more than one per day this calendar year alone. We are on track to supply law enforcement information collected from the online environment more than 600 times. And part of the advantage of being a nongovernmental organization is we can take that data, we can retain it, we can store it, we can analyze it in different ways, and we can hold onto it in perpetuity.

When I was the Director of the Interagency Countering Violent Extremism Task Force, that was not the case in the Federal Government. The rules and limitations on data retention and threshold and database development are extremely cumbersome to some degree, where if there is not a real or perceived nexus to a crime, that data cannot be held on a Federal Government computer. But as a nongovernmental organization, if, God forbid, there is another mass shooting or domestic terror attack tomorrow—and I really

hope that there never will be another one, but God forbid if there is, the ADL can quickly go through our records and determine if the alleged shooter had ever posted or kind of made some type of insinuation, as Senator Scott was referring to, of a mass shooting or something else.

And so the ability to collect that data, analyze it, retain it for long periods of time exists outside of government, and similar considerations for data retention and analysis and some of these things that are prescribed in the DATA Act that is currently pending before Congress should be considered to have a more accurate depiction of the threat environment.

Senator SINEMA. Thank you.

Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Hassan has a quick question.

Senator HASSAN. Yes, thank you, Mr. Chairman. And I will just observe, too, that after 9/11 we put together a real counterterrorism architecture that allowed for some of the kind of information sharing that we are talking about at the domestic level that is not happening and has not been resourced. So I hope we could focus on that moving forward because I think that that is one of the real deficits we have been talking about.

The quick question I had was for you, Mr. Selim, because 2 weeks ago we were all in New York City right before 9/11, having a field hearing at the National Memorial and Museum, which was an extraordinary place and it was—thank you to both the Chair and the Ranking Member—a wonderful and important opportunity. We had three former DHS Secretaries there, and one of the things we talked about with them was about the recent rise in threats against and attacks on houses of worship across the country.

Everybody agrees no one, regardless of their faith, should fear for their lives when they go to their house of worship. That is where we want them to feel safest, and that is where they should be safest.

Your organization has recorded 1,879 anti-Semitic incidents in the United States just in 2018, including the deadly attacks in Pittsburgh, not to mention the attack earlier this year in Poway.

In New Hampshire, one rabbi noted to me that now they only open the doors to her temple shortly before services begin, and they lock the doors shortly after the start of services. As she leads her congregation during those minutes when the doors are open, she said she wonders, "Is this the night we die?"

So, Mr. Selim, can you share with me your thoughts about how Congress, the Department of Homeland Security, and the entire Federal Government can work with law enforcement and community organizations to keep soft targets like houses of worship safe from threats? I worked with Senator Portman on getting grants to houses of worship of all sizes in all communities because New Hampshire is a small State, we are a rural place, we do not always qualify for the big urban grants. But what else can we be doing to work to really keep soft targets like these safer?

Mr. SELIM. Senator, thank you for your question, and thank you for making such a sober point in this testimony about the fear that really tears at the fabric of faith-based communities across this

country. It is very real, and it is something that many communities live with on a day-to-day basis.

For context, even going back to pre-9/11, for more than three decades ADL has been a leader on the issue of security for communal organizations, especially for schools and synagogues, and it is obvious just based on your question that the Jewish community and the data that ADL has recorded in 2017 with a 57-percent increase in anti-Semitic incidents across the country has been a significant target of hate crimes and bias-motivated crimes.

The FBI and DOJ's own data for calendar year 2017 shows a 17-percent increase in hate crime surge across the United States. It is so important that as we think about protecting any house of worship or any faith-based or vulnerable community in this country, irrespective of race, religion, ideology, or sexual orientation, that we are doing so mindful of the threat environment that we are in today.

And so one of the things that ADL has continued to lead—and we welcome partnership with other governmental and nongovernmental organizations—is working to increase the awareness of the threat environment as well as partnering with organizations that do teaching and education on preventing targeted violence and mass attacks across the United States. I think much of the work that has come out of the Federal Government in this regard for teaching, training, education, and partnerships across faith-and community-based groups has been foundational, but much more resources and personnel need to go into these efforts to increase a State of preparedness, if you will, across all communities that could be vulnerable.

Senator HASSAN. Thank you very much, and, Mr. Chair, thank you for your indulgence.

Chairman JOHNSON. Thank you for attending the hearing.

I want to go right to Professor Chesney. In your testimony, both written and verbal, you talked about gaps in laws. I know in your written testimony you were talking—one example is the caliber of a weapon used. It is true that most criminal law is State law and enforced at the State level. Within those gaps, are a lot of those gaps covered by State law as well?

Mr. CHESNEY. Yes. It is important never to lose sight of the fact that State law has comprehensive coverage as a matter just of general violent crime statutes across the Nation for all the scenarios where we have an actual violent act. I think there is no scenario, once you have a completed act or an attempted act or conspiracy to do the same, where you could not bring any charges.

Chairman JOHNSON. So that is my point. So what do the gaps in Federal law—what problem does that create? We just heard Mr. Selim talk about the fact that we cannot hold data for constitutional reasons. Describe what problems that creates in terms of the gaps in Federal law when those gaps are filled, once the act is committed, by State law.

Mr. CHESNEY. Alright. So if I understand the question right, the issue is given that there are some gaps in Federal law but not at the State law level.

Chairman JOHNSON. Kind of what is—so?

Mr. CHESNEY. So does it really matter, right. There are a couple of arguments that are commonly advanced. I think there is some merit to these. I will articulate them.

First of all, there is an argument about the important symbolism of what is Federal criminal law covering and what does it not cover. And every single time there is a domestic terror incident—and, unfortunately, in Texas we have had plenty of repeat examples of this—one of the first things that tends to come up with the reporters and, thus, with the public at large is: Why isn't there a terrorism charge here? Why isn't there a terrorism charge here? Do people not think this is serious? And the response is, well, the district attorney (DA) in El Paso has indicted for capital murder. It does not get more serious than that. It does not matter. There is no terrorism charge. Where is the terrorism charge? So there is something to be said for showing that.

Separate from that, there is concern—I think Mr. Watts' testimony has really highlighted this. There are spillover effects into what investigative predicates are available for Federal law enforcement. Insofar as we want to focus on that, not losing sight of the fact that State law enforcement can do its own investigative work, but, nonetheless, what the Feds can do really matters, and if there is a real or even just a perceived lack of ability to go into certain areas because of a lack of potential downstream charging options, that is a problem as well.

Chairman JOHNSON. OK. So that really needs to be properly defined, because I also believe in your testimony you talked about—I do not want to put words in your mouth, but there are concerns about, for example, like we can designate foreign terrorist organizations, there have been some suggestions to provide those investigative abilities, start designating domestic terror organizations. Can you describe your concerns about that?

Mr. CHESNEY. So the designation phrase could mean a lot of different things, and the consequences that follow from having any kind of designation really matter.

In the foreign terrorist organization context, famously there are really serious consequences because the material support statute attaches just a blanket embargo, criminal penalties for any association, including even being an active member of the group yourself. I do not see many people talking about doing that in the domestic space, nor do I think we should do that.

So we have to make sure we are clear. We are not talking about——

Chairman JOHNSON. You could make criminals out of just normal citizens who are contributing to what they consider is an OK organization.

Mr. CHESNEY. The First Amendment consequences that follow from this, we do not want to go there. Will it help in some fashion to have some other—not that but some other form of designation process that would be focused on domestic terrorist organizations? There is a problem here that a lot of what is going on in this problem we are all engaging with here does not root back to identified, specific, articulable organizations in the first place. There are common ideologies and there are social networks, but I think Mr. Watts' testimony highlights this. We are not talking about com-

mand-and-control networks. At least, that is not what I see from the outside. So the designation mechanism in that formal sense probably also is not a great fit for this problem set.

Do we need to have something, though, to facilitate the FBI in particular in being able to open and advance through the stages of investigation something that approximates what Mr. Watts described as the national approach? When you have an al-Qaeda, it is really easy to get a nationwide investigation going. Is there some analog to that? I think we should avoid the phrase "designation" because it leads to these other issues, but something that would make sure that the FBI is more clearly taking advantage of the expansion of counterterrorism prevention authorities that the AG Guidelines invite.

Chairman JOHNSON. So here is the concern, going back to what issue Senator Scott raised, is here you have existing authorities where there is just a failure of using those, and now we want to create new authorities that create certain problems.

In Robert Bork's book, which I thought was a pretty prophetic book, in 1996, 2 years after Yahoo! was established, he talked about these deviants, isolated deviants now having this tool, this Internet, where they can start connecting to other formally isolated deviants, and that is kind of what we are talking about.

With international terrorism, Islamic terror groups, there is that kind of core group, core ideology, and people are connecting to it. How many connections do we know about? How disconnected are these groups? Is it just that those isolated deviants now being able to connect to this Internet and realizing—it maybe not a core group. It is maybe not an organization. But they are just feeding in copycats, and then literally how do you combat that within the framework of a constitutional government where we recognize people's constitutional rights?

Again, I will go back to what I think is the easiest way to describe this. How does America in a free and open society deal with individuals that are not guilty yet? Mr. Watts.

Mr. WATTS. Senator, great example. So there are two things. If I went to the best domestic terrorism investigator in the FBI right now, and I said just go stop the next person that you think is going to do a terrorist attack in the United States, they would probably go to Telegram. And then you would have to——

Chairman JOHNSON. They would do what?

Mr. WATTS. They would go to Telegram, which is a social media platform.

Chairman JOHNSON. Oh, OK.

Mr. WATTS. They would see that as, OK, this is a place—or 8chan, as we saw in some of the previous ones. Then if you are the Special Agent in Charge (SAC) out in that jurisdiction, you would say, "OK, what is the case that you are investigating?" And he would say, "Well, I am trying to stop a domestic terrorism attack." "What charge?" He would not have one, right? So that is one problem.

The second part, though, is we do have opportunities to designate foreign groups right now that could give us the predicates to open cases back into the United States. I do not want to name——

Chairman JOHNSON. If they are connected to a foreign group.

Mr. WATTS. Yes. I could think of four right now that the State Department could potentially designate as an international terrorist organization that do not line up with jihadists that could open the doorway so that you could look for inspired terrorism, and in much the way we did it with al-Qaeda-ISIS, just not traditionally the way we think. Now, that is a back-ended way to do that, to open that up, but it would make it easier for them to enter into those spaces.

But I feel for the domestic terrorism investigator because I know they are nervous, even when they are moving forward. "I do not have a specific individual. I do not have a specific crime. I just know this is a violent ideology. It is pushing people, and I know this is where they are doing it."

Chairman JOHNSON. Oh, yes, it is a vexing problem, and I am going to ask indulgence from Senator Peters here. And I am not beating up on the FBI. I truly appreciate your past service, and I know the difficult nature of what they are trying to deal with. But we had the Garland shooting, and there were two perpetrators there. Again, I do not like naming them. And this is a letter I wrote, and in that letter I said, "According to reports, during that time the FBI paid [informant name] around $132,000 to gain intelligence on one of the perpetrators," allegedly also sending text messages to this perpetrator that read, "Terror of Texas." I think it was also true that there were multiple meetings at coffee shops or whatever.

Again, if I am part of a community and I have FBI agents, again, concerned about issues, there is somebody who said some nasty things, then you have an FBI informant having coffee. You could almost call that incitement. Talk a little bit about that. That is a real problem. There have been other cases, and they are celebrating, we have stopped a terrorist incident. Is it a terrorist incident that we literally incited? Did we plant an idea in somebody's head who was just going off half-cocked?

Mr. WATTS. This was a challenge throughout the al-Qaeda-ISIS era, which is where is the line between incitement and entrapment, where you are pushing a potential suspect to that. Over time, if I am correct—and I do not have the data in front of me—declination rates from U.S. Attorneys went down, meaning—or went up. They were declining more cases even under that circumstance where they were being let go.

I think the other problem with a lot of those cases is the borderline of what ideology, violent ideology, were they adhering to. Oftentimes they did not know. And the further you get away from a named group—you could see this in Phoenix right now. There was a case recently where an individual was citing both al-Qaeda-ISIS propaganda and white supremacist propaganda at different times. It was very confusing whenever you get away from that. So what is it you are investigating? And so I think it is a persistent problem around that. Part of it is measurement. If we do not have the measurement and we do not really consolidate it, it is very difficult.

I would also say that even for the investigators, they do not necessarily know where that line would be, and we have not informed them about how to do that. They would maybe not know where am

I pushing someone to violence versus adhering to an ideology that is mobilizing someone to violence.

Chairman JOHNSON. I will turn it over to Senator Peters here, but, the point of this hearing is just, again, that first step, to kind of flesh out how difficult this problem is. Social media companies, I have been dealing with them. They have done an awful lot about taking down these sites, whether it is Islamic hate sites or other hate sites or Russian interference in our election sites. But it is not a perfect system. And there are real concerns about political bias being put into their activities as well. So this is an incredibly difficult issue, and that is why we need to have, as I think this hearing was, just a very high quality discussion fleshing all these things out. We have a long way to go, but it does—I am an accountant, a business guy. You need information to manage any kind of problem, and so we kind of want to work with the departments, with you folks, to help codify what needs to be codified but develop that baseline information and then continue this discussion, because we are not going to come up with anything anytime real soon on this.

But my final statement would be I am very encouraged, having read all your testimony and then reviewing what the Department of Homeland Security has published here, how they have to implement it. But I think even you, Mr. Selim, I would think you would be pretty pleased by what you are reading here in terms of what the direction is.

Mr. SELIM. Absolutely.

Chairman JOHNSON. That is great. Senator Peters.

Senator PETERS. Well, thank you, Mr. Chairman. Just a couple followups, and, again, I agree. This has been a very productive and great conversation and the first of what will have to be more conversations as we continue to think about this.

I ran out of time in my questions. I want to ask Mr. Selim basically the question I asked Mr. Chesney at the very end. If you could speak to some of the concerns that communities that are targeted by white supremacists have about expanding domestic terrorism authorities. Are there concerns out there that you are hearing?

Mr. SELIM. Sure, and let me just, Senator Peters, thank you for your question and express thanks to both you and the Chairman for holding this hearing in such a bipartisan and inclusive way. I think it is really demonstrative of the work that you all and the Committee staff is bringing to this very important issue.

To answer your question specifically, Senator, there is a reason that this has not been done to date. And as the Chairman was alluding to earlier, this is very difficult and it is very hard. There has been a history in this country of law and policy that has disproportionately and disparately impacted ethnic and religious minority groups. I say that from the standpoint of between 2006 and December 2012, I served as a Senior Policy Adviser in the DHS Office for Civil Rights and Civil Liberties. I saw firsthand the disparate impact of post-9/11 law and policy that had on Arab, Muslim, Sikh, and South Asian groups and individuals who were perceived to be members of those groups. So the fear from many community organizations, including the ones I mentioned, is very real because, as

a country, we have a history of mistrust between law enforcement organizations and communities that in some places is better and worse in others. As an organization that is a founding member of the Leadership Conference of Civil and Human Rights, it is important that we mention, as we begin to consider and as Congress begins to examine this undertaking, that any measure we take, either legal or policy-wise, that we do not disproportionately harm communities that are already the target of white supremacist and other violent extremist ideologies.

And so it is really important to underscore the protections that need to be put in place, the congressional oversight that is required, the privacy, civil rights, and civil liberties oversight that needs to be conducted. And as you all begin to consider legislative solutions, those factors are critical as Congress begins to examine this very important topic.

Senator PETERS. Thank you.

This question is for you, Mr. Chesney. It seems as if the decision of when to call a crime "terrorism" has largely been subjective. I say that for the reason—a couple of examples here. The FBI declined to investigate the Heather Heyer murder in the Unite the Right rally in Charlottesville as a domestic terrorist, and yet 2 years later, with mounting public concern over attacks by white supremacists, the FBI announced that both the El Paso shooter and the Gilroy Garlic Festival shooter would be investigated as domestic terrorists.

What explains what appears to be an inconsistency in the FBI's determination of whether or not to investigate a perpetrator as a domestic terrorist?

Mr. CHESNEY. So the first thing I would say is that there is, as you say, a certain amount of subjectivity in the mens rea elements of both the very statutory definitions and the non-charging regulatory definition such as the FBI regs that talk about this. There is the requirement that there is an intent to coerce a government or to intimidate a civilian population or part thereof.

There is a wide spectrum that runs from things that are very clearly designed to be in that zone and that fit that very well and things that could be described as having that effect, but perhaps it is not obvious as much. So there is bound to be a lot of marginal calls. I am not suggesting any of the examples you mentioned are such marginal calls, but there is always going to be a little bit of fuzziness on the edge.

I do think it is fair to say that for a considerable period there was a way of looking at things like what happened in Charlottesville more in terms of hate crime, which is a very important and equally visible concept, and a tendency to assume that we kind of need to slot things toward one bucket or the other bucket, as if you have to choose between them. And if something feels or resonates as hate crime, at least until recently there was a tendency to slap that label on it and move along and not really pause to consider whether, might that also be viewed as terrorism? Isn't hate crime, writ large, often a subset of terrorism?

Now I think we are beginning to see, and especially as it has crystallized in past year or so with domestic terrorism being so much more visible in our dialogue about race-based political vio-

lence, we see that hate crime and terrorism are really overlapping much more. So I think it follows inevitably that you will start seeing more forward-leaning use of the terrorism label as an investigative category and as a charging category when possible; whereas, you might not have seen that in a few years past, and that is probably a good thing.

Senator PETERS. One last question, and this is for you, Mr. Braniff. While I am concerned that the government does not consistently provide data on domestic terrorism, as we have said throughout this hearing, I am probably even more concerned that the limited data they do provide may be inaccurate and unreliable, and that creates a whole set of problems that we have to address.

An example: In January 2018, DHS and DOJ issued a report that falsely claimed that three out of four terrorism convictions in the United States were of foreign-born individuals. A year later, DOJ acknowledged the errors in its data, but they refused to withdraw the report that had this false data.

So my question to you is: Do your data sets contradict the 2018 report? And is the data produced by DOJ and DHS reliable, in your estimation?

Mr. BRANIFF. Thank you for the question, Senator Peters. Our data does not line up with the data found in that report. We actually sent a statement for the record to the House Homeland Security Committee upon their request for data that described the socio-political—or economic backgrounds of—sorry. Let me be more clear. It described the backgrounds of perpetrators of terrorism in the United States using various data sets, many of which I have briefed today. And, of course, they paint a very different picture if you include domestic terrorism in those statistics. If you exclude domestic terrorism and only include international terrorism, then you get half of the story, and the half of the story that was reported on.

Terrorism is inherently politicized. Terrorism is intended to get an emotional response from individuals. It lends itself to be manipulated either subtly, consciously or unconsciously, because it is uncomfortable to talk about many of these things and the motivations behind this kind of violence. I think it has been very important that we have had these public-facing objective data sets that are transparent. Our inclusion criteria are publicly available so you know exactly why we include what we include in our data set. And they serve as a check against the potential for politicization of terrorism data.

I cannot speak to the accuracy of DOJ and DHS data generally. In that one instance I think the data were misleading. But we pump this data out as aggressively as we can, so our data sets are used by fusion centers all over the country. The Global Terrorism Database is downloaded 1,000 times per month, and we answer government requests for information every 1½ days at START. So we try to serve as a sounding board and an objective, nonpartisan entity that holds these data for the public.

Senator PETERS. Good. Thank you for that. And, again, thank you to each of our witnesses. This has been a great hearing, and we will look forward to having a continuing dialogue with each of you as we move forward on some of these issues. Thanks again.

Chairman JOHNSON. So I do not want to let the moment pass because the last answer talked about politicizing terror events, so let me make another pitch. The use of "far-right" and "far-left" is just not helpful. It feeds into that. It politicizes it. And nobody on this panel is associated with anybody on the far right or the far left, so just I would say drop that. Again, call a hate group a "hate group," call a terrorist a "terrorist," and let us move forward, because we all agree that we abhor that. We want to do everything we can to prevent these types of tragedies in the past.

Again, I want to thank the witnesses. I think this was an excellent hearing. It is a first step. We will continue. We are going to continue to work with Committee Members, DHS, and the Department of Justice in terms of getting that data and getting it right and try and work through these very thorny, very vexing constitutional issues, protect constitutional rights, and at the same time try and give law enforcement the resources, the authority, the priorities to try and prevent and mitigate these tragedies that nobody wants to see. So, again, thank you.

The hearing record will remain open for 15 days until October 10th at 5 p.m. for the submission of statements and questions for the record. This hearing is adjourned.

[Whereupon, at 12:05 p.m., the Committee was adjourned.]

# APPENDIX

**Chairman Ron Johnson Opening Statement**
**"Countering Domestic Terrorism: Examining the Evolving Threat"**
**September 25, 2019**

*As prepared for delivery:*

This is the first in what I expect will be a series of hearings examining domestic acts of terrorism. Although we must remain vigilant, the defeat of the territorial caliphate of ISIS and focused counter-terrorism efforts have resulted in the recent decline in the number of ISIS inspired terrorist attacks in the United States and worldwide. Unfortunately, the increase in domestic attacks has kept our nation on edge and forced a re-evaluation of how law enforcement can and should deal with different kinds of threats.

In May, Ranking Member Peters and I sent letters to the Department of Homeland Security, the Federal Bureau of Investigation, and the Department of Justice requesting basic information about their efforts to track, counter, and prevent all forms of domestic terrorism. From the outset of our inquiry, it has been clear that there is a lack of consistent and reliable data concerning domestic terrorism. If the federal government is not accurately tracking the threats and outcomes, it is exceedingly difficult for agencies and Congress to properly allocate resources and/or determine if additional authorities are required.

In allocating law enforcement resources and considering new authorities, it is important to put the threat and human cost of terrorism into perspective. In the 51 years from 1967 through 2017, there were 938,039 murders committed throughout the U.S. — an average of 18,393 murders per year, 183,929 per decade. According to the Washington Post, since August 1, 1966, there have been 167 mass shootings in which 1,207 individuals were killed — an average of approximately 228 per decade. START's Global Terrorism Database reports 3,774 deaths from terrorist attacks in the U.S. over the five decades since 1970. Excluding 9/11's death toll of 2,996, terror-related deaths since 1970 equal 778 — an average of 156 per decade.

In citing these statistics, I am in no way minimizing the human cost of terrorism or mass shootings. Every murder, regardless of the cause, is a tragedy that takes an incalculable toll on the lives of those affected. As a result, public policy, operating within the bounds of constitutional government and limited resources, should be designed to prevent as many of these tragedies as possible. The purpose of this hearing is to explore the many issues raised in attempting to achieve that worthy goal.

We need to understand how authorities differ in addressing international versus domestic terrorism. What is the proper role of federal versus state governments? What definitions need to be developed and what data needs to be gathered? What can be done to prevent online radicalization? How do we deal with "the not guilty yet"?

One final thought. Although I took no offense from any of the testimony, because I know none was intended, I do want to challenge the use of "far right" and "far left" as descriptive adjectives for hate groups like white supremacists, anti-Semites, or environmental terror groups. I realize this has become accepted terminology, but I believe we need to break that habit. There

is an acknowledged political spectrum ranging from left to right that is a useful shorthand description of one's general political philosophy. But hate groups not only fall far outside that spectrum, they also advocate and use violence to advance their political aims – a radical rejection of the norms that permit America to be a free and self-governing country. Those of us who abide by the fundamental rejection of political violence do not want to be, nor should we be, associated with such despicable views and evil behavior. So let's drop the far right / far left descriptors, and simply call a hate group a hate group and a terrorist a terrorist.

We have assembled a highly qualified panel of witnesses to discuss these and other issues. I thank you again, and look forward to your testimony.

## U.S. Senate Committee on Homeland Security and Governmental Affairs
## "Countering Domestic Terrorism: Examining the Evolving Threat"

**OPENING STATEMENT OF RANKING MEMBER GARY C. PETERS**
**SEPTEMBER 25, 2019**
**AS PREPARED FOR DELIVERY**

I am grateful to the Chairman that today, for the first time, this Committee is holding a hearing that gives us the opportunity to focus on white supremacist violence, a form of terror that is older than the nation itself.

Since September 11, 2001, we have held more than 50 hearings focused on terrorism. We have been, and we remain, rightfully focused on the threat posed by foreign terrorists and their homegrown imitators.

Unfortunately, over that time, we have not adequately grappled with white supremacist violence. Over the last decade it has become, by far, the deadliest form of domestic terrorism we face.

Its trademark racist rhetoric and dehumanizing language has embedded itself in our public discourse. And it is amplified around the world at the speed of light via social media platforms.

In Charleston, the shooter who took the lives of nine African American churchgoers, while their heads were bowed in prayer, had self-radicalized online and regularly espoused racist rhetoric on his own website.

The terrorist who ran down a crowd of peaceful protesters in Charlottesville drove hundreds of miles to join in the largest and most violent gathering of white supremacists in decades.

The extremist who murdered eleven worshippers at the Tree of Life synagogue, the deadliest attack on the Jewish community in our nation's history, regularly posted anti-immigrant and anti-Semitic conspiracy theories on white supremacist social platforms.

A white supremacist in Southern California was inspired by the horrific Christchurch mosque attack, which was livestreamed and shared virally, and the Tree of Life massacre. He failed in his attempt to burn down a mosque but succeeded in shooting up a synagogue, killing one and injuring three, including the rabbi.

The perpetrator in El Paso, who killed 22 people and wounded dozens more in the deadliest attack on the Latino community in our nation's history, also cited the Christchurch attack and spewed familiar hateful rhetoric about a "Hispanic invasion" in a manifesto he posted online.

White supremacy is a homeland security threat. That's why Chairman Johnson and I have launched one of the first bipartisan efforts in Congress to address it. In May, we asked the Department of Homeland Security, the FBI, and the Department of Justice: How many Americans have been killed or injured in domestic terrorist attacks since 2009, broken out by ideology.

It took DHS two months to tell us that they didn't know. After four months, the FBI and the Justice Department have failed to respond. Last week, in response to our pressure, DHS finally released a policy paper acknowledging the growing white supremacist threat.

But we cannot effectively address a threat that we cannot measure. We need data to track and assess this rapidly evolving threat so that we can ensure our resources are aligned with the threats we face.

Today, we will have a discussion about the path forward. We need to confront the scourge of domestic terrorism, and any solutions we consider must be based on facts and sound data.

But even the most well-intentioned policies can have harmful unintended consequences. Looking back on our response to September 11th, I am acutely aware of how our policies were wrongfully used to cast suspicion on entire communities, primarily Arab Americans and Muslim Americans – including vibrant, patriotic communities that I represent in Michigan. As we work to tackle the threat posed by domestic terrorism and white supremacist violence, we cannot repeat the mistakes of the past.

I hope that today's hearing will be an important step toward meaningfully addressing the growing threat of white supremacist violence. We must be clear-eyed about the challenges we face, focus our resources in response to accurate threat data, and make sure that all Americans feel safe where they live, work, and pray.

START NATIONAL CONSORTIUM FOR THE
STUDY OF TERRORISM AND RESPONSES TO TERRORISM

***Homeland Security and Governmental Affairs Committee***

# "Countering Domestic Terrorism: Examining the Evolving Threat"

Testimony of William Braniff
Director
National Consortium for the Study of Terrorism and Responses to Terrorism (START)
Professor of the Practice
University of Maryland
25 September 2019

START

Opening Statements

Chairman Johnson, Ranking Member Peters, and esteemed members of the committee, I would like to thank you on behalf of the National Consortium for the Study of Terrorism and Responses to Terrorism, known as START, [1] for inviting us to testify before you today.[2] I've been asked to draw upon our work at START to assess the domestic terrorism threat, as well as the status of data collection and threat tracking performed by the federal government.

START data from a number of relevant datasets demonstrate the following:

1. The ideological motivations behind terrorist behaviors in the United States are exceptionally diverse, constantly evolving, often overlapping, and difficult to assess in many instances. Clearly articulated manifestos are the exception, not the rule.[3] The implication is that any government response to violent extremism in the United States should not be based on predetermined ideological categories or assumptions about the relative threat of ideological movements at any one time.

[1] START is a university research center based at the University of Maryland and is a U.S. Department of Homeland Security Emeritus Center of Excellence. START uses state-of-the-art theories, methods and data from the social and behavioral sciences to inform counterterrorism and terrorism prevention policy and practice. This testimony reflects the opinions of the author, and not those of the Department of Homeland Security or any other office of the United States Government that funds or has funded START research.

[2] I would like to thank Markus Binder, Steve Chermak, Josh Freilich, Jeff Gruenewald, Patrick James, Mike Jensen, Erin Miller, Amy Pate, Katie Ratcliff, Jessica Rivinius and Liz Yates for contributing data, analyses and portions of the text for this testimony.

[3] Umbrella terms (e.g., domestic, international, far-right, far-left, religious) used by government entities, researchers and the media are necessary to aggregate and communicate information about these diverse motivations, but are not universally agreed upon, are imprecise, and are influenced by differing considerations such as bureaucratic considerations, legal considerations, political considerations and preferences for specificity or inclusiveness. Furthermore, terrorist ideologies morph over time, new terrorist ideologies emerge, and many individual terrorists are influenced by more than one ideology. Therefore, data and analysis emerging from one government entity or research project may be based on different definitions and inclusion criteria than data and analysis emerging from another, making direct comparisons difficult. Finally, many terrorist ideologies espouse the use of violence to advance the same or similar beliefs and world views that non-violent and/or law-abiding citizens and organizations espouse. As a result, ideological definitions may be misunderstood to mean that anyone subscribing to a specific set of beliefs is a terrorist, when in actuality it is an individual or organization's behavior that qualifies them as "terrorist" in nature. Ideological considerations are merely understood as motivation that helps to shape the perpetrators' violence for an intended political purpose.

START

2. In the United States over the last decade, domestic terrorists[4] are more numerous, active and lethal than international terrorists[5] in gross numbers, including what the U.S. government refers to as Homegrown Violent Extremists (HVE).[6,7]
3. Despite the fact that more domestic terrorists are arrested than HVEs in gross numbers, 62% of far-right and 78% of far-left terrorists succeed in violent plots, compared with 22% of HVEs, for a host of reasons discussed below.
4. Among domestic terrorists, violent far-right terrorists[8] are by far the most numerous, lethal and criminally active. Over the last several decades, they are responsible for more: failed plots; successful plots; pursuits of chemical or biological weapons; homicide events; and illicit financial schemes than international terrorists, including HVEs.
5. While domestic terrorism, and violent far-right terrorism specifically, is on the rise in the United States over the past several years, domestic terrorism and violent far-right terrorism have been a persistent threat in the United States, which has ebbed and flowed in intensity. This is especially true if one includes hate and bias crimes as part of the threat landscape, as the motivations for hate and bias crime often conform to ideological tenets of violent far-right extremism.

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[4] The FBI defines domestic terrorism as that "Perpetrated by individuals and/or groups inspired by or associated with primarily U.S.-based movements that espouse extremist ideologies of political, religious, social, racial or environmental nature." See https://www.fbi.gov/investigate/terrorism.

[5] The FBI defines international terrorism as that "Perpetrated by individuals and/or groups inspired by or associated with designated foreign terrorist organizations or nations (state-sponsored)." See https://www.fbi.gov/investigate/terrorism.

[6] The FBI defines HVEs as "global-jihad-inspired individuals who are based in the U.S., have been radicalized primarily in the U.S., and are not directly collaborating with a foreign terrorist organization." See https://www.fbi.gov/investigate/terrorism.

[7] Intellectually, the lines between domestic and international terrorism are blurry, bordering on arbitrary. Many domestic terrorist movements are inspired by organizations or movements that originated oversees (e.g., Neo-Nazis and the Nazi Party, the Animal Rights Liberation Front), and/or are participants of ongoing international movements. Not all foreign terrorist organizations are formally designated as foreign terrorist organizations, however, and so similar or identical behaviors conducted by an individual inspired by one foreign terrorist organization or movement may be treated differently, legally and analytically, as those behaviors inspired by a different foreign terrorist organization or movement.

[8] START's Global Terrorism Database defines "far-right extremism" as "Violence in support of the belief that personal and/or national way of life is under attack and is either already lost or that the threat is imminent. Characterized by anti-globalism, racial or ethnic supremacy or nationalism, suspicion of centralized federal authority, reverence for individual liberty, and/or belief in conspiracy theories that involve grave threat to national sovereignty and/or personal liberty."

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6. Recent years have seen more lethal far-right terrorist attacks than previous years, and the composition of far-right targets has changed, with anti-immigrant (including anti-Muslim) attacks increasing in frequency.

## Data

START curates a suite of datasets that examine different facets of violent extremism. These datasets have different units of analysis, including individuals, incidents, and organizations. They also investigate different behaviors, including: radicalization and mobilization in support of hate and bias crime, and terrorism; deradicalization, disengagement and desistance from violent extremism; failed and foiled plots; attacks; ideologically motivated homicides; financial schemes; and pursuits of chemical, biological, radiological or nuclear weapons. These datasets therefore have different inclusion criteria, structure and utility. Some datasets are representative samples of their topic of inquiry, while others endeavor to be comprehensive. Given this, in addition to the challenges associated with ideological categorizations and definitions, the following analyses are presented by database, as opposed to in an integrated fashion. In sum, these different efforts examining different research questions point to similar trends regarding domestic terrorism, which strengthens their findings.

### The Global Terrorism Database

The Global Terrorism Database (GTD) is an open-source database including information on terrorist events around the world from 1970 through the first quarter (Q1) of 2019[9].

[9] The Global Terrorism Database defines terrorism as: "the threatened or actual use of illegal force and violence by a non-state actor to attain a political, economic, religious, or social goal through fear, coercion, or intimidation." Given the varying definitions of terrorism and to provide flexibility for those who use GTD for different analytical and operational purposes, an incident must meet five of six criteria to be included in the GTD. Specifically, START includes incidents that meet three mandatory criteria (the act was intentional, the act involved the use or threat of violence, and the perpetrator(s) of the act was a sub-national actor) and then two of the three following additional criteria:

1. The violent act was aimed at attaining a political, economic, religious, or social goal;
2. The violent act included evidence of an intention to coerce, intimidate, or convey some other message to a larger audience (or audiences) other than the immediate victims; and
3. The violent act was outside the precepts of International Humanitarian Law insofar as it targeted non-combatants.

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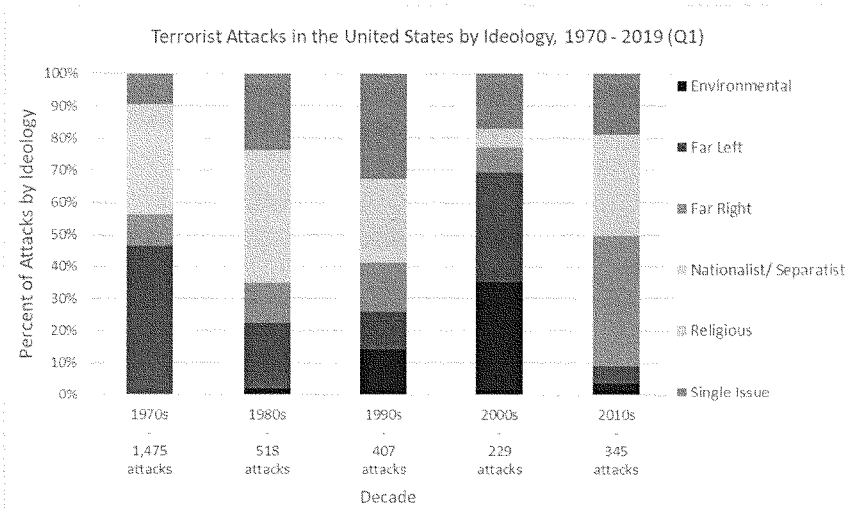
Unlike many other event databases, the GTD includes systematic data on domestic as well as transnational and international terrorist incidents that have occurred during this time period and now includes more than 193,500 cases, making it the most comprehensive terrorist incident database in the world. For each GTD incident, information is available on the date and location of the incident, the weapons used and nature of the target, the number of casualties, and—when identifiable—the group or individual responsible.

A longitudinal dataset with consistent definitions and inclusion criteria allow us to examine trends over time, such as the percentage of terrorist attacks and deaths occurring in a given decade attributed by ideology.

*Terrorist Attacks in the United States by Ideology, 1970-2019 (Q1)*




Source: Global Terrorism Database
Note: Ideology was unknown in 22% of all attacks. Ideology categories overlap; attacks can be counted multiple times.

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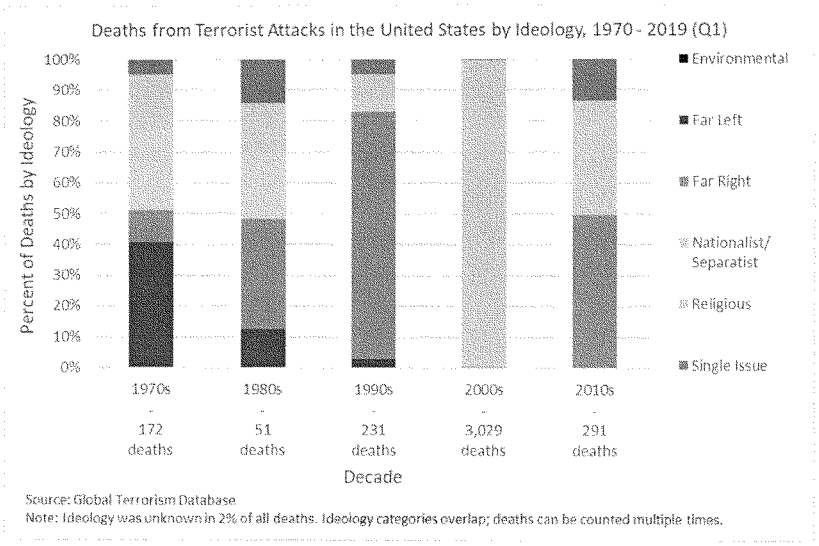
*Deaths from Terrorist Attacks in the United States by Ideology, 1970-2019 (Q1)*




Source: Global Terrorism Database
Note: Ideology was unknown in 2% of all deaths. Ideology categories overlap; deaths can be counted multiple times.

The tables above demonstrate the fluidity of terrorism in the United States across decades regarding ideology. A closer look at the last decade demonstrates that fluidity from year to year. In the table below, attacks are attributed to multiple ideologies when more than one ideological motivation was present, and so the increase in the number of violent far-right attacks contributes to the rise in religiously motivated attacks. Forty-seven of the 110 religiously motivated attacks charted below were also coded as far right.

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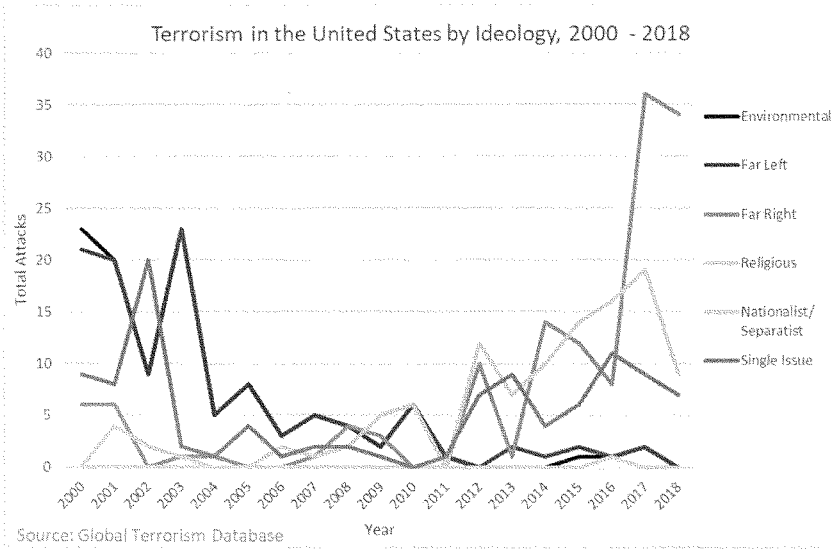
*Terrorism in the United States by Ideology, 2000-2018*




Furthermore, from last decade to this decade, the number of ideological motivations and perpetrator groups within each of these umbrella categories has increased from 29 to 54, as new ideologies have emerged, existing ideologies have evolved, and individuals or groups have merged ideological motivations in new ways. From 2000-2009, the GTD catalogues, nine different far-right motivations or perpetrator groups, seven religious, seven single-issue, and six far-left (including environmentalist) motivations or perpetrator groups. From 2010-2019 Q1, those numbers rise to 19 far-right motivations or perpetrator groups, 11 religious, 14 single-issue, and 10 far-left motivations or perpetrator groups (including environmentalist). Any government response to terrorism in the United States must account for the evolving nature of terrorist ideologies, to include the emergence of new categories of ideologically motivated perpetrators.

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2018 was the third consecutive year in which there were more than 65 terrorist attacks in the United States, a figure not exceeded since 1982. There were 67 terrorist attacks in the United States in 2018, resulting in 45 deaths, including two perpetrator deaths.

There were six lethal terrorist attacks in the United States in 2018, excluding one attack in which only the perpetrator died, compared to 18 in 2017. Although terrorism in the United States is ideologically and geographically diverse, all six lethal attacks shared in common far-right ideological elements including primarily white supremacy and, in at least two cases, male supremacy. We observed this general pattern continue in 2019.

Two of the three deadliest attacks in the United States in 2018 were school shootings. In February, an assailant shot and killed 17 people and injured 17 others at Marjorie Stoneman Douglas High School in Parkland, Florida.

In May, an assailant shot and killed 10 people and injured 13 others at Santa Fe High School in Santa Fe, Texas. The GTD does not include all school shooting attacks. These two school shooting attacks were designated "doubt terrorism proper" because there were indications of possible personal motivations (the victims were known to the assailants) and ideological motivations (in particular, neo-Nazi and white supremacist messaging).

In October, an assailant shot and killed 11 people and injured six others at the Tree of Life Synagogue in Pittsburgh, Pennsylvania. The assailant reportedly shouted "all Jews must die" and had a history of anti-Semitic rhetoric on social media.

In October, a white supremacist shot and killed two African American shoppers at a grocery store in Jeffersontown, Kentucky, after unsuccessfully attempting to enter a predominantly African-American church.

In November, an incel extremist shot six women, killing two, in a Tallahassee yoga studio.

In March, a teenager who held white supremacist and Islamist views stabbed his friends dozens of times in Palm Beach Gardens, Florida, killing one, reportedly because they "made fun of his Muslim faith."

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**The Extremist Crime Database**[10]

The U.S. Extremist Crime Database (ECDB) is an open-source study that tracks violent, financial and material support crimes committed by far-right, HVE, far-left, and other extremists in the United States. It is a unique relational database that collects hundreds of attributes on the incident, offender, personal victim, non-human targets, networks, organizations, and the reliability of the uncovered open-source materials.

*Ideologically motivated homicides:* Ideologically motivated homicides provide another measure of the extremist threat, as not all ideologically motivated homicides fit the definition of terrorism, and therefore may not be included in terrorism data.[11] These ECDB data are valuable, in particular, as not all precincts report ideologically motivated homicides to the Federal Bureau of Investigations, and so the Uniform Crime Report may underreport these homicides.

The table on the next page lists the number of ideologically motivated far-right and international/HVE fatal incidents and victims by year from 1990 to 2018:

[10] The ECDB has allowed researchers to make major theoretical and policy-relevant contributions, to train law enforcement officials, and to train both undergraduate and graduate students to conduct policy-relevant research. It is a collaborative effort between Professors Joshua D. Freilich (John Jay College of Criminal Justice) and Steven M. Chermak (Michigan State University).

[11] The Government Accountability Office (GAO) violent extremism report released in April 2017 used ECDB data to contextualize far-right and jihadist violence in the U.S: http://www.gao.gov/products/GAO-17-300,

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*Ideologically Motivated Fatal Incidents and Victims by Year, 1990-2018*

| Year | Far-right Homicide Events | Far-right Homicide Victims | HVE Homicide Events | HVE Homicide Victims |
|---|---|---|---|---|
| 1990 | 7 | 7 | 2 | 2 |
| 1991 | 7 | 7 | 0 | 0 |
| 1992 | 8 | 9 | 0 | 0 |
| 1993 | 9 | 9 | 2 | 8 |
| 1994 | 14 | 15 | 1 | 1 |
| 1995 | 11 | 179[a] | 0 | 0 |
| 1996 | 7 | 7 | 0 | 0 |
| 1997 | 9 | 12 | 1 | 1 |
| 1998 | 11 | 12 | 0 | 0 |
| 1999 | 18 | 37 | 0 | 0 |
| 2000 | 6 | 7 | 1 | 1 |
| 2001 | 7 | 10 | 5 | 2998[b] |
| 2002 | 10 | 12 | 16 | 17 |
| 2003 | 6 | 12 | 0 | 0 |
| 2004 | 1 | 1 | 0 | 0 |
| 2005 | 5 | 7 | 0 | 0 |
| 2006 | 3 | 4 | 2 | 2 |
| 2007 | 5 | 5 | 1 | 5 |
| 2008 | 8 | 11 | 0 | 0 |
| 2009 | 16 | 32 | 2 | 14 |
| 2010 | 4 | 5 | 0 | 0 |
| 2011 | 4 | 4 | 1 | 3 |
| 2012 | 3 | 10 | 0 | 0 |
| 2013 | 4 | 5 | 3 | 5 |
| 2014 | 9 | 14 | 5 | 6 |
| 2015 | 5 | 24 | 2 | 19 |
| 2016 | 2 | 2 | 1 | 49 |
| 2017 | 10 | 12 | 4 | 16 |
| 2018 | 6 | 17 | 1 | 1 |
| Total | 215 | 488 | 50 | 3148 |

*Source: The United States Extremist Crime Database (ECDB)
[a] Includes the 168 homicide victims of the Oklahoma City bombing
[b] Includes the 2997 homicide victims of the 9/11 terrorist attacks

This table indicates that from 1990 to 2018 far-right extremists committed more ideologically motivated homicide incidents (n=215) than international/HVE extremists (n= 50). Far-right lethal activity is consistent in that attacks occurred every year.

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International/HVE ideologically motivated homicide incidents are more sporadic but on average more deadly. For example, the 50 international/HVE homicide events include 11 incidents that killed more than five persons and seven that killed more than 10 individuals, while the 215 far-right homicide incidents include nine events that killed more than five persons and three that killed more than 10 individuals.

Quantifying the relative severity of these attacks is complicated by the high number of fatalities due to the 9/11 attacks, and to a lesser extent the Oklahoma City bombing. Excluding 9/11, HVE attacks have resulted in 3.1 fatalities on average. Violent far-right attacks generated 2.3 fatalities on average, or 1.4 if you exclude Oklahoma City from the calculation. *These numbers do not include the 2019 El Paso violent far-right attack.*

The ECDB has not been funded to track far-left (e.g., Anarchists, Antifa, Black Nationalist, Marxists) ideologically motivated violence in the United States but our preliminary effort (guided by a doctoral student's ongoing dissertation) has uncovered more than 30 such ideologically motivated homicides since 1990.[12]

*Failed and Foiled Plots:* To understand the scale of the extremist threat, it is critical to examine failed and foiled plots in addition to those that succeed. The ECDB tracks failed and foiled plots and has found that since 1990, far-right extremists have been involved in plots of varying maturity that targeted over 800 targets, international/HVEs have been involved in plots of varying maturity that targeted over 350 targets, while far-left extremists appear to have targeted close to 100 targets, according to preliminary analysis.

*Financial Schemes:* The ECDB team has not had sufficient funding to collect data on financial schemes in recent years, but an earlier study examining far-right financial schemes from 1990-2013 demonstrates the utility of understanding this aspect of the threat, as these financial schemes help to sustain and grow extremist movements, provide material incentives for participating in violent extremist movements, and impose a significant cost on government and society. These illicit schemes have raised hundreds of millions of

[12] In addition, animal rights and eco rights extremists have committed close to 200 ideologically motivated arsons and bombings in the U.S. between 1995 and 2018, causing hundreds of millions of dollars in damages. In recent years the frequency of these attacks has declined.

dollars in illegal gains which has been used for both personal profit and to fund their ideological causes, and caused over $1 billion in government losses. Some of these financial crimes have also been linked to violent ideologically motivated crimes in both the United States and abroad.

> This project has identified 609 financial schemes involving at least one far-right extremist occurring in the United States from 1990 to 2013. These schemes involved 1,345 individual criminal suspects: 72% (n=969) were far-right extremists and 20% (n=264) were non-extremist collaborators. Specific information about the remaining 112 (8%) was not found.... Far-right extremists engaged mostly in tax avoidance schemes (59%) as a form of anti-government protest....
>
> The far-right extremists involved in these schemes belong to a number of movements. While many individuals fit into multiple categories, only the primary affiliation is reported. The most prominent affiliation is with sovereign citizens (40%), who believe they are freemen not subject to governmental authority.... An additional 5% were affiliated with militia or patriot groups, and 4% affiliated with white supremacists (KKK, neo-Nazi, Christian Identity, etc.). The remaining 23% of extremist individuals are tax protesters.[13]

**Profiles of Individual Radicalization in the United States**

The Profiles of Individual Radicalization in the United States (PIRUS) dataset is a deidentified, cross-sectional, quantitative dataset of 2,214 individuals based in the United States who radicalized to the point of violent or non-violent ideologically motivated criminal activity, or ideologically motivated association with a foreign or domestic extremist organization from 1948 until 2018. PIRUS spans multiple ideological milieus,

[13] Sullivan, Brandon A., and Joshua D. Freilich, Steven M. Chermak, William Parkin, Jeff Gruenewald. 2015. "Financial Crimes Perpetrated by Far-Right Extremists in the United States: 1990-2013." College Park, MD. June. http://www.start.umd.edu/pubs/START_ECDB_FinancialCrimesSchemesPerpetratedbyFarRightExtremists_June2015.pdf

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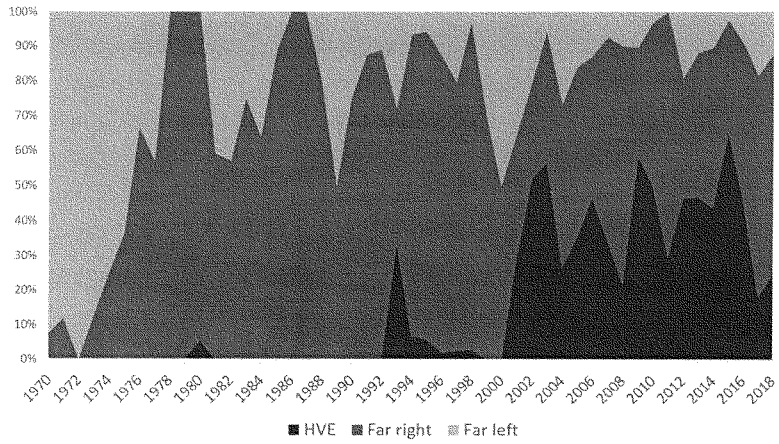
broadly categorized as Islamist extremists, far-right extremists, far-left extremists, and single-issue extremists. The dataset contains detailed information on each individual's radicalization pathway, group affiliation, plot involvement, demographics, and personal background and history. The data were collected using entirely publicly available resources, such as news reports, unsealed court documents, unclassified government reports, and other media.

Far-right extremists make up the largest percentage of extremists in the United States over the past several decades, and after dipping in the 2000s to historical lows, that percentage has increased to approximately 60% in recent years.

*Extremists in the United States by Ideology, 1970-2018 (%)*




Target preferences among violent far-right extremists have shifted in this decade, and especially in the past four years, to include a greater focus on perceived foreigners. Over the last 10 years of data, (2009-2018), 21.85% of violent far-right offenders were

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motivated at least partly by anti-immigrant or anti-Muslim sentiment compared to only 2.80% in the 10 years prior.[14]

| Year | Number of violent anti-immigrant cases | Total violent far-right cases | Violent anti-immigrant cases as % of violent far-right |
|---|---|---|---|
| 2009 | 1 | 12 | 8.33% |
| 2010 | 4 | 22 | 18.18% |
| 2011 | 1 | 35 | 2.86% |
| 2012 | 1 | 9 | 11.11% |
| 2013 | 1 | 10 | 10.00% |
| 2014 | 2 | 19 | 10.53% |
| 2015 | 7 | 30 | 23.33% |
| 2016 | 13 | 35 | 37.14% |
| 2017 | 16 | 42 | 38.10% |
| 2018* | 6* | 24* | 25.00%* |
| 2009-2018 | 52 | 238 | 21.85% |

*2018 data is preliminary. Approximately 14 more far-right cases will be coded to complete 2018 data.

Despite the fact that more domestic terrorists are arrested than HVEs in gross numbers, domestic terrorists are more likely to succeed in carrying out violent plots than HVEs. Over 20% of violent HVE plots are disrupted at the earliest phase of their mobilization ("nebulous plot" in chart below) to violence, before the perpetrators have created a specific plan to engage in specific tactics against specific targets. Nearly 80% of violent HVE plots

[14] This does not include anti-Semitic motivations, which PIRUS codes separately. PIRUS coding does not currently differentiate between anti-immigrant and anti-Muslim motivations, but this improvement can be made to the codebook.

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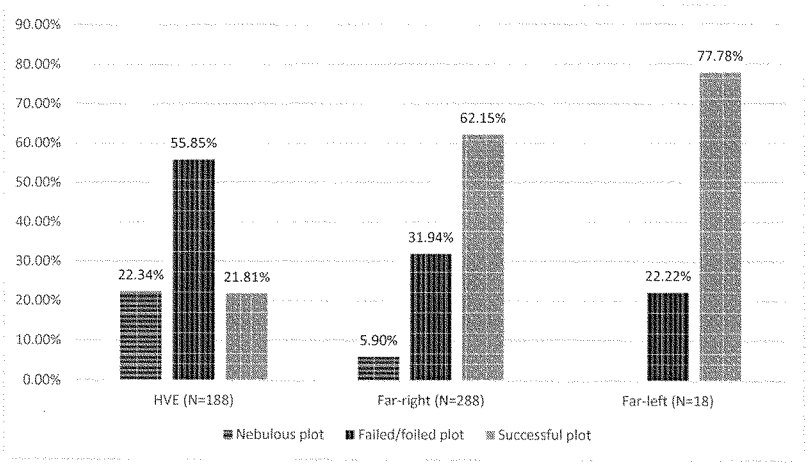
fail or are foiled, compared to 40% of domestic terrorism plots, only 6% of which are disrupted at the earliest states of mobilization.

*Extent of Violent Plots in the United States by Idology, 2008-2018*




This is likely due to a combination of pragmatic and political factors that collectively reduce resource allocation to domestic terrorism when compared to international terrorism and HVEs.

- The material support statutes in federal law provide criminal justice professionals with the criminal predicate necessary to open full investigations into HVEs inspired by foreign-designated terrorist organizations, but not domestic terrorists. Behaviors like propagandizing, recruiting, procuring weapons, and training are deemed as behaviors protected by the Constitution for domestic terrorists, but may be grounds for a criminal justice disruption if performed by an HVE. If the FBI cannot legally open an investigation into a potential domestic terrorist but can regarding an HVE, resource allocation decisions will follow.
- Domestic terrorists are embedded in much larger extremist communities than HVEs, creating a "signal to noise" challenge. There is a very large community of

individuals in the United States who espouse general support for ideologically motivated violence on social media platforms, making it difficult for law enforcement officials to identify the small percentage of those individuals who are likely to engage in violence.

- Domestic extremists often espouse the use of violence to advance a social or political agenda that is shared by a larger number of Americans who do not espouse the use of violence. This creates political pressure to handle domestic terrorism less aggressively than international terrorism, as aggressive investigations may be misperceived as attacks on the social or political agenda itself.
- Absent strong federal terrorism charges, domestic extremists are often charged with lesser crimes and therefore serve shorter sentences, increasing their opportunity for recidivism.
- The DoD and Intelligence Community dedicate considerable resources to international terrorism that generates leads and sometimes evidence regarding HVEs, but rarely domestic terrorists.

Perpetrators of extremist crimes in the United States radicalize to violence over differing time horizons on average, with the violent far-right offenders experiencing the longest duration. Additionally, violent far-right offenders are arrested or conduct their extremist crime at a relatively older median age. This provides an opportunity for a non-criminal justice intervention, or a criminal justice interdiction given a legal predicate and sufficient resources.

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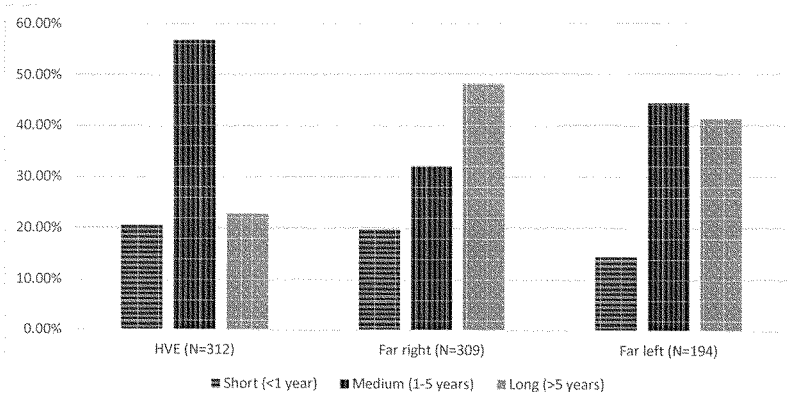
*Duration of Radicalization* for Extremist Offenders in the United States*




*measured as period of time between first evidence of radicalization (in beliefs or behaviors) and the individual's date of exposure (e.g., arrest/plot)

General characteristics about extremists in the United States demonstrate similarities and differences between ideological movements, which can inform both counterterrorism and terrorism prevention efforts. Relative to HVE and far-left extremists, far-right extremists tend to be older at the time of their arrest or involvement in extremist crime, are more likely than not to have a criminal history, have lower socio-economic standing and education levels, and a higher rate of military experience. Rates of known or suspected mental illness is low across all three ideological groups, and the presence of internet radicalization as a part of the radicalization process is high for all three groups.

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*Characteristics of Extremist Offenders in the United States by Ideology, 1948-2018 (n= 2215)*

| | Far-right (n=963) | Far-left (n=375) | HVE (n=512) |
|---|---|---|---|
| % Violent | 60.9% | 32.5% | 71.9% |
| Age at Public Exposure (Median)* | 35 | 25 | 26 |
| % Female | 5.8% | 25.6% | 6.4% |
| Low Education (no college experience)* | 52.9% | 21.2% | 42.7% |
| Low Socioeconomic Status* | 31.0% | 23.7% | 26.2% |
| Military Experience* | 22.6% | 9.7% | 8.4% |
| Criminal History* | 53.5% | 29.9% | 33.3% |
| Internet Radicalization (post 1999)* | 81.5% | 85.1% | 86.2% |
| Evidence of Mental Illness | 14.6% | 6.1% | 14.6% |

*valid percentages only (individuals with missing data for these variables were not included for analysis)

### Bias Incidents and Actors Study

The Bias Incidents and Actors Study dataset (BIAS) is a deidentified, cross-sectional, quantitative dataset that currently contains data on 687 U.S.-based individuals who committed a violent or non-violent crime between 1990-2018 that was at least partially motivated by some form of identity-based prejudice, including bias based on religion, race, ethnicity, nationality, sexual orientation, gender identity, disability, or age. Similar to the PIRUS dataset, these data contain detailed information on the personal background, group affiliation, demographics, and factors related to the development of bias-motivated beliefs, as well as in-depth information on the bias crimes in which they were involved. The data were collected using entirely publicly available resources, such as news reports, unsealed court documents, unclassified government reports, and other media.

START has recently compiled these data and has not yet generated analyses beyond summary statistics. Those statistics are included here, as ideologically motivated violence does harm whether it is categorized after-the-fact as an act of terrorism or hate, or both. As

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of now, 309 of the 687 individuals in BIAS are also in the PIRUS dataset. Of those individuals, 81% are classified as far right, 13.6% as single issue, 4.5% as HVEs and 0.7% as far left. It is important for the U.S. Government and civil society to include hate and bias perpetrators as part of the threat landscape when thinking through responses to domestic extremism. Hate and bias offenders often engage in spontaneous acts of ideologically motivated violence, for example, that may require different responses.

*Characteristics of Hate Crime Offenders in the United States, 1990-2018*

| | Spontaneous hate crime (n=279) | Planned hate crime (n=407) | All offenders (n=686) |
|---|---|---|---|
| **% Violent** | 78.5% | 63.4% | 69.5% |
| **Age (Median)** | 27 | 26 | 27 |
| **% Caucasian*** | 79.9% | 84.6% | 82.8% |
| **% Female** | 5.4% | 5.7% | 5.5% |
| **Low Education (no college)*** | 67.1% | 60.1% | 62.6% |
| **Low Socioeconomic Status*** | 50.9% | 59.5% | 56.5% |
| **% Married*** | 10.3% | 15.9% | 13.9% |
| **Military Experience*** | 6.1% | 15.9% | 9.5% |
| **Criminal History*** | 68.0% | 61.5% | 64.1% |
| **Internet Radicalization (post 1999)*** | 57.1% | 64.1% | 62.4% |
| **Evidence of Mental Illness** | 12.5% | 21.6% | 17.9% |

*valid percentages only (individuals with missing data for these variables were not included for analysis)

### Chemical and Biological Non-State Actor Database

START maintains various databases that look at non-state actor pursuit of chemical, biological, radiological and/or nuclear weapons capabilities around the world. While rare, and in most instances aspirational, the pursuit of weapons of mass destruction is essential for study because the potential for psychological impact and physical harm are high, and

because technological advances will continue to make it easier and cheaper for non-state actors to obtain capabilities akin to nation-states.

In the United States, START has identified seven non-state actors motivated by far-right ideologies who aspired or attempted to obtain chemical or biological weapons, one HVE who aspired to obtain a chemical or biological weapon, zero far-left extremists, and five individuals whose motivations were unknown, compared with 29 plotters with criminal motivations.

### The Status of Data Collection and Threat Tracking Performed by the Government

There are several challenges to the U.S. Government's ability to maintain, share, analyze and make public data on U.S. persons involved in domestic extremism.

One challenge is in regard to the legal and bureaucratic handling of different kinds of ideologically motivated crimes. The FBI's Counterterrorism Division oversees domestic terrorism investigations, but the Criminal Division oversees hate crime investigations, prompting the creation of the Domestic Terrorism-Hate Crimes Fusion Cell in April 2019. Furthermore, domestic terrorism and international terrorism are typically handled separately within and between organizations, leading to bifurcated threat assessments and situational awareness. In addition to undermining risk assessment and rational resource allocation decisions, this bifurcation is also logically flawed, given that what the government refers to as domestic terrorism is often part of an international extremist movement, and vice versa. To reflect reality, violent extremism data has to be collected and analyzed globally.

A second set of challenges result from civil rights and civil liberties protections, and our individual-oriented (vs. collective) criminal justice system. The U.S. Government is limited in its ability to maintain data as it pertains to domestic extremist movements broadly and the large number of individuals within them (e.g., ideologues, propagandists, recruiters, supporters) who are not acting in violation of the law. Researchers outside of the government are often better able to examine domestic extremist movements. But even for

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those extremists in violation of the law, there are structural limitations to the extent that our criminal justice system can adopt an intelligence-led domestic counterterrorism posture.

The Domestic Investigation Operations Guide produced by the Department of Justice protects against persistent government surveillance of U.S. citizens. It limits the duration and intrusiveness of assessments that the FBI-led Joint Terrorism Task Forces are allowed to conduct when following up on a terrorism-related lead. Failing a legal predicate to open up full investigations, assessments are closed.

For active investigations, the FBI Counterterrorism Division (CTD) maintains high quality data on individuals under investigation and uses that data to manage risk across their portfolio of international and domestic terrorism investigations. That information is highly granular, but narrowed by the needs of the investigation and also limited by resource constraints given the large number of on-going domestic and international terrorism investigations. It is also at the individual-level of analysis, which is appropriate for our criminal justice purposes, but only captures part of "the story." There are limitations as to how broadly case information can be shared outside of the FBI, as individuals under investigation have not been charged or convicted of a crime.

The next challenge speaks to a criminal's journey through the criminal justice lifecycle. The FBI and DOJ have recently conducted analyses on the outcomes of cases that go to trial regarding whether or not a federal terrorism charge, a non-terrorism-related federal charge, or a state-level charge in a state court were utilized. For convictions that occur in state courts or that utilize non-terrorism-related federal charges, which is more common with domestic terrorism cases, there has historically been a break down once these perpetrators enter the correctional system. The Executive Office of the U.S. Courts is working to improve its understanding of who in the prison system has a history of violent extremist crime, as that may not be obvious based on the individual's prosecution. I am not well-informed on where they stand in those efforts, but I can attest that they understand how important it is to arm probation and pre-trial officers with that information, as well as training on how to foster violent extremist rehabilitation and reintegration into

communities. Given the relatively large number of domestic extremists, tracking incarcerated and formerly incarcerated extremists over time is a tremendous challenge, and terms of release for lesser crimes may not allow for extended probation periods.

The final challenge speaks to politics. Given the inherently political nature of terrorism, defining, tracking and reporting data on terrorism is subject to manipulation or more subtle pressures.

## Conclusion and Recommendations

Given the nature of the threat as described here, it is clear that domestic terrorism, and specifically far-right extremism, require greater attention and resource allocation. This is not to say that the U.S. Government should respond to domestic terrorism in the same ways as it has responded to international terrorism and homegrown violent extremism.

- Congress should pass the Domestic Terrorism DATA Act or similar legislation, including the requirement for the continued funding of unclassified, objective and longitudinal data collection and dissemination on the various facets of domestic and international terrorism through the DHS Center of Excellence apparatus.
    - Universities can responsibly, transparently, affordably and objectively collect data both domestically and internationally, at different units of analysis, and on subjects beyond just violations of the law to make sense of these complex human phenomena.
    - American taxpayers and the Department of Homeland Security have already built this capability at START, and despite the efforts of many public servants at DHS and DOJ, funding for many of the datasets described here expires in December 2019.
- Resource allocations decisions, such as those driving the Urban Area Security Initiative and State Homeland Security Program grants, should incorporate these objective data.

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- The U.S. Government should take a public-health approach to violent extremism and invest in programs that strengthen individual, family, and community resilience to violent extremism, programs that foster non-criminal justice interventions for at-risk individuals, and programs that foster rehabilitation and reintegration of domestic extremists. A parallel grants program to the Homeland Security Grants Program could be run out of an organization like Health and Human Services to support these public health programs. This is the most pragmatic course of action given that:
    - A much higher percentage of violent domestic terrorist attacks are not disrupted by law enforcement given the issues described above;
    - Even a federal criminal statute regarding domestic terrorism, should Congress choose to pass one, will likely continue to protect many behaviors that might allow for, and warrant, a non-punitive intervention by civil-society actors;
    - START data suggests that there is both a window of opportunity as well as indicators observable to friends and family regarding interest in violent extremism that could allow for interventions and off-ramping;
    - Criminal justice disruptions without rehabilitation or reintegration programs delay rather than reduce the risk to public safety, but we are currently incarcerating a relatively high number of domestic terrorists who serve relatively shorter sentences than HVEs, but who also do not have access to rehabilitation and reintegration programs. START research leveraging the PIRUS database highlights challenges to violent extremist deradicalization, disengagement and desistance that programs can address,[15] although this is a field of research and practice in need of much greater attention.
    - Domestic terrorist movements are enduring despite competent law enforcement interdictions, and require social and political responses.

[15] Jensen, Michael, and Patrick James, Elizabeth Yates. 2019. "Profiles of Individual Radicalization in the United States—Desistance, Disengagement, and Deradicalization (PIRUS-D3)." START, College Park, Maryland. July. https://www.start.umd.edu/pubs/START_PIRUS_DesistanceDisengagementDeradicalization_July2019.pdf

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Traditional counterterrorism measures do not provide useful means for limiting the attractiveness of violent extremist ideologies, nor the psychological or political impact of acts of violence when they do happen. Civil society is necessary to accomplish this.

- Whereas counterterrorism efforts are by nature clandestine and difficult to study, civil society-led terrorism prevention programs can be rigorously studied, allowing us to improve these programs over time. Funding should be allocated to measure and evaluate specific programs over time, but also in the creation of an overarching dataset on the relevant characteristics of terrorist prevention programs across the country to advance the practice of terrorism prevention over time.

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## Appendix 1: Background information on START datasets

### About the Global Terrorism Database

The Global Terrorism Database (GTD) is maintained by researchers at the National Consortium for the Study of Terrorism and Responses to Terrorism (START), at the University of Maryland. It documents more than 180,000 international and domestic terrorist attacks that occurred worldwide since 1970. With details on various dimensions of each attack, the GTD familiarizes analysts, policymakers, scholars, and journalists with patterns of terrorism. The GTD systematically defines terrorist attacks as: "Acts by non-state actors involving the threatened or actual use of illegal force or violence to attain a political, economic, religious, or social goal through fear, coercion, or intimidation."

The database—sourced by unclassified media articles—contains information on multiple dimensions of each event. More than 100 structured variables characterize each attack's:

- Location: Including region, country, province/state, city, coordinates of the city, village, or town where the attack took place
- Tactics and Weapons: Including attack types, weapon types and subtypes, use of suicide tactics, attack success
- Targets: Including target types and subtypes, target nationality, specific target entities
- Perpetrators: Including perpetrator groups/subgroups attributed responsibility, claims of responsibility, number of attackers
- Casualties and Consequences: Including deaths, injuries, hostages, hostage outcomes, property damage
- General Information: Including definitional criteria and ambiguity, source citations, links between coordinated attacks

The initial collection of GTD data was carried out by the Pinkerton Global Intelligence Services (PGIS) between 1970 and 1997 and was donated to Gary LaFree at the University of Maryland. Computerizing and validating the original GTD data from 1970 to 1997 was funded by a grant from the National Institute of Justice (PIs Gary LaFree and Laura Dugan;

grant no. NIJ2002-DT-CX-0001) and thereafter as part of the START Center of Excellence by the Department of Homeland Security Science and Technology Directorate (DHS S&T), Office of University Programs (PI Gary LaFree; grant no. N00140510629 and award no. 2008-ST-061-ST0004). Data collection funding for GTD from 1998 to 2007 was supplied by the DHS S&T Human Factors Division (PIs Gary LaFree and Gary Ackerman; contract no. HSHQDC-05-X-00482). All information in the database on events through 2007 was collected and coded by database staff at the National Consortium for the Study of Terrorism and Responses to Terrorism (START) and the Center for Terrorism and Intelligence Studies (CETIS).

Data on cases for 2008 through 2011 have been funded by a grant from the Office of University Programs, Science and Technology Directorate, U.S. Department of Homeland Security (PI Gary LaFree; award no. 2008-ST-061-ST0004). In addition, efforts to review and update information on terrorist incidents in the United States have been supported through funding from the Department of Homeland Security Science and Technology Directorate's Resilient Systems Division (PI Gary LaFree, award no. 2009ST108LR0003). For GTD data collection from 2008 to November 2011, START partnered with the Institute for the Study of Violent Groups (ISVG), headquartered at New Haven University. Beginning in November 2011 the START Consortium headquartered at the University of Maryland began collecting the original data for the GTD. START's collection of GTD data from 2012 to 2017 was jointly funded by the U.S. Department of Homeland Security (PI Gary LaFree; award no. 2012-ST-061-CS0001) and by the U.S. State Department (PIs Gary LaFree and Erin Miller; contract no. SAQMMA12M1292).

Since January 2019, GTD has been funded by the Combatting Terrorism Technical Support Office (PI Amy Pate; task order no. W911NF19F0014) and the German Federal Foreign Office (PI Erin Miller; award no. 19061669)

**About the Extremist Crime Database**

The Extremist Crime Database (ECDB), a collaborative effort between Joshua D. Freilich (John Jay College of Criminal Justice, City University of New York) and Steven Chermak (Michigan State University), both domestic and international terrorism, ideological and

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non-ideological crimes, violent and non-violent (e.g., financial) crimes, terrorist and non-terrorist acts, crimes committed by groups and lone wolves, and cases prosecuted federally and under state-jurisdictions. It includes information on the incidents themselves, as well as their perpetrators, related organizations and victims.

The ECDB includes more than 850 variables (incident, perpetrator, victim, target and group) on more than 1,500 terrorist/violent extremist events and an additional nearly 1,000 financial and material support schemes identified to date. The ECDB methodology uses validated open-source research strategies to identify all relevant events and capture all publicly available information on each event.

Although the ECDB focuses on domestic events, it also contains rich data related to international incidents, groups and events. These data include:

- All foreign fighters who went abroad to train/support/fight in jihadist conflicts as well as all perpetrators and schemes that funded jihadist movements or attacks abroad from the United States. The financial scheme data is rich with linkages to groups outside the United States.
- In addition to global jihadist groups (AQ and ISIS), the ECDB includes financial and material support data regarding Hamas and Hezbollah.
- Finally, the data includes all jihadist and far-right incidents both fatal and foiled where the perpetrators were funded from abroad and/or the perpetrators originated from or trained abroad.

ECDB has been funded by Department of Homeland Security Science and Technology Directorate (DHS S&T), Office of University Programs (PI Gary LaFree; award no. 2008-ST-061-ST000; award no. 2012-ST-061-CS0001); the Department of Homeland Security Science and Technology Directorate's Resilient Systems Division (PI Gary LaFree; award no. 2009ST108LR0003). Additional funding to support data collection and analysis has come from the National Institute of Justice (PI Steven Chermak; award no. 2014-ZA-BX-0004; PI Gary LaFree; award no. 2015-ZA-BX-0004).

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**About the Profiles of Radicalization in the United States**

The Profiles of Individual Radicalization in the United States (PIRUS) dataset contains deidentified individual-level information on the backgrounds, attributes, and radicalization processes of over 2,100 violent and non-violent extremists who adhere to far-right, far-left, Islamist, or single-issue ideologies in the United States covering 1948-2017. Coded using entirely public sources of information, the PIRUS dataset is among the first efforts to understand domestic radicalization from an empirical and scientifically rigorous perspective.

The original PIRUS data was funded by the National Institute of Justice (PI John Sawyer, award no. 2012-ZA-BX-0005). The Office of University Programs, Science and Technology Directorate, U.S. Department of Homeland Security (PI Gary LaFree, award no. 2012-ST-061-CS0001) provided additional funding to extend the original coding.

In 2015, the National Institute of Justice provided additional funding to collect additional data on desistance and disengagement pathways of extremists (PI Michael Jensen, award no. 2014-ZA-BX-0003), and to assess the similarities and differences between extremist offenders and members of criminal gangs (PI Gary LaFree, award no. 2014-ZA-BX-0002).

An additional subset of the PIRUS data focuses on foreign terrorist fighters, with initial funding provided by the Office of University Programs, Science and Technology Directorate, U.S. Department of Homeland Security (PI William Braniff; award no. 2012-ST-061-CS0001).

The National Institute of Justice (PI Gary LaFree, award no. 2017-ZA-CX-0001) is currently funding an effort to add social network data to the core PIRUS dataset, as well as integrate community-level data, in order to build risk assessment tools.

**About the Bias Incidents and Actors Study**

The Bias Incidents and Actors Study (BIAS) dataset builds on the methodology developed for PIRUS in order to build a dataset on bias crime offenders, including data on demographics, education levels, socioeconomic characteristics, personal histories, social

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networks and bias motivations across multiple offender types and criminal acts (e.g., violent vs. nonviolent bias crimes). The BIAS dataset is funded by an award from the National Institute of Justice (PI Michael Jensen, award no. 2017-VF-GX-0003).

**About the Profiles of Incidents involving CBRN and Non-State Actors**

The Profiles of Incidents involving CBRN and Non-State Actors (POICN) database is an open-source relational database recording ideologically motivated CBRN incidents including attacks, failed agent-use attempts, plots and proto-plots. The dataset is currently comprised of 517 events covering the period 1990 to 2017. Each event collects more than 122 geospatial, temporal, motivational, operational, tactical and consequence variables.

Original POICN collection was funded by a subaward from University of Arizona (PI Gary Ackerman; award no. Y554530) with funding originating from the Defense Threat Reduction Agency (prime award no. HDTRA1-10-1-0017). The Office of University Programs, Science and Technology Directorate, U.S. Department of Homeland Security (PI Gary LaFree; award no. 2012ST061CS0001) provided additional funding to extend the original coding.

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Appendix 2: Perpetrators of Terrorism in the United States by Ideology

**Perpetrators of Terrorism in the United States by Ideology, 2000 - 2009**

| Ideology/Perpetrator Group | Total Attacks | Total Killed |
|---|---|---|
| **Environmentalists** | | |
| Animal Liberation Front (ALF) | 31 | 0 |
| Coalition to Save the Preserves (CSP) | 8 | 0 |
| Earth Liberation Front (ELF) | 58 | 0 |
| Environmentalists | 2 | 0 |
| Revenge of the Trees | 1 | 0 |
| Revolutionary Cells-Animal Liberation Brigade | 2 | 0 |
| **Far Left** | | |
| Animal Liberation Front (ALF) | 31 | 0 |
| Coalition to Save the Preserves (CSP) | 8 | 0 |
| Earth Liberation Front (ELF) | 58 | 0 |
| Revenge of the Trees | 1 | 0 |
| Revolutionary Cells-Animal Liberation Brigade | 2 | 0 |
| **Far Right** | | |
| Anti-Abortion extremists | 1 | 0 |
| Anti-Immigrant extremists | 3 | 1 |
| Anti-Liberal extremists | 1 | 2 |
| Anti-Semitic extremists | 1 | 1 |
| Incel extremists | 1 | 4 |
| Ku Klux Klan | 1 | 0 |
| Minutemen American Defense | 1 | 2 |
| Neo-Nazi extremists | 2 | 0 |
| White supremacists/nationalists | 11 | 7 |
| **Religious** | | |
| Al-Qaida | 4 | 3004 |
| Al-Qaida in the Arabian Peninsula (AQAP) | 1 | 0 |
| Anti-Abortion extremists | 3 | 1 |
| Anti-Semitic extremists | 1 | 1 |
| Jihadi-inspired extremists | 5 | 15 |
| Ku Klux Klan | 1 | 0 |
| Muslim extremists | 2 | 0 |
| **Single Issue** | | |
| Anti-Abortion extremists | 20 | 1 |
| Anti-Government extremists | 18 | 0 |
| Anti-Immigrant extremists | 3 | 1 |
| Anti-Israeli extremists | 1 | 3 |
| Anti-Kim Jong-il extremists | 1 | 0 |

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| | | |
|---|---|---|
| Anti-White extremists | 4 | 3 |
| White supremacists/nationalists | 3 | 2 |

Source: Global Terrorism Database

**Perpetrators of Terrorism in the United States by Ideology, 2010 - 2019 (Q1)**

| Ideology/Perpetrator Group | Total Attacks | Total Killed |
|---|---|---|
| **Environmentalists** | | |
| Animal Liberation Front (ALF) | 6 | 0 |
| Environmentalists | 3 | 0 |
| The Justice Department | 1 | 0 |
| Unknown | 1 | 1 |
| **Far Left** | | |
| Anarchists | 3 | 0 |
| Animal Liberation Front (ALF) | 6 | 0 |
| Anti-Government extremists | 2 | 3 |
| Anti-Republican extremists | 1 | 1 |
| Anti-White extremists | 1 | 0 |
| Left-wing extremists | 1 | 0 |
| Students For Insurrection | 1 | 0 |
| Unknown | 1 | 0 |
| **Far Right** | | |
| Anti-Arab extremists | 1 | 0 |
| Anti-Government extremists | 9 | 69 |
| Anti-LGBT extremists | 4 | 0 |
| Anti-Muslim extremists | 30 | 5 |
| Anti-Police extremists | 1 | 2 |
| Anti-Semitic extremists | 5 | 11 |
| Anti-Sikh extremists | 1 | 0 |
| Citizens for Constitutional Freedom | 1 | 0 |
| Incel extremists | 4 | 20 |
| Jihadi-inspired extremists | 1 | 1 |
| Ku Klux Klan | 3 | 0 |
| Neo-Nazi extremists | 3 | 12 |
| Pro-Trump extremists | 16 | 0 |
| Right-wing extremists | 2 | 0 |
| Sovereign Citizen | 3 | 1 |
| United Aryan Empire | 1 | 0 |
| Unknown | 6 | 2 |

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| | | |
|---|---|---|
| White Rabbit Three Percent Illinois Patriot Freedom Fighters Militia | 2 | 0 |
| White supremacists/nationalists | 26 | 46 |
| **Nationalist/Separatist** | | |
| Anti-White extremists | 1 | 0 |
| **Religious** | | |
| Anti-Abortion extremists | 5 | 3 |
| Anti-Government extremists | 5 | 4 |
| Anti-Muslim extremists | 28 | 5 |
| Anti-Semitic extremists | 7 | 11 |
| Black Hebrew Israelites | 3 | 0 |
| Citizens for Constitutional Freedom | 1 | 0 |
| Jihadi-inspired extremists | 28 | 92 |
| Ku Klux Klan | 3 | 0 |
| Muslim extremists | 9 | 13 |
| Tehrik-i-Taliban Pakistan (TTP) | 1 | 0 |
| Unknown | 3 | 2 |
| **Single Issue** | | |
| Anti-Abortion extremists | 13 | 3 |
| Anti-Government extremists | 3 | 1 |
| Anti-Gun Control extremists | 3 | 0 |
| Anti-Police extremists | 9 | 14 |
| Anti-Trump extremists | 3 | 0 |
| Anti-White extremists | 6 | 10 |
| Conspiracy theory extremists | 2 | 1 |
| Court Reform extremists | 1 | 0 |
| Incel extremists | 4 | 20 |
| Male supremacists | 3 | 0 |
| Pro-choice extremists | 2 | 0 |
| Pro-LGBT Rights extremists | 2 | 0 |
| Unknown | 3 | 1 |
| Veterans United for Non-Religious Memorials | 2 | 0 |

Source: Global Terrorism Database

**Clint Watts**

- **Distinguished Research Fellow, Foreign Policy Research Institute**

**Statement Prepared for the U.S. Senate Committee on Homeland Security and Governmental Affairs**

**"Countering Domestic Terrorism: Examining the Evolving Threat" – 25 September 2019**

Today, both international terrorists and domestic terrorists congregate, coordinate, and conspire online, often without having any direct connection or physical interactions with a terrorist organization or fellow adherents. Both types of terrorist perpetrate violence in pursuit of political or social change on behalf of their respective ideologies. In both international and domestic terrorism, successful attacks inspire further attacks by like-minded supporters. Modern domestic terrorist networks like international terrorist networks stretch beyond international borders and across hundreds of U.S. jurisdictions.[1]

Domestic terrorists differ from international terrorists in two critical ways that vex law enforcement efforts to preempt violence. First, domestic terrorists, for the most part, don't operate as physical, named groups in the way that al Qaeda and the Islamic State have in an international terrorism context. America's law enforcement presence and the operational opportunities of virtual networking result in sub-surface, distributed networks of domestic terrorists motivated by common violent ideology, but they generally lack a defined organizational structure or physical base for their operations.

Second, law enforcement pursues domestic terrorists via different rules and structures separate from international terrorists. Investigators must pass higher thresholds to initiate investigations and have fewer tools and resources at their disposal. In sum, domestic counterterrorism remains a reactive affair, in which investigators respond to violent massacres and then pursue criminal cases.

There's more to discuss than I can capture during these brief opening remarks, but I'll focus on what I believe to be critical gaps in America's posture and approach for countering domestic terrorists.

- *If we can't define the threat, then we can't stop the threat – Importance of threat designation & measurement*

  Countering al Qaeda and the Islamic State is no easy task, but the process for conducting international counterterrorism is far easier because the U.S. State Department can

[1] An extended discussion of the similarities between international and domestic terror attacks and groups can be found at the Foreign Policy Research Institute (FPRI). Clint Watts, "America Has A White Nationalist Terrorism Problem. What Should We Do?," FPRI, May 1, 2019. Available at: https://www.fpri.org/article/2019/05/america-has-a-white-nationalist-terrorism-problem-what-should-we-do/.

designate such groups as a Foreign Terrorist Organization (FTO).[2] FTO designations allow federal law enforcement to a) pursue investigations according to the Attorney General Guidelines, b) organize their agencies and allocate resources based on these designations, c) centrally manage cases around the country helping connect associated perpetrators and plots, and d) measure investigative performance and return on investment.

Today's domestic terrorism lacks designation by group or violent ideology and the pursuit of investigations is limited to U.S. Criminal Codes. Lacking designations for initiating a nationwide case for pursuing connected violence, federal law enforcement largely pursues cases reactively after an attack. Individual cases are pursued across dozens or even hundreds of jurisdictions even though subjects congregate, communicate, and collaborate with each other in online environments. Domestic terrorism's lack of designation also results in no effective measure for understanding the size, shape, and scale of each violent extremist threat.

If the U.S. seeks to preempt domestic terrorist attacks, then it must provide a mechanism for designating domestic terrorism threats. A domestic terrorism statute or designation process would resolve this challenge but may be impossible to effectively create or implement. Alternatively, we could develop a process allowing the FBI Director to open nation-wide cases when violent ideologies inspire mass casualty attacks and are connected to multiple cases, incidents, and reports across the country. With congressional oversight, reasonable thresholds could be established for placing federal, state, and local law enforcement into a preemptive posture similar to our approach with al Qaeda- and Islamic State-inspired terrorism over the past decade.

- *If we don't understand the threat, then we can't defeat the threat – Need for research & training*

  After the September 11, 2001 terrorist attacks, agencies dramatically increased their staffing of intelligence analysts and committed research funds for understanding terrorist ideologies helping to identify key influencers, ideological justifications for violence, and radicalization pathways for those enticed to join terrorist groups.[3] By understanding terrorist networks, we could assess the scale and breadth of the jihadist threat, establish intelligence requirements that needed further analysis, and inform investigators and community partners about where to look and what to look for in mitigating terrorist violence.

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[2] For additional background on the Foreign Terrorist Organization process and current list, see, "Foreign Terrorist Organization (FTO)" *Congressional Research Service*, January 15, 2019. Available at: https://fas.org/sgp/crs/terror/IF10613.pdf.

[3] For example, the Combating Terrorism Center at West Point created the *Militant Ideology Atlas* helping determine key influencers, influences, and indicators for understanding mobilization to violence. There is no parallel for domestic terrorism despite there being sufficient data for exploration. See, here, at the Combating Terrorism Center website: https://ctc.usma.edu/app/uploads/2012/04/Atlas-ResearchCompendium1.pdf.

With domestic terrorism, threat knowledge comes anecdotally from the experience of the most seasoned investigators. Few, if any, personnel and resources are dedicated to establishing a collective picture of which violent ideologies perpetrate violence, why they do it, and how they overlap. Indicators of mobilization to violence are largely unknown or undefined, yet we have extensive data about past perpetrators that we could analyze and new technology tools for understanding terrorist sentiment, associations, and mobilization. The best sources for understanding these domestic terrorist threats reside outside the U.S. government, have little or no contact with investigators, and lack sufficient funding. Since they lack research and training, we cannot expect investigators to preempt the current spate of domestic terrorist attacks.

- *If we can't see the threat, then we can't preempt the threat – Identifying violent extremists both online and on-the-ground to disrupt their attacks*

  To reduce the frequency and scale of international terrorism in the U.S., we sought to connect the dots between extremists through all-source analysis and targeted outreach with community partners and online interventions. With domestic terrorism, federal investigators have less ability to observe online threats than I have from my home. Federal agencies may have extensive relationships for conducting outreach to at-risk individuals and communities in the international terrorism context, but they have only a few, if any, in the domestic terrorism context.

  In the online space, federal agencies might look to rapidly increase their partnerships with groups like Moonshot CVE,[4] which employs innovative approaches for spotting and engaging vulnerable individuals via social media in both international and domestic terrorism contexts. Similarly, terrorism task force officers should extend their "See Something, Say Something"[5] strategies to domestic terrorism threats and create community partner engagement strategies with non-governmental groups.

- *If we don't resource the defenders, then we'll keep losing to the offenders – Allocating resources and synchronizing operations across the federal, state, and local levels*

  International terrorist threats brought about a whole-of-government approach by which federal resources created terrorism task forces synchronizing information sharing and actions across the country to defeat distributed terrorist networks. We have intelligence fusion centers stretched across the country designed to detect international terrorism now seek out more missions to sustain their utility and existence. The federal government could lead the way to not only help state and local law enforcement do more than simply respond to domestic terror attacks, but also help them to employ effectively their manpower and resources for preempting domestic terror attacks.

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[4] For background on Moonshot CVE and its approach for preempting violent extremism, see, here: http://moonshotcve.com.

[5] For background on the "See Something, Say Something" strategy employed over the last decade, see, this Department of Homeland Security website: https://www.dhs.gov/publication/if-you-see-something-say-something™-campaign-overview.

- *If we only look at what's happening in the U.S., then we'll miss the dangerous global connections – Local violence is increasingly connected to a global network*

Our homegrown terrorists, at times, appear to be lonely, but they are not alone in their motivations, and their connections extend far beyond U.S. borders. Over the last decade, we worried about the global networking, state sponsorship, and facilitation of jihadist terrorism. Today, we should worry equally about foreign connections and influences on domestic terrorist threats. The social media posts and manifestos of recent domestic attackers point to the international inspiration and global connections of violent ideologies. These connections extend beyond the internet leading to physical movement across international boundaries to attend training or execute attacks. In Sweden, two of three bombers from the Nordic Resistance Movement received military training in Russia before returning home to attack.[6] The Christchurch mosque attacker was not from New Zealand, but Australia.[7]

The patterns of today's domestic terrorism formation mirror what we've seen with international jihadists. The federal government must use lessons learned from countering global jihadists to help defend against foreign influences inspiring or facilitating violence in America that on the surface may appear as strictly homegrown. Creating a common operational picture for understanding violent ideologies with international reach is essential for developing individual de-escalation strategies online and on-the-ground in local communities.

In conclusion, with these remarks, I've only addressed gaps that I believe, if closed, would reduce the frequency of domestic terrorist attacks. These remarks do not address how we could reduce the impact—the number of dead and wounded—arising from each domestic or international terrorist attack.

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[6] "Two men charged over refugee home blast 'received military training in Russia'." *The Local (Sweden)*, June 9, 2017. Available at: https://www.thelocal.se/20170609/gothenburg-sweden-two-men-charged-over-refugee-home-bomb-attack-received-military-training-in-russia.

[7] Sarah Keoghan and Laura Chung, "From local gym trainer to mosque shooting: Alleged Christchurch shooter's upbringing in Grafton," *Sydney Morning Herald*, March 15, 2019. Available at: https://www.smh.com.au/national/nsw/alleged-christchurch-gunman-identified-as-former-grafton-local-20190315-p514nm.html.

## Terrorist Attack Spectrum – Directed, Networked & Inspired

| Terrorist Attack Category | Directed | Networked | Inspired |
|---|---|---|---|
| **Category Description** | Attacks planned, staffed, resourced and designated by a terror group<br>• Less frequent<br>• More capable<br>• Most Dangerous | Attacks executed by affiliated cells, trained cadre, former fighters. Varying degrees of coordination with terror group's central leadership<br>• Frequency indicative of terror network strength<br>• Mixed capability | Attacks perpetrated by individuals/cells inspired by extremist ideology, no formal connections to terror group. Self-funded, self-equipped, Perpetrator selects targets<br>• Higher frequency<br>• Lower capability, on average<br>• Highly dangerous at times, Amateurish failures other times |
| **International Jihadist Terrorism**<br>(Top Down Growth - Directed, Networked, Inspired) | Al Qaeda & Islamic State execute attacks, 9/11 in U.S., 7/7 in London, many others | Former foreign fighters from Afghanistan & Iraq/Affiliates join brand, execute attacks regionally & locally. Heavy at times in Europe, S. Asia, North Africa, Middle East | Social media & Internet inspired individuals conduct local attacks on designated targets & targets of opportunity. Known as Homegrown Violent Extremists in U.S. |
| **White Nationalist Terrorism**<br>(Bottom Up Growth - Inspired, Networked, Directed) | No named group at present, may emerge if successful attacks unchallenged, state sponsorship emerges | Successful attacks & resulting discussions increase online networking leading to physical associations, larger scale congregations, increasing complexity & frequency of attacks. | Social media inspired individuals attack places of worship, minority groups in their local area. Broadcast attacks & manifestos to like-minded communities via Internet. |

Source: C. Watts (Foreign Policy Research Institute)

Figure 2

**Statement of Professor Robert Chesney***

United States Senate
Committee on Homeland Security and Governmental Affairs

"Countering Domestic Terrorism: Examining the Evolving Threat"

September 25, 2019

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## I. INTRODUCTION

Domestic terrorism is not a new phenomenon. In various guises, it has been with us throughout our history. At certain times it has loomed especially large. Racist political violence reached epic proportions in the aftermath of the Civil War in the South. Anarchists in the late 19th and early 20th centuries (many of whom were U.S. citizens, notwithstanding contemporaneous perceptions that anarchist violence stemmed from abroad) left a mark that included the assassination of a president. A virulent strain of hostility to the federal government spawned the bombing of the Alfred P. Murrah Federal Building in Oklahoma City in 1995. The list is, alas, a long one.

We may be on the cusp of, or perhaps even in the midst of, another such period. Concern about domestic terrorism—especially (but not only) racially-motivated terrorism—had been growing steadily even before the El Paso attack. FBI Director Wray testified in July, before the Senate Judiciary Committee, about a rise in the rate of domestic terrorism arrests, noting that it had reached rough parity with international terrorism arrests. That has led to debate regarding how many such cases there actually are (a topic to which I will return below), but whatever the precise number the fact remains that the public has grown very concerned about the problem of domestic terrorism, and for good reason.

The surge in interest in domestic terrorism raises an important question: Do we have the right arrangement of laws and policies to respond appropriately to this challenge?

It is impossible to answer that question definitively. Even one death from terrorism seems too many, after all, yet very few of us would want to live within the sort of system that would be necessary to get anywhere close to eliminating all such risk. The types of surveillance and arrest powers needed to eliminate danger altogether would produce a world quite inconsistent with our traditions, chilling political dissent and sending the rate of "false positives" (*i.e.*, situations in which the government takes an action against someone out of a mistaken belief that he or she has done or will do something harmful) through the roof. When we seek the optimal calibration of our counterterrorism laws and policies, therefore, we have little choice but to engage in a rough sort of balancing: with decidedly-imperfect information and with different views about the weight to give to competing values, we trade-off safety gains with other values, striving to

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* I am the James A. Baker III Chair in the Rule of Law and World Affairs at the University of Texas at Austin. I also serve the university as the Associate Dean for Academic Affairs at the School of Law and as Director of the Robert S. Strauss Center for International Security and Law.

maintain an optimal balance even as technological, political, and other background conditions evolve in ways that disrupt previously-settled expectations. Such balancing projects thus require perpetual attention, and in light of recent events the present moment seems a particularly apt time to turn attention to our domestic terrorism laws, policies, and practices.

My aim with this testimony is to help with that project by drawing lessons from the post-9/11 project of rebalancing our counterterrorism laws and policies to respond more assertively to the international terrorist threat posed by al Qaeda. There are important differences between the domestic terrorism and international terrorism problem sets, to be sure, but even the differences can be instructive.

## II. The Post-9/11 Terrorism-Prevention Paradigm for International Terrorism

The U.S. government's post-9/11 counterterrorism framework is most famous, of course, for its military and covert action components. However central those measures have been to the post-9/11 framework, though, I will not explore them here; military force and other manifestations of the armed conflict model simply have no place in a discussion of our current domestic terrorism challenges.

What does that leave? Quite a lot.

Despite the (understandable) tendency to focus on the military dimensions of post-9/11 counterterrorism, there have always been critical non-military dimensions to post-9/11 counterterrorism policy. Some of those non-military dimensions (for example, changes to the legal and policy frameworks of the immigration laws) are not sufficiently relevant to the current wave of domestic terrorism concerns so as to warrant discussion here. The real action, instead, has to do with new or invigorated approaches to both prosecution and investigative authorities, approaches that combined to form what I have described as the "terrorism-prevention paradigm."[1]

Put simply, the point of the terrorism-prevention paradigm was to drive both FBI investigators and Justice Department prosecutors to focus more on interventions that might prevent attacks in the first place, in contrast to a more-reactive approach. Here is how I described it in a 2005 article:

> The precise moment when this shift occurred may have been captured in Bob Woodward's account of policymaking within the Bush Administration in the days and weeks immediately following 9/11. Woodward describes a meeting of the National Security Council shortly after the attack, during which new FBI Director Robert Mueller mentioned the need to take care that evidence not be tainted in the event of subsequent arrests and prosecutions. This reference to the traditional role of federal law enforcement

[1] Robert M. Chesney, *The Sleeper Scenario: Terrorism-Support Law and the Demands of Prevention*, 42 Harvard Journal on Legislation 1-90 (2005) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=587442). *See also* Robert M. Chesney, "Anticipatory Prosecution in Terrorism-Related Cases," in The Changing Role of the American Prosecutor (Worrall & Nugent, eds., SUNY Press 2007) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=944117).

> prompted Attorney General John Ashcroft to interrupt. Woodward provides the following account: "Let's stop the discussion right here, [Ashcroft] said. The chief mission of U.S. law enforcement . . . is to stop another attack and apprehend any accomplices or terrorists before they hit us again. If we can't bring them to trial, so be it."
>
> That moment symbolized a dramatic change in priorities not only for the FBI but for the Justice Department as a whole. As Ashcroft explained to the Senate Judiciary Committee a few weeks later, "[o]ur fight against terrorism is not merely [or] primarily a criminal justice endeavor[.] [I]t has to be a defensive and preventi[ve] endeavor . . . [w]e must prevent first; prosecute second."
>
> It is one thing to declare prevention to be an overriding priority, but quite another to operationalize that concept. What precisely has the Justice Department done to translate these words into action, and do any of these changes provide policymakers with a plausible alternative to military detention of potential sleepers within the United States? These questions require a survey of the multi-tiered law enforcement strategy adopted by the Justice Department in response to the prevention imperative.[2]

In that article, I went on describe the multi-pronged FBI/DOJ approach to terrorism prevention that emerged in the following years. I set forth the key insights below, updating to account for more recent developments. The first subpart discusses "untargeted" prevention strategies, while the second addresses situations in which the government suspects that a particular person might carry out an act of terrorism.

**A. Untargeted Prevention**

A key strategy for DOJ involves what we might call "untargeted prevention." The idea here is to generate preventive benefits even without knowing the identity of those who might cause harm. How? By systematically eroding access to important resources that might be used by a would-be terrorist, including not just directly-dangerous resources but also other resources that might directly or indirectly facilitate an organization's ability to cause harm.

Several key examples of this strategy are not specific to the international terrorism setting. This includes enhanced efforts to investigate and prosecute violations of laws relating to money laundering, identity fraud, and immigration fraud. Another example of untargeted prevention, however, involves a statute that is very much focused on international terrorism: 18 U.S.C. 2339B (the second of two "material support laws," this one enacted in 1996).

This statute makes it a felony to provide "material support or resources"—that is, just about any form of tangible or intangible services or things, including providing others or even one's own self as "personnel"—to certain recipients. It does not require any showing that the defendant knew or intended that the support they provided would further a criminal act. Indeed, it is possible that a 2339B defendant had only the most-wholesome of intentions. This matters not, so long as they knew or should have known that the recipient of their aid is a foreign organization that is on the State Department's list of formally-designated "foreign terrorist

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[2] *Sleeper Scenario, supra* note 1, at 27-28.

organizations" ("FTOs"), or at least that they knew or should have known that the recipient organization engages in the sort of activity that would support such a designation. In this sense, 2339B functions like an across-the-board embargo of FTOs, much as one could see in the more-familiar setting of embargoes of foreign states. And while few if any FTOs are entirely dependent on US-based resources for their survival, the basic concept underlying 2339B is that cutting off access to US sources might at least somewhat erode the ability of FTOs to cause harm (either in the direct sense of denying them access to directly-dangerous materials, or in the indirect sense of denying them access to funds (or fungible resources that would free up funds) that could be used directly for harmful purposes).

The 1996 material support statute was used in only a handful of cases during its first five years of existence, but it has been a mainstay of international terrorism cases ever since. Many if not most of those instances fit the untargeted-prevention model. Some, however, are better understood as examples of targeted prevention, as I will explain below.

**B. Targeted Prevention**

As important as untargeted prevention may be, the most critical task for the terrorism-prevention paradigm involves incapacitating potentially-dangerous persons before than can cause harm. This scenario is the most acute one both in terms of the benefits to be had (for prevention of a terrorist attack is far more valuable than a post-hoc intervention, at least from the point of view of the victims and their loved ones) and the costs that might be entailed (for the chances of an error on the government's part—of a "false positive—are higher insofar as the government is intervening well before any attempt or completed act occurs).

There are several options for pursuing targeted prevention, and all have been significant for the terrorism-prevention paradigm.

First, federal criminal law includes a variety of inchoate crime statutes that can be used for pre-attack intervention. Such charges can allow for arrest and prosecution at a surprisingly early stage along the continuum that runs from mere inclinations to completed operations. Indeed, therein lies a difficult policy challenge. On one hand, attaching liability at an early stage along that continuum is very attractive, as it allows the government to act well before the moment of harm draws close, thereby reducing the risk that the harm will materialize before the government quite manages to make an arrest. But the same quality increases the risk of what some would characterize as the "precrime" or "Minority Report" problem: *i.e.*, the risk that charges will fall on someone who would not in fact have gone on to commit a harmful act.[3] These are two sides to the same coin.

Conspiracy charges can raise this issue. While usually conspiracy charges specify some particularized object of the conspiracy, the fact remains that the object need not be reduced to

[3] *The Minority Report* is a famous novella by Philip K. Dick, contemplating a world in which law enforcement officials rely on psychics to arrest people before they can carry out a future crime, while still charging them for that future crime (thus "precrime"). It was popularized further in a Tom Cruise movie.

specifics of where, when, or how.[4] The prosecution of Jose Padilla (an American citizen once widely-described as the "dirty bomber," Padilla was held in military detention in the United States for a long period prior to being transferred for prosecution in federal court) illustrates this well. When he moved for a bill of particulars seeking elaboration of the object of the murder conspiracy with which he had been charged, the response from prosecutors was framed broadly in terms of agreement to participate in al Qaeda's generalized plans to carry illegal acts of violence, without specification as to a particular target, means, or occasion. On that view, the government could have arrested Padilla (assuming he could be located and apprehended) at a very early and indeterminate stage; the fact that he was not arrested until al Qaeda dispatched him back to the United States, and that the public heard an earful about his involvement in various possible plots, obscured this insight about the potential reach of conspiracy liability.

A separate instrument for preventive intervention involves another material-support statute: 18 USC 2339A, enacted in 1994. In contrast to 2339B (discussed above), 2339A has nothing to do with FTOs as such, nor embargo concepts. Instead, it is best to think of 2339A as an enhanced aiding-and-abetting statute. It makes it a felony to provide "material support or resources" to *anyone*—whether related to an FTO or not—so long as the defendant intended or at least knew that the recipient of the aid would use the aid in furtherance of any of more than a dozen listed predicate offenses (thus the analogy to aiding-and-abetting). In this sense, 2339A functions somewhat like conspiracy charges: the government need not await an actual or attempted act of violence, but simply must show a knowing or intentional step taken to aid one of the listed predicate crimes.

From the prosecutor's perspective, both conspiracy and 2339A are particularly useful. Add in the idea that one can *attempt* to violate 2339A, or even *conspire* to do so, and the options for preventive intervention extend still further. But these charging options won't always be there when the government is investigating a potentially-dangerous person. What then?

This brings us to the "Al Capone" strategy. The idea here is that prosecutors can opt to make use of fortuitously-available charges, ones that may have little or no relation to the suspicions that lead the government to suspect the person may commit a terrorist act. Just as the violent mobster Capone was taken down for tax-avoidance rather than for the various murders in which he was involved, a terrorist might be arrested for identity fraud rather than a terrorism offense. On this model, in short, any available charge will do so long as otherwise legitimate; the larger goal of incapacitation is served (at least for a time) even if the labeling of the charges fails to reveal the connection to terrorism suspicions.

To give an example: let's say that we have a person whom the government suspects might be inclined to commit a terrorist act, but for whatever reason terrorism-related charges cannot be brought. If that person has engaged in credit-card fraud, however, or has lied to FBI investigators during an interview, the person may be prosecutable nonetheless. This is helpful from the point of view of reducing the risk of a violent act, and so long as the actual charge is

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[4] Robert M. Chesney, *Beyond Conspiracy? Anticipatory Prosecution and the Challenge of Unaffiliated Terrorism*, 80 SOUTHERN CALIFORNIA LAW REVIEW 425-502 (2007) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=932608).

well-founded it does not seem unfair to the defendant. The government on this model is simply allowing terrorism-related concerns help it decide how to allocate its prosecutorial and investigative resources in relation to other offense categories.

I pause here to note that the Al Capone strategy gives rise to the potential for statistical anomalies, and thus to confusion for those who are trying to understand the scope and efficacy of counterterrorism investigations and prosecutions. The potential mismatch between initial FBI investigative interests and the eventual, actual charges can result in both undercounting of counterterrorism efforts (when someone focuses on the types of eventual charges and thus misses the underlying counterterrorism interest) and overcounting of them (when someone focuses on the investigative categorization without accounting for whether mere suspicions were ever really put to the test). For similar reasons, analysis of the resulting sentences in such cases may prove to be a poor guide to their underlying significance.[5] This is something to bear in mind as Congress ponders the path forward for domestic terrorism legal and policy frameworks and seeks data regarding current efforts.

It also is worth noting that 2339B (the FTO embargo provision) plays a special role in the Al Capone strategy, one that is easy to overlook given that 2339B on its face is an untargeted-prevention statute focused expressly on terrorism. The idea is that 2339B, on its face and as described above, appears to be no more than an embargo statute that furthers counterterrorism in a generalized way, limiting group access to useful resources. On that view, a prototypical 2339B defendant is not necessarily personally dangerous; they may be making *others* more capable of harm, but they themselves may be harmless in a direct sense. But what if that's not the case? What if we have a person who is quite dangerous, yet the government cannot mount a conspiracy case, a 2339A case, or some unrelated case based on tax fraud or the like? If the person is in contact with an FTO, there is a very good chance that he or she will take steps at some point that open the door towards a 2339B material support charge. Indeed, if the person is a member under the direction and control of the FTO, there's no need to prove any particular conduct apart from that status—and the ability to arrest based simply on membership status is an especially powerful—though risky—tool for preventive intervention.

The utility of 2339B for preventive prosecution grows further, moreover, once one considers how it interacts with the practical consequences of an investigative approach in which an undercover officer or confidential informant interacts with a suspected terrorist. The relationships that unfold in such situations have the benefit (at least sometimes) of allowing for highly-controlled development of the situation, gradually revealing (or, as critics would say, changing) what the suspect is capable and willing to do. In practice, this means that the government to some extent can calibrate the moment in time when liability for material support—or better yet, *attempted* provision of material support—will attach.

That model is, of course, another two-edged sword. The very same qualities that make it so

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[5] *See* Robert M. Chesney, *Federal Prosecution of Terrorism-Related Cases: Conviction and Sentencing Data in Light of the "Soft Sentence" and "Data Reliability" Critiques,* 11 LEW. & CL. L. REV. 851 (2007) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005478).

useful for ex ante prevention also increase the risk of false-positive interventions—*i.e.,* situations in which the suspect would not have gone on to cause harm if left to their own devices. And here we come to one of the great and intractable dilemmas of counterterrorism policing: the tension between reaping the substantial benefits of the undercover-attempt model and incurring the substantial individual and social costs of increased false-positives. Reasonable minds will differ on how best to strike the balance on that dimension, but all should acknowledge that the stakes are high in both directions.

There are other tools for targeted prevention. For example, the centuries-old statute allowing for the detention of material witnesses to crimes has been used as another Al Capone-style ground for incapacitation. But the general thrust of the prevention-charging model is clear enough at this point, so let's now turn our attention to the role of investigative practices and authorities in the overall terrorism-prevention paradigm.

### C. Investigative Practices and Authorities

We have touched already upon one of the critical investigative practices that support the terrorism-prevention paradigm: vigorous reliance upon both undercover officers and confidential informants. To that account we should now add that its utility for counterterrorism has increased substantially in recent years thanks to the rise of social media.

Social media, to be sure, has been a boon to malicious organizations and individuals. Because it removes the mediating functions associated with traditional mass media, social media provides such actors with far more capacity to share their propaganda than would have been the case two decades ago. The Islamic State famously made much hay from this, reaping extraordinary recruitment benefits. But this, again, is a two-edged sword. The same openness—the same lack of editorial mediation—that allows a potential-recruit to be identified by the Islamic State creates intelligence-collection and evidence-gathering opportunities for law enforcement and intelligence agencies as well. When one looks through the endless array of indictments of U.S. persons arrested for attempting to provide material support to the Islamic State in recent years, what one finds again and again is that the defendant first was identified as dangerous via public social media postings, and then brought into sustained contact with an undercover officer or confidential informant. That sequence (and variations upon it) has been the engine driving the FBI's impressive run of counterterrorism arrests in recent years. It is a powerful, if underappreciated, testament to the value of combining open-source intelligence (OSINT) collection and analysis with the use of undercover officers and confidential informants for counterterrorism purposes.

What about surveillance and other collection authorities? International terrorism can be investigated not only through a domestic criminal paradigm but also through a foreign-intelligence collection paradigm. The latter capacity unlocks a panoply of authorities that do not require the same sort of proof-of-crime showings that one associates with ordinary law enforcement. Some are expressly designed to function with respect to U.S. person targets (for example, "traditional" FISA Title I electronic surveillance orders). Others compel cooperation from U.S. companies that are in a position to assist in acquiring communications (for example,

FISA Section 702) or other information (for example, national security letters and so-called "Section 215" orders). And since one of the most notable innovations of the post-9/11 world was the elimination of the "wall" that previously prevented criminal investigators and foreign-intelligence collectors and analysts from integrating their efforts, those charged with investigation of international terrorism are in a good position to benefit from the full range of investigative powers today.

## III. A Terrorism-Prevention Paradigm for Domestic Terrorism?

So, should some or all aspects of the post-9/11 terrorism-prevention paradigm be mapped on to the domestic terrorism context today? Let's consider that question first in relation to substantive criminal law, before turning to investigative issues.

### A. Do We Need New Federal Crimes?[6]

As an initial matter, it is clear from the discussion above in Part II that there are many aspects of the terrorism-prevention paradigm that depend simply on prosecutorial judgment rather than on the creation of novel forms of criminal liability. This is true in particular for the Al Capone model, and it is true too for the use of standard-issue inchoate crimes such as conspiracy. There is no need for new legislation to use those tools in the domestic terrorism setting. They no doubt are used at times in the domestic terrorism setting, and the decision to use them more extensively is a question of resources and policy preference rather than having the right authorities.

As Part II also made clear, however, there are some terrorism-specific statutes that play an important role in the prevention paradigm, both in the untargeted and targeted settings. Some of these are specific to the international terrorism context. And so the question arises: do we need new federal statutes along any of those lines, for the domestic terrorism context?

Some think the answer is a clear yes. Especially since the El Paso attack, we have heard repeated calls for legislation along those lines. Most notably, the El Paso terrorist attack seems to have revived interest in the possibility of making "domestic terrorism" a federal offense. The FBI Agents Association, for example, renewed its earlier call to take that step (see here for a very useful explainer from Charlie Savage in the *New York Times*, and also this insightful piece from Adam Goldman, also in the *Times*, from early June of this year).

Do the various arguments for creating at least some type of new federal domestic terrorism statute hold water? Here are some of the key considerations:

#### 1. Do we need a federal domestic terrorism law in order to enable prosecution (or sufficiently serious punishments) of persons actually involved in terrorist attacks?

No. We do not have a situation in which persons who are involved in domestic terrorist attacks somehow end up walking free (or getting improperly light sentences) due to a gap in the scope or

[6] This section is a modified version of an essay I wrote for *Lawfare* on August 8. *See* Robert Chesney, *Should We Create a Federal Crime of "Domestic Terrorism"?* (available at https://www.lawfareblog.com/should-we-create-federal-crime-domestic-terrorism).

calibration of criminal laws. This is true regardless of the scope of federal criminal law, in fact, for the *states* are the primary source of criminal law in the American system, and every state has a wide array of general-purpose state criminal laws applicable to terrorist acts (murder, attempted murder, conspiracy, destruction of property, and so forth). In some states, moreover, capital charges are available in at least some circumstances. The El Paso shooter, for example, now faces capital murder charges in the Texas state court system.

To be sure, many states do not have capital punishment, and Congress thus *might* be making a practical difference if it provides a nationwide capital option via creation of a new federal domestic terrorism offense. Is that enough on its own to carry the argument, however? I am doubtful, for federal law *already* does this to a substantial extent. As discussed in the next section, the common claim that federal criminal law—and even the subpart of federal criminal law that is terrorism-specific—does not address domestic terrorism is partially incorrect.

**2. There already are federal domestic terrorism laws on the books**

It is true that we do not have a single, sweeping statute purporting to criminalize *all* domestic terrorism as such. Yet we *do* have several federal terrorism statutes that apply even in the purely domestic context.

To assess the argument for adding a new domestic terrorism offense, therefore, it makes sense to start by identifying just what gaps remain once one accounts for the existence of these current statutes. Title 18 of the U.S. Code contains most federal criminal laws, and it includes a chapter (Chapter 113B) titled "Terrorism." This is where one finds a variety of federal terrorism-related statutes, including most of the ones commonly used in prosecuting *foreign* terrorism cases. But not all the "terrorism" crimes listed here are limited to international or foreign fact patterns. Some apply just as well to domestic terrorism.

Take one of the most significant of these crimes: 18 U.S.C. § 2332a. This one, alas, has an unfortunately misleading title, one that makes it sound as if the statute would come into play only quite rarely: "Use of Weapons of Mass Destruction." Naturally, one would think that this statute makes it a federal offense to use, attempt to use, or conspire to use nuclear, radiological, chemical or biological weapons. And it does do all that. But, critically, it *also* covers the use of regular explosives—that is, *non*-WMD explosives. And it does *not* require any showing of a transnational or foreign element in the fact pattern. It is enough if there is an interstate commerce element, as is generally required with most federal criminal laws (in order to bring those laws into the scope of federal lawmaking power to begin with, via the interstate commerce authority of Article 1, Section 8, of the Constitution). The point being: This is a key terrorism statute, and it is perfectly available for domestic terrorism cases that involve bombings. Indeed, it was a key charge in the case of Cesar Sayoc, a domestic terrorist who just got a 20-year sentence for attempting to mail bombs to a large number of public figures.

Similarly, 18 U.S.C. § 2332f, also part of the "Terrorism" chapter, addresses the bombing of public places, infrastructure, transportation and the like. And both 2332a and 2332f bear the possibility of the death penalty. And then there is 18 U.S.C. § 2339C ("Prohibitions Against the Financing of Terrorism"). Section 2339C makes it a crime to collect funds knowing or intending

that the funds will be used to commit various predicate acts, most of which have an international connection but one of which encompasses attacks on civilians meant to intimidate a population where an element of interstate commerce is present (see the subtle combination of 2339C(a)(1)(B) and 2339C(b)(1)(G)(ii)). Further, we also have 18 U.S.C. § 2339(a), which prohibits harboring or concealing a person you reasonably believe has committed or is going to commit certain offenses, including a violation of the "WMD" (i.e., explosives) statute described above (i.e., 18 U.S.C. § 2332a).

This brings us to the 1994 material support law (18 U.S.C. § 2339A), which as noted above functions like an aiding-and-abetting statute in that it makes it a felony to provide material support or resources to anyone—including purely-domestic individuals or groups—with knowledge or intent that the assistance will be used to facilitate any of a long list of predicate federal crimes. Most of those predicate offenses are not relevant to the domestic terrorism scenario, to be sure, but some are. For example, 2339A applies when the support is used to facilitate a violation of 18 U.S.C. § 1114 (murder of U.S. government officials), or 2332a and 2332f (both discussed above). To that extent, the remarkable breadth of the "material support" concept can be brought to bear in cases of those who assist at least some domestic terrorism scenarios.

So what does this leave missing? Two gaps stand out.

First, as El Paso illustrates, terrorist attacks can be devastating without the use of explosives. The statutes listed above do not appear to reach most gun-based scenarios—although 2332a does come into play for some guns, because it incorporates by reference the definition of a destructive device found in 18 U.S.C. § 921(a)(4) and, thus, reaches weapons that "expel a projectile by the action of an explosive or other propellant … [if it has a] barrel with a bore of more than one-half inch in diameter." This is a concrete difference between the current approach to criminalizing domestic terrorism as compared to foreign/transnational terrorism, for in the latter scenario it generally would be possible to turn to a statute—18 U.S.C. § 2332b ("Acts of Terrorism Transcending National Boundaries")—that does not distinguish based on the means of violence employed.

Second, the partial availability of a material-support charge under 2339A is just not nearly as useful, from the law enforcement perspective, as having access to the version of material support provided in 18 U.S.C. § 2339B (i.e., the embargo-style 1996 statute that prohibits material support to designated *foreign* terrorist organizations). The reason why is clear (and helped significantly in gaining passage of 2339B in the first place): It is comparatively hard to show a person knows or intends to support a particular criminal act but comparatively easy to show they knew or should have known that their support was going to the benefit of a specific organization. This is why I wrote, above, that 2339B opens the door to anticipatory prosecutions of persons whom the government thinks are personally dangerous but cannot yet be linked to particular conspiracies, attempts or completed acts of violence, but who can at least be shown to have given something of value to a designated foreign terrorist organization (including providing themselves as "personnel" subject to the group's direction and control, thereby encompassing the status of active membership). Some bemoan that scope and some applaud it, but either way the point for

present purposes is that it is not available in the domestic terrorism context; we do not have a proscribed-organizations list for domestic terrorist groups, let alone a prohibition on providing material support or resources to such groups.

Should that change? I do not think so.

As an initial matter, it should be obvious that the First Amendment frictions associated with proscribing organizations in this manner—the limitation on free association and expression—become more profound where the object of proscription is a domestic organization rather than a foreign one. Even if those concerns can be overcome, though,[7] there are powerful reasons not to open that can of worms too readily. One need only ponder a world in which the power of such a designation is in the hands of one's ideological opponents in order to appreciate how quickly the mechanism could become a focal point for intensely-divisive decisions. In that regard, it is worth noting that the Board of Supervisors for the City and County of San Francisco recently passed a resolution denouncing the NRA as a domestic terrorist organization. One might try to police against unwarranted designations through statutory safeguards regulating the designation process, of course, but it would be an extraordinary risk to take. Meanwhile, it is worth underscoring that the current wave of concern about domestic terrorism does not appear rooted in the existence of organization-directed violence of the type associated with the familiar examples in the FTO setting. Taking all of that together, and it seems the case for an organization-based approach cannot be made as things currently stand, and even if it could probably still would not warrant the constitutional and political-stability risks. The idea of having "DTOs" just as we have FTOs is a Pandora's Box. Let's keep it closed.

To sum up: When people say that we lack a federal criminal law for domestic terrorism, this is only partially accurate. We do have such laws when it comes to explosives, and those laws apply not just to the direct perpetrators but also to those who harbor, finance, or otherwise materially support them. Federal law also is effective at reaching domestic terrorists who attack federal officers and installations. What is missing is

> (a) the domestic terrorism scenario in which the weapon is a firearm below a certain size (though such scenarios may yet be covered by federal hate crimes liability), and
>
> (b) a framework for proscribing organizations and thereby criminalizing material support to such groups (including becoming a person subject to the group's orders).

Closing the former gap might serve a useful signaling function, underscoring that domestic terrorism and international terrorism are despicable in equal measure. Closing the latter gap, however, would be unwise.

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[7] *Cf.* Holder v. Humanitarian Law Project, 561 U.S. 1 (2010) (upholding 2239B against First Amendment challenge); Scales v. United States 367 U.S. 203 (1961) (upholding "membership" clause of the Smith Act against First and Fifth Amendment challenges).

**3. What issues do proposals to criminalize "domestic terrorism" raise?**

Consider first federalism concerns. This is the idea that passage of a federal domestic terrorism statute would mark still another expansion of federal criminal law (and therefore federal enforcement capacity) into a domain previously belonging exclusively to the states. That is an argument that has some merit, though some will find it only a modest objection as compared to potential enforcement benefits such as increased resources available to investigate and pursue such threats and the narrative symbolism of so visibly stamping certain conduct with the terrorism label.

Bearing in mind that much domestic terrorism already can be reached by existing federal terrorism laws, or else by other federal criminal laws (such as hate crime), the degree of encroachment here may actually be rather limited, making the case for closing the gap similarly weaker as to increased resources but still relatively strong as to narrative symbolism. But, of course, much would depend on the precise details of such a statute.

What might such a law look like, and what concerns apart from federalism might it raise?

One oft-cited proposal, elaborated on *Lawfare* by Mary McCord and Jason Blazakis, would take the transnational terrorism offense noted above (18 U.S.C. § 2332b) and simply restate it in a manner that would apply to domestic terrorism. McCord and Blazakis pitched the idea this way:

> Based roughly on current 18 U.S.C. § 2332b, the statute could make it a federal criminal offense to kill, kidnap, maim, commit an assault resulting in serious bodily injury or an assault with a dangerous weapon, or destroy property causing significant risk of serious bodily injury, when done with one of the intents included in the current federal definition of domestic terrorism: (1) to intimidate or coerce a civilian population, (2) to influence the policy of government by intimidation or coercion, or (3) to affect the conduct of a government. The statute should apply to attempts and conspiracies too.[8]

Similarly, some have proposed simply attaching criminal penalties to the existing statutory definition of "domestic terrorism" found in 18 U.S.C. § 2331(5) (a definition that currently is there simply to provide meaning when that phrase is used in a handful of other statutes, such as certain sentence-enhancement provisions). Roughly speaking, it tracks with the 2332b-based model described above. Both approaches, in short, are agnostic as to the means of violence associated with an incident; what matters instead is the coercive intent and motivations of the perpetrator.

Indeed, these approaches might encompass even assaults carried out with mere fists and feet, if harmful enough. Section 2331(5)(A) requires that the act in question be "dangerous to human life," after all, while 2332b(a)(1) requires serious bodily injury, use of a "dangerous weapon," or "substantial risk of serious bodily injury." That would certainly close the gap noted above. But

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[8] Mary B. McCord & Jason M. Blazakis, "A Road Map for Congress to Address Domestic Terrorism," LAWFARE (Feb. 27, 2019) (available at https://www.lawfareblog.com/road-map-congress-address-domestic-terrorism).

would it perhaps bring within the scope of "terrorism" scenarios that are too far afield from the moral core of that label?

That question forces our attention to an important but little-discussed aspect of a key element in common terrorism definitions: the idea that not all violent acts (of whatever type) are encompassed, but rather only those that are accompanied by an intent either to impact government policy or to intimidate or coerce a "civilian population." In paradigm cases of terrorism such as the 9/11 attacks, these elements seem easy to apply. And so too with scenarios that are clearly outside the scope of terrorism, such as a financially-motivated robbery involving a fatal shooting. But what about marginal cases? And more specifically, what about situations that do have an element of intimidation to them, but intimidation that is narrow in scope and associated with lesser forms of violence?

Depending on how carefully the elements of a terrorism offense are framed, the door might be opened for applying the terrorism label in circumstances that seem remote from the core meaning of the term. Might an act of thuggery involving an unwelcome protester at a political rally be categorized as domestic terrorism, on the theory that, given the political context, the defendant could be viewed as using force to intimidate a civilian population? Congress would do well to err on the cautious side if it sails into these waters.

**B. Do We Need New Investigative Authorities?**

As described in Part II, the terrorism-prevention paradigm is not a function solely of substantive criminal charging options. It is, every bit as much, a function of investigative authorities and practices as well. And so the question arises whether there are significant gaps between the investigative models for international terrorism and domestic terrorism, and if so whether those gaps can and should be closed.

As an initial matter, it is likely that a substantial amount of OSINT-style social media monitoring relating to domestic terrorism already takes place, and that undercover officers and confidential informants also are employed to some extent. Whether these tools are employed in the domestic setting with anything comparable to the scale of their use in the international terrorism setting is impossible to say from an outsider's perspective, but certainly a worthy question to consider. That said, it bears emphasis that these practices are not without cost from a First Amendment perspective, and that cost is likely to be higher in the context of purely-domestic investigations.

We can be confident, in contrast, that certain other important investigative tools from the international terrorism setting have not been carried over to the domestic terrorism scenario. Specifically, we can be confident that the panoply of foreign-intelligence collection tools noted above has not been carried over. It can't be, at least not without major legislative changes.

There is a reason for this. In the famous "Keith Case" in 1972, the Supreme Court considered the government's view that collection of domestic intelligence for security purposes (*i.e.*, collection of information about wholly-domestic security threats, in contrast to collection of "foreign intelligence" either from inside or outside the United States) should be treated as exempt from the Fourth Amendment warrant requirement even where the nature of the collection

intruded on a reasonable expectation of privacy, as in the case of wiretapping. After first noting that it was taking no position on whether that might be the right answer with respect to *foreign* intelligence, SCOTUS firmly rejected the government's position as to *domestic* intelligence. SCOTUS emphasized that, in order for domestic intelligence collection to continue other than through criminal investigative means, Congress would have to enact a statutory framework analogous to the warrant systems used in criminal investigations.[9]

It was an invitation that went unanswered. By the mid-1970s, in the wake of endless leaks and Congressional investigations involving allegations of intelligence abuses, it had become quite difficult to imagine Congress creating a "Domestic Intelligence Surveillance Act." Instead, in 1978, Congress took up the task of creating such a system exclusively for use in relation to *foreign* intelligence collection—*i.e.,* FISA. Since then, FISA has been altered and expanded in various ways, but no one has ever pushed seriously for a DISA. The idea smacks of authoritarian excess even in the best of times (which these are not). Even if such a measure would pass constitutional muster under the Keith Case, therefore, the case has not been made for making the attempt.

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I thank you for giving me the opportunity to testify before you, and for the attention you are giving to this important topic. I look forward to your questions.

Prof. Robert Chesney

[9] United States v. United States District Court, 407 U.S. 297 (1972). The case is known as the Keith Case because the district judge whose order became the subject of the Supreme Court's review (following a mandamus petition that yielded the awkward combination of party names just cited) was Damon Keith.

Congressional Testimony

# Countering Domestic Terrorism: Examining the Evolving Threat

Testimony of
George Selim
Senior Vice President for National Programs
ADL (Anti-Defamation League)

**at a hearing before the**
**Senate Committee on**
**Homeland Security and Governmental Affairs**

Washington, D.C.
September 25, 2019
2:30 p.m.

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*Working to stop the defamation of the Jewish people and to secure justice and fair treatment for all since 1913*

**Testimony**
**Mr. George Selim**
**Senior Vice President, National Programs**
**Before the Senate Committee on Homeland Security and Government Affairs**
**at a Hearing titled, "Countering Domestic Terrorism: Examining the Evolving Threat"**
**September 25, 2019**

Mr. Chairman, Ranking Member Peters, Members of the Committee, good morning. I am George Selim, Senior Vice President for Programs at the ADL, and it is an honor to appear before you today to address the issue of domestic terrorism and the threat it poses to our communities.

I am honored to have served our country in the Bush and Obama Administrations, and briefly in the Trump Administration. My most recent experience as a career civil servant was serving as the Director of the interagency Task Force for Countering Violent Extremism and as the Director of the DHS Office for Community Partnerships. Now at ADL, I oversee a team that investigates extremists across the ideological spectrum, including white supremacists and other far-right violent extremists, produces research to inform the public on the threat, and works with the law enforcement and educational sector to promote best practices that undermine or counter threats to communities. Unfortunately, from my new vantage point, I have seen the rise of far-right violent extremism in the United States with white supremacist groups adopting some of the same tactics that I formerly countered when ISIS used them. And I have seen our policies go backward – not only failing to counter the threat but shirking the responsibility to increase our efforts to do so.

Since 1913, the mission of ADL (Anti-Defamation League) has been to "stop the defamation of the Jewish people and to secure justice and fair treatment to all." For decades, ADL has fought against bigotry and anti-Semitism by exposing extremist groups and individuals who spread hate and incite violence.

ADL's data suggest that extremism is on the rise. The question is not *if* another domestic terrorism tragedy will take innocent lives in America, but *when*. Some security risks are ever-present, so some risk is to be expected. But domestic terrorism is on the rise and our policies are moving in the wrong direction to help address the challenge. Today, I will lay out the threat landscape, how our government is currently handling it, and what ADL recommends you can do to take immediate action to prevent future tragedies.

**The New and Increasing Threats in Domestic Terrorism**

The morning of Saturday, August 3, 2019, a gunman opened fire at a Walmart in El Paso, Texas, and at the adjacent Cielo Vista Mall. Had Patrick Crusius – the alleged shooter – been an Islamist extremist, the odds are higher that he would been interdicted before the tragedy.[1]

[1] Oral remarks by George Selim, House Oversight and Government Reform Subcommittee on Civil Rights and Civil Liberties on May 15, 2019. Citing University of Maryland's National Consortium for the Study of Terrorism and Responses to Terrorism (START), Profiles of Individual Radicalization in the United States

Instead, he was able to take 22 innocent lives – the deadliest white supremacist attack in the U.S. in 50 years. The alleged shooter is believed to have posted a four-page manifesto to 8chan prior to the attack. His justification for the deadly spree was that he was defending his country from "cultural and ethnic replacement brought on by an invasion."

One of the most telling elements of his post is that in it, he also expressed support for the Australian white supremacist, mass-murderer Brenton Tarrant, the accused shooter in the March 2019 mosque attacks in Christchurch, New Zealand that left 51 people dead. Like the El Paso shooter, we assess that Tarrant likely turned to 8chan to post what he referred to as an "explanation" for his deadly rampage, providing links to his own manifesto, which he called "The Great Replacement." In it, he fixated on the white supremacist notion that white European society will be overrun by migration from Muslim and African nations. In his manifesto, Tarrant addressed his preferred online community – that of the fringe site 8chan – directly, as co-conspirators in his movement, and explicitly directed them to "do your part." Just one month later, at the Chabad Congregation in Poway, California, John Earnest allegedly killed an innocent woman and injured others just after posting a link to his own manifesto on 8chan, offering the same kind of white supremacist tropes and citing the Christchurch and Pittsburgh shooters for inspiring his own deadly attacks.

These are only the most recent attacks. They all leveraged 8chan to spread their manifestos. These came after the horrific tragedy almost one year ago, on October 27, 2018, when Robert Bowers allegedly perpetrated the deadliest attack against Jews in American history, using an assault rifle and three handguns to take eleven innocent lives at the Tree of Life Synagogue in Pittsburgh.[2] As he committed the attack, he shouted, "All Jews must die." He did so because he said he believed that the congregants in that synagogue were helping non-white immigrants invade America.

Four white supremacist attacks. One targeted Muslims, two targeted Jews, and another the Latinx community and immigrants. Each of the alleged perpetrators spread their propaganda and leveraged the internet as a weapon. These stories are the face of white supremacist terrorism. They will not be the last such tragic stories. From my government experience, had these attacks been committed by ISIS, I can guarantee you the national security structure would be in crisis mode at this pernicious and severe threat to our communities. Where is that outrage and whole-of-government mobilization in the face of white supremacist terrorism?

In January 2019, ADL published our fourth annual report on extremist-related murders, "Murder and Extremism in the United States in 2018," finding that of the 50 murders committed by extremists last year, all but one were conducted by right-wing extremists and 78% were tied

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(PIRUS). https://www.adl.org/news/article/adl-svp-of-programs-testified-before-congress-addressing-the-threat-of-white-supremacy

[2] Jay Croft and Saeed Ahmed, "The Pittsburgh synagogue shooting is believed to be the deadliest attack on Jews in American history, the ADL says," CNN, October 28, 2018. https://www-m.cnn.com/2018/10/27/us/jewish-hate-crimes-fbi/index.html.

specifically to white supremacy.[3] The one murder attributed to an Islamist extremist was perpetrated by someone who had a past tie to white supremacy. By contrast, only 62% of extremist killings in 2017 were committed by right-wing extremists, and only 21% in 2016.

Of the 427 people killed by extremists in the last 10 years, 73% have been at the hands of right-wing extremists – 76% of these carried out by white supremacists – making white supremacists the deadliest type of extremist movement in the United States over the past 10 years, by far. During the period between 1970 and 2018, the five deadliest years for murders by domestic extremists occurred, and three of them are within the last five years.

Hate is on the rise in our country, including against the Jewish community. Since 1979, we have compiled an annual *Audit of Anti-Semitic Incidents* (the Audit) throughout the United States, including both criminal and non-criminal acts of harassment and intimidation, including distribution of hate propaganda, threats, and slurs. The data we have compiled from the last three years show that anti-Semitism in America is far more pervasive than in previous years. Our Audit for 2018 recorded 1,879 anti-Semitic incidents in the United States.[4] Last year was the third-highest year on record since ADL began tracking incidents in 1979 and it saw a doubling of anti-Semitic assaults compared to 2017. While most anti-Semitic incidents are not directly perpetrated by extremists, there are interesting connections between the trends. We found in our Audit that in 2018, 249 acts of anti-Semitism (13 percent of the total incidents) were attributable to known extremist groups or individuals inspired by extremist ideology, making it the highest level of anti-Semitic incidents with known connections to extremists or extremist groups since 2004.

FBI data shows a similar growing threat. The FBI documented 7,175 hate crimes reported by 16,149 law enforcement agencies across the country in 2017 – the highest level of participation since the enactment of the Hate Crime Statistics Act of 1990, and a 6 percent increase over 2016 participation of 15,254.[5] Of the 7,175 total incidents, religion-based crimes increased 23 percent. Crimes directed against Jews increased 37 percent – from 684 in 2016 to 938 in 2017; 60 percent of the total number of reported religion-based crimes were directed against Jews and Jewish institutions. Many hate crimes go unreported, so this may just be the tip of the iceberg.

With hate and extremism in America on the rise, it is white supremacist extremist violence that is currently the greatest threat to Americans.

The movement is not as obvious about its true objectives as it might once have been when racist skinheads dominated white supremacists' ranks in the 1980s and early 1990s. Today, many of them seek to dress in a non-descript manner and use coded language. Within the white supremacist community, there is some disagreement on strategy. Some feel the need

[3] ADL. "Murder and Extremism in the United States in 2018," *available at* https://www.adl.org/murder-and-extremism-2018#murder-and-extremism-in-the-united-states-in-2018

[4] ADL. "Audit of Anti-Semitic Incidents: Year in Review 2018." https://www.adl.org/audit2018

[5] FBI, *Hate Crime Statistics 2017*, https://ucr.fbi.gov/hate-crime/2017

to adhere to "optics"[6] and purposefully obfuscate their views in order to infiltrate mainstream politics (an approach decried by Bowers immediately before his attack), while others hope to purposefully spark a race war, an ideology known as "accelerationism."[7] With one approach involving secrecy and coded language, and the other sometimes including seemingly random acts of violence, both approaches are alarming in their potential to shift from seemingly innocuous conspiracies to violent tragedy.

Our 2018 data shows a 182% increase of white supremacist propaganda incidents, with 1,187 cases reported, compared to 421 in 2017.[8] While hate on campuses is still at a relatively high point, on-campus incidents increased only modestly (9%) compared to 2017. However, off-campus incidents spiked – a 572% increase, year-on-year. The propaganda, which includes everything from veiled white supremacist language to explicitly racist images and words, often features a recruitment element, and frequently targets minority groups, including Jews, Blacks, Muslims, non-white immigrants and the LGBTQ community. We urge your Committee to regularly consult our Hate, Extremism, Anti-Semitism, and Terrorism (HEAT) Map,[9] which provides the public with a jurisdiction-specific, ongoing opportunity to observe incident and propaganda data from throughout the country.

When I worked for the federal government to counter ISIS, I watched as this terrorist group abused social media resources like Facebook and Twitter, and then migrated to less-common platforms like Telegram. White supremacists similarly use both mainstream platforms – ranging from Facebook and Twitter to Reddit – as well as those less scrutinized by the public eye. For example, largely as a response to being removed from Twitter for violating its terms of service, the alt right has created its own social media platform, called Gab,[10] where they feel at liberty to share content that typically would not survive standard social media platform content policy. Gab was the preferred platform of the alleged perpetrator of the murderous attack on worshippers at the Tree of Life Synagogue in Pittsburgh.[11]

One of the most significant and underreported-on social platforms is 4chan, a 15-year-old "imageboard," which serves as a key source of internet memes.[12] Its "politically incorrect" sub-forum, "/pol" includes an anarchic collection of posts that range from relatively innocuous to highly offensive. 4chan's success at proliferating offensive memes has borne imitators, such as 8chan – the preferred sites of the alleged perpetrators of the Poway, Christchurch, and El Paso attackers.

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[6] ADL. "Tree of Life Shooting Revives 'Optics' Debate Among White Supremacists." https://www.adl.org/blog/tree-of-life-shooting-revives-optics-debate-among-white-supremacists

[7] ADL. "White Supremacists Embrace 'Accelerationism.'" https://www.adl.org/blog/white-supremacists-embrace-accelerationism

[8] ADL. "White Supremacists Step Up Off-Campus Propaganda Efforts in 2018." https://www.adl.org/resources/reports/white-supremacists-step-up-off-campus-propaganda-efforts-in-2018

[9] ADL. H.E.A.T. Map. https://www.adl.org/education-and-resources/resource-knowledge-base/adl-heat-map

[10] See, e.g. ADL "Gab Was Down for a Week, Forcing Extremists to Consider Their Alternatives." https://www.adl.org/blog/gab-was-down-for-a-week-forcing-extremists-to-consider-their-alternatives

[11] See, e.g. ADL "Deadly Shooting at Pittsburgh Synagogue." https://www.adl.org/blog/deadly-shooting-at-pittsburgh-synagogue

[12] ADL. "From 4Chan, Another Trolling Campaign Emerges." https://www.adl.org/blog/from-4chan-another-trolling-campaign-emerges

Similar to the Pittsburgh shooter, the Christchurch shooter was keenly interested in the concept of "white genocide," which has proven one of the most virulent conspiracy theories among white supremacists. Tarrant allegedly posted his manifesto and goaded potential followers on 8chan, the same type of proselytizing and incitement to violence that, if it were done by an ISIS supporter, would inspire significant government reaction to counter and prevent. As described in our April 2019 report[13] with analysis from the Network Contagion Research Institute, the Pittsburgh and Christchurch massacres both involved online announcements of their intentions, both subscribed to the same violent extremist ideology, and both used their respective platforms – Gab and 8chan – as key tools in advancing their cause. Both alleged killers announced these violent plans to their preferred internet forums and were consumed by the white supremacist conspiracy theory of "white genocide," which is frequently referenced on both sites. Both Gab and 8chan are rife with white supremacist, hateful, anti-Semitic bigotry. Earnest, inspired by Tarrant, attempted to livestream his attack in Poway and replicate the carnage of Christchurch.

This sick attempt at inspirational copycat behavior is pervasive, and the risk of further incitement is severe. Anders Breivik, the Norwegian far-right terrorist who killed 77 people in 2011, influenced Tarrant. American white supremacist Dylann Roof, who killed nine black parishioners in South Carolina in 2015, also influenced Tarrant. Tarrant influenced Earnest. The inspiration is global,[14] and the trend is alarming.

While the most extreme forms of online content thrive on websites like 8chan, Gab, and 4chan, larger social media platforms like Facebook, Twitter, and YouTube need to remain vigilant. Extremists leverage larger mainstream platforms to ensure that the hateful philosophies that begin to germinate on message boards like Gab and 8chan find a new and much larger audience. Twitter's 300 million users and Facebook's 2.4 billion dwarf the hundreds of thousands of users on smaller fringe websites. White supremacists make use of mainstream platforms in specific and strategic ways to exponentially increase their audience while avoiding content moderation activity that Facebook and Twitter use to remove hateful content. These include creating private pages and events, sharing links that directly lead users to extreme content on websites like 8chan, as well as using coded language called dog whistles to imply and spread hateful ideology. At the same time, our knowledge on the efficacy of platforms' content moderation initiatives at dealing with the problem of white supremacist activity remains concerningly limited.

In response to the 2017 Unite the Right rally, a white supremacist rally in Charlottesville, Virginia, and subsequent hate crimes by extremists, there have been many well-publicized efforts by mainstream social media companies and internet service providers to stem the tide of hate and extremism online. After the Charlottesville rally, technology companies ranging from large social media platforms like Facebook to payment processors like PayPal and cybersecurity services like Cloudflare took action to expel white supremacists from their

[13] ADL. "Gab and 8chan: Home to Terrorist Plots Hiding in Plain Sight." https://www.adl.org/resources/reports/gab-and-8chan-home-to-terrorist-plots-hiding-in-plain-sight

[14] See, e.g., Cai, Waiya and Simone Landon. "Attacks by White Extremists Are Growing. So Are Their Connections." *New York Times*. 3 April 2019. https://www.nytimes.com/interactive/2019/04/03/world/white-extremist-terrorism-christchurch.html

services. But these policies have been reactive to incidents and not comprehensive, forcing technology companies to respond to violent white supremacist activity on an ad hoc basis over the last year. The Christchurch massacre was livestreamed on Facebook Live, causing Facebook to change its livestreaming policy. PayPal provided payment services to the fringe platform Gab, where the Pittsburgh shooter was radicalized, but cut off its services after the shooting. Cloudflare provided cybersecurity services to 8chan, and publicly withdrew its services after 8chan was blamed for helping to radicalize the perpetrator in the shooting in El Paso (among others). If technology companies took significant action and pursued a sufficiently holistic approach to address white supremacy and hate in 2017 as they claim to have done, the services provided by these their platforms would not continually be exploited to target others and spread hate two years later.

Fueled by virtual globalization, but extending beyond the internet, we are witnessing an internationalization of the white supremacist movement. Over the past decade, we have seen surging violence in the United States, Europe, and beyond motivated by elements of white supremacy from Anders Breivik in Norway to Brenton Tarrant in New Zealand to Patrick Crusius in El Paso, Texas. These killers influence and inspire one another. European and American adherents are learning from each other, supporting each other and reaching new audiences.

For example, the London Forum, a far-right discussion group run by Jeremy Bedford-Turner, who was jailed for one year for inciting racial hatred, has spawned U.S. equivalents.[15] American white supremacist Greg Johnson, who has spoken at The Forum's meetings, was sufficiently impressed by the London Forum that he created the New York Forum, the Northwest Forum and the Atlanta Forum.[16] Since the 2000s, German and American white supremacists (for example, David Duke) have participated and spoken at one another's conferences and events.[17] German far-right online activists are also inspired by the American "alt right" and try to copy their ideas, memes and trolling strategies. Analogous to online activity around the 2016 U.S. presidential election, a network of new and old German far-right activists tried to copy the strategies of "memetic warfare" by organizing on Discord servers, a chat and messaging platform, fighting people who are pejoratively described as social justice warriors and promoting the far-right party Alternative for Germany using memes.[18] The rise of the "alt right" in America has given new prominence to the ideas of the French New Right, a school of thought born in the 1970s with the goal of ideologically influencing the mainstream

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[15] Lizzie Deardon, "Former British soldier jailed for antisemitic speech where he incited supporters to 'free England from Jewish control,'" The Independent, May 15, 2018. (https://www.independent.co.uk/news/uk/crime/jeremybedford-turner-race-hate-speech-antimsemitism-british-soldier-england-jewish-control-a8352561.html)

[16] Greg Johnson, "The Second Meeting of the Northwest Forum," Counter Currents Publishing, February 27, 2017. (https://www.counter-currents.com/2017/02/the-second-meeting-of-the-northwest-forum/)

[17] Thomas Grumke, "Die transnationale Infrastruktur der extremistischen Rechten," in Globalisierter Rechtsextremismus? Die extremistische Rechte in der Ära der Globalisierung, ed. Thomas Greven and Thomas Grumke (Wiesbaden: VS Verlag für Sozialwissenschaften, 2006).

[18] Kira Ayyadi, Wie 'Reconquista Germanica' Auf Discord Seine 'Troll-Armee' Organisiert," Bell Tower News, February 15, 2018. (https://www.belltower.news/wie-reconquista-germanica-auf-discord-seine-troll-armeeorganisiert-47020/)

conservative right on topics including race relations, ethnicity, and the pagan roots of European culture and bioethics. The New Right has had an influence on a number of American white supremacists, including Jared Taylor and Richard Spencer. Both Taylor and Spencer have spoken about the impact of the works of New Right thinkers such as Alain de Benoist and Guillaume Faye on their own ideology and invited these men to their own conferences in the U.S. Other examples abound.

Not unlike the rise of ISIS radicalization, there is no single cause that motivates individuals to radicalize. As such, there is no single solution to address the threat, and from varied sectors and a wide variety of tools from the government, private, and non-profit sectors. Unfortunately, when we need the government to step up to lead, it is absent or even moving in the wrong direction.

**Critical Gaps in Addressing the Threat**

While representatives of the FBI recently testified that there are 850 cases being investigated to counter domestic terrorism,[19] we have little information on the nature of the threat or what exactly the government is doing. The 850 cases are a significantly less than the 1,000 cases FBI officials testified were underway in 2017,[20] despite an escalation of the threat. FBI officials have testified that they lack the legal tools to counter the threat as effectively. Further, the FBI told members of Congress that it had revised its eleven categories of domestic terrorism on which it once reported and folded them into four categories. White supremacy, which was its own category, is now included in a broader "racially motivated violent extremism," along with publicly unknown other types of violence. At a time when the threat from white supremacy is growing, being less precise and transparent could obscure this threat rather than sharpen the tools for addressing it.

Similarly, the *Daily Beast* reported that the unit in the Department of Homeland Security's Office of Intelligence and Analysis (I&A) focused on domestic terrorism was disbanded, and its analysts folded into other units, limiting the ability of DHS to fully grasp the nature of the threat our communities face.[21]

At DHS, I served as the Director of the interagency Countering Violent Extremism Task Force and oversaw what was then the Office for Community Partnerships (OCP). A program that had $10 million in grant funding to empower local civil society organizations, public health practitioners, and local law enforcement to recognize radicalization and prevent community members from going down a violent path is now defunct. What was once an office with 16 full-time employees and 25 contractors with a $21 million budget is now approximately an eight-person office with less than $3 million in funding.

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[19] See, *e.g.*, Myre, Greg. "FBI Is Investigating 850 Cases Of Potential Domestic Terrorism." *NPR*. 8 May 2019. https://www.npr.org/2019/05/08/721552539/fbi-is-investigating-850-cases-of-potential-domestic-terrorism

[20] Barrett, Devlin. "FBI investigating 1,000 white supremacist, domestic terrorism cases." Washington Post. 27 September 2017. https://www.washingtonpost.com/world/national-security/fbi-investigating-1000-white-supremacist-domestic-terrorism-cases/2017/09/27/95abff24-a38b-11e7-ade1-76d061d56efa_story.html?utm_term=.c681ea42dde4

[21] Woodruff, Betsy. "Homeland Security Disbands Domestic Terror Intelligence Unit." *Daily Beast*. 2 April 2019. https://www.thedailybeast.com/homeland-security-disbands-domestic-terror-intelligence-unit

DHS recently released its new "Strategic Framework for Countering Terrorism and Targeted Violence." We applaud that, like the Administration's Counterterrorism Strategy, this document calls out the need to address domestic terrorism, including white supremacy. We also applaud the emphasis on civil liberties protections and engaging with communities for prevention and transparency. However, the Counterterrorism Strategy made similar commitments and we have yet to see that translate into action. While the document is an improvement in both organization, priorities, and rhetoric, we hope it is not a plan in speech only and – under an Administration that seems intent on preventing Departments and Agencies from countering domestic terrorism – we need to see more concrete action from other parts of the Executive branch.

Rhetoric that demonizes vulnerable Americans, policies that profile communities of color and directly discriminate against Muslims based on their religion – this Administration's policies and rhetoric have broken trust with the communities most directly under threat from white supremacist violence. Congress must create policies that mitigate its damage, and if the Administration is to regain the public's trust, they and leaders throughout our country will need to commit to robustly communicating and demonstrating that bigotry will not be tolerated.

Unfortunately, the structural factors that could keep the government on track to address the challenge of domestic terrorism in these troubling times are simply not in place. If the federal government addresses domestic terrorism at all, agencies do so as a matter of policy, rather than law. Further, the public is scarcely aware what the government thinks of the threat of domestic terrorism and what it is doing to counter it. The limited information provided by Administration officials in hearings and letters to Congress and the decision to obscure and limit access to data on this threat make it difficult to know the true prevalence of domestic terrorism or what the government is really doing to counter it. What we do know is that the Administration is not doing enough. Greater transparency is critical in understanding what policy challenges remain and, just as significantly, accurate reporting on the threats to communities can help lawmakers ensure that the FBI is applying investigative resources in line with real threats and not based on the identity or political beliefs of the subjects.

Information flow is not only critical between the government and the public broadly, but also within the government and between the government and key non-government actors. For example, the National Counterterrorism Center (NCTC), lacks the authority to address domestic terrorism, despite the fact that – as the government's terrorism information-sharing hub – it possesses key interagency connections, critical information, and the core skills needed to spread knowledge of the threat throughout the government. The Countering Violent Extremism Task Force was disbanded, despite facilitating terrorism prevention best practices throughout the government. Moreover, there are many civil society organizations – like ADL – with expertise in domestic terrorism and whose connections to communities can help mitigate the threat, but there is limited information provided to organizations like ours, and few systematized mechanisms by which we can engage on these issues fruitfully.

While countering domestic terrorism itself is the core objective of this hearing, we cannot ignore the relevance of precursor crimes, such as hate crimes that are committed for the same

discriminatory motivations, even if they do not rise to terrorism. Not only do hate crimes and civil liberties concerns not rank as a top FBI priority, state and local governments struggle for the expertise to address hate crimes and lack available incentives and the resources to facilitate comprehensive reporting of them. For example, the FBI has been tracking hate crimes and preparing an annual report on hate crimes since 1991, but, like all FBI crime reporting, this data collection program is voluntary – and it is clearly incomplete. In 2017, the most current data available, hundreds of federal and local police agencies *did not report any data to the FBI* – including nine cities over 100,000 in population. And another 82 cities over 100,000 affirmatively reported zero (0) hate crimes to the FBI. Congress should act swiftly to ensure that the federal government transparently reports on hate crimes to the public, and that state and local governments are empowered to effectively report hate crimes to the federal government to guarantee this reporting accurately represents the threat of hate in our communities.

Preventing the next generation of domestic terrorists will be critical to change the trends in the threat. Programs like those I used to manage for DHS can empower local actors around the country to provide "off-ramps" from extremism, such as the provision of counseling and/or mental health services. Creating non-coercive partnerships with law enforcement can encourage trust with communities under mutually agreeable terms. If there were more opportunities to engage with communities, and more research into how extremist narratives might penetrate once-innocent community members, we could explore early warning approaches and support civil society to promote "alternative narratives" that might reduce the likelihood that someone would consume extremist content and believe extremists' conspiracy theories. One approach that shows considerable promise is the use of "formers" – people who have left extremist movements are more likely to be credible to potential adherents to those movements. Organizations such as Life After Hate and prominent rehabilitated figures have an authenticity that resonates with vulnerable populations. At a time when the Administration lacks credibility on these issues, it is non-profits, academic institutions, and other civil society actors that must be at the lead of such programs, allowing distance from this Administration and, in fact, the government writ large, and hopefully depriving today's extremists of tomorrow's recruits.

When prevention fails and individuals do turn to extremism, much more can be done to reduce their lethality. For example, there were fewer lethal extremism incidents in 2018 than in 2017 (17 compared to 21), but the events were significantly deadlier—and the 2018 shooting sprees were responsible for most of the deaths. These attacks are in large part intensified by the use of guns. In both high- and low-casualty attacks, domestic extremists used guns in 42 of the 50 murders they committed in 2018, far outpacing edged weapons or physical assaults. Over the past ten years, firearms were used in 73% of domestic extremist related killings in the United States. It is clear that guns are the weapon of choice among America's extremist murderers, regardless of their ideology.

Our federal legal system currently lacks the means to prosecute a white supremacist terrorist as a terrorist. Perpetrators can be prosecuted for weapons charges, acts of violence (including murder), racketeering, hate crimes, or other criminal violations. But we cannot legally prosecute them for what they are: terrorists. Many experts have argued that, without being so empowered, there is a danger that would-be domestic terrorists are more likely to be

charged with lesser crimes and subsequently receive lesser sentences. Others have argued that there are a sufficient number of criminal provisions already on the books that can be used to cover this gap. Congress should begin immediate hearings and consultations with legal and policy experts, marginalized communities, and law enforcement professionals on whether a rights-protecting domestic terrorism criminal charge is needed – and whether it is possible to craft such a statute. Congress should closely examine whether the gap in the law caused by the lack of a criminal domestic terrorism statute can be addressed without violating First Amendment speech and association rights.

There is a reason that such a statute has not been created to date. Although the U.S. can designate *foreign* terrorist organizations to enable a broad range of prosecutable offenses, First Amendment-protected speech and association rights (which do not apply to terrorists operating abroad) rightly preclude designating domestic groups. Moreover, the government's history of targeting minorities and political activists in the name of national security make any politically-oriented, designation approach a non-starter on civil liberties grounds. Indeed, the federal government has had a disturbing history of targeting minorities and political activists or political opponents in the name of national security. Trying to address the threat of white supremacist violence through reforms that overstep or infringe on civil liberties and potentially expand racial profiling or unwarranted, discriminatory surveillance and harassment of marginalized communities would be unacceptable. Any statute Congress would seriously consider should include specific, careful Congressional and civil liberties oversight to ensure the spirit of such protections are faithfully executed. None of the proposed measures introduced to date meet these standards.

In light of the transnational nature of this threat, the State Department should examine whether certain white supremacist groups operating abroad meet the specific criteria to be subject to sanctions under its Designated Foreign Terrorist Organization (FTO) authority. The criteria, set out in 8 U.S.C. § 1189(a)[22] are: (1) the organization must be foreign; (2) the organization must engage in terrorist activity or retain the capability and intent to engage in terrorist activity or terrorism; and (3) the terrorist activity or terrorism of the organization must threaten the security of U.S. nationals or the national security of the U.S.

None of the current 68 organizations on the FTO list is a white supremacist organization.[23] And while the possibility of designating white supremacist organizations under the State Department's FTO authority holds promise, there are some important considerations that must be taken into account.

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[22] "8 U.S. Code § 1189.Designation of foreign terrorist organizations," Cornell Law School Legal Information Institute, accessed September 16, 2019; (https://www.law.cornell.edu/uscode/text/8/1189)

[23] State Department, "Foreign Terrorist Organizations," accessed September 16, 2019; (https://www.state.gov/foreign-terrorist-organizations/)

First, while several countries have added white supremacist groups to their own designated terrorist lists in recent days – including Canada[24] and England[25] – white supremacist groups do not operate exactly like other FTOs, such as ISIS and al-Qaeda. For example, individual white supremacists that carry out attacks – wherever they are – very rarely receive specific operational instructions from organized white supremacist groups abroad to carry out these attacks. These groups generally do not have training camps in Europe or elsewhere where individuals travel to learn tactics and then return home to carry out an attack. Instead, individuals in the United States are typically motivated to act based on their own white supremacist ideology, which primarily stems from domestic sources of inspiration, but which can sometimes also stem from inspirational sources abroad – including the violent actions of white supremacists – whether that foreign source is associated with an organization or not.

Second, in the United States, unlike in Canada and England, the First Amendment provides unique, broad protection for even the most vile hate speech and propaganda. While clearly criminal conduct would not be protected under the First Amendment, a great deal of non-criminal association, speech, and hateful propaganda would be protected speech. The First Amendment's assembly and speech protections would not permit designation of white supremacist organizations operating here, but designating *foreign* white supremacist groups could make knowingly providing material support or resources to them a crime – extending authority for law enforcement officials to investigate whether such a crime is being planned or is occurring.[26]

Beyond government, civil society and the private sector also have a critical role to play in addressing this threat. ADL has formed a Community Safety and Security Task Force with the Secure Communities Network to address protecting religious institutions. The Task Force, co-chaired by former Secretaries of Homeland Security Michael Chertoff and Jeh Johnson, will look at how communities can better secure religious institutions. Communities like ours depend on relationships with law enforcement to keep our religious institutions safe, and while we intend to make recommendations for collaboration with the government – as well as for our own methods to better secure our institutions – we need the government to, in kind, have a plan for engaging with community members to secure houses of worship.

For the private sector, much of the radicalization that might once have happened in training camps is instead happening at 24-7 white supremacist online rallies. As private entities, tech companies can regulate content absent First Amendment concerns. Balancing content moderation with the principles of free speech is incredibly important, and over-regulating could

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[24] Harmeet Kaur, "For the first time, Canada adds white supremacists and neo-Nazi groups to its terror organization list," *CNN*, June 28, 2018, (https://www.cnn.com/2019/06/27/americas/canada-neo-nazi-terror-organization-list-trnd/index.html)

[25] Emma Lake, "Terror Crackdown: Which terror groups are banned under UK law and when was National Action added to the list?" *The Sun (UK)*, October 26, 2017 (https://www.thesun.co.uk/news/4569388/banned-terror-groups-uk-national-action)

[26] Mary B. McCord, "White Nationalist Killers Are Terrorists. We Should Fight Them Like Terrorists," *Washington Post*, Aug. 8, 2019, (https://www.washingtonpost.com/outlook/white-nationalist-killers-are-terrorists-we-should-fight-them-like-terrorists/2019/08/08/3f8b761a-b964-11e9-bad6-609f75bfd97f_story.html)

curtail free speech and even fuel the propaganda of extremist organizations. Companies must find mechanisms to address this threat, including vigilant and up-to-date terms of service that prioritize accountability and reduce their complicity in violent extremism. This hard line-drawing might be done through legislation or through public pressure, and must strike a careful balance, but there need to be creative solutions to mitigate online platforms' role in housing this hate. The government could even help by facilitating technological innovations that could streamline finding hateful content – even if those innovations themselves are content-neutral – and train (or support civil society in training) tech companies to find and analyze white supremacist content.

**Policy Recommendations**

With these observations in mind, there are key policy priorities that ADL urges you to take on immediately.

- **Use the bully pulpit:** The President, cabinet officials, and Members of Congress must call out bigotry at every opportunity. The right to free speech is a core value, but the promotion of hate should be vehemently rejected. Simply put, you cannot say it enough: America is no place for hate

- **Increase government transparency and expand its understanding of the challenge:** Congress should immediately approve the Domestic Terrorism Documentation and Analysis of Threats in America (DATA) Act (H.R. 3106). Data on extremism and domestic terrorism is being collected by the FBI, but not enough, and the reporting is insufficient and flawed. Data drives policy; we cannot address what we are not measuring. The Domestic Terrorism DATA Act focuses on increasing the coordination, accountability, and transparency of the federal government in collecting and recording data on domestic terrorism.

- **Resource to the threat:** Congress should pass the Domestic Terrorism Prevention Act (DTPA) (S. 894/ H.R. 1931) to enhance the federal government's efforts to prevent domestic terrorism by not only requiring reporting on the threat of white supremacist violence, but also requiring that the government apportion its resources to focus on the threat as reported. The bill also authorizes the offices addressing domestic terrorism, giving Congress offices that they can oversee more directly. It would also provide training and resources to assist non-federal law enforcement in addressing these threats, requiring DOJ, DHS, and the FBI to provide training and resources to assist state, local, and tribal law enforcement in understanding, detecting, deterring, and investigating acts of domestic terrorism.

- **Create a mechanism for systematized public-private information sharing:** Since law enforcement must be more constrained than civil society in collecting information on domestic extremists, and since civil society and the technology sector may be more credible or appropriate actors to counter the threat, there must be a formalized and institutionalized mechanism for information flow on domestic terrorism information. The National Center for Missing and Exploited Children (NCMEC) has set up such a

public-private partnership that has streamlined public-private information flow using a structure set up with government funding but operating independently of the government.

- **Invest in prevention:** Civil society and other actors can help create off-ramps to prevent individuals from taking up violent extremists' cause. Congress can work to prevent violent extremism with an outside grants lens, designed to invest in academic institutions to research what works in prevention, provide funding for law enforcement training on white supremacy and extremism, and for civil society to empower local communities.

- **Support local entities in preventing, addressing, and reporting hate crimes:** Congress should take up and pass the Khalid Jabara and Heather Heyer National Opposition to Hate, Assault, and Threats to Equality Act of 2019 (NO HATE Act of 2019 S. 2043/ H.R. 3545). This legislation would authorize incentive grants to spark improved local and state hate crime training, prevention, best practices, and data collection initiatives – including grants for state hate crime reporting hotlines to direct individuals to local law enforcement and support services.

- **Prevent known hate crimes perpetrators from accessing firearms:** Congress should immediately take up and pass the Disarm Hate Act (S.1462/H.R.2708) to close the loophole that currently permits the sale of firearms to individuals who have been convicted of threatening a person based on their race, religion, gender, sexual orientation, or disability. The measure would prohibit individuals convicted of a misdemeanor hate crime from obtaining a firearm.

- **Consider the necessity and feasibility of a criminal domestic terrorism statute:** Congress should begin immediate hearings and consultations with legal and policy experts, marginalized communities, and law enforcement professionals on whether a rights-protecting domestic terrorism criminal charge is needed – and whether it is possible to craft such a statute. Congress should closely examine whether the gap in the law caused by the lack of a domestic terrorism statute can be addressed without violating First Amendment speech and association rights.

- **Better enforce existing hate crimes laws and improve training and data collection on hate crimes:** Congress should ensure that the FBI and the Justice Department's Civil Rights Division will enforce relevant federal laws and vigorously investigate and prosecute hate crimes. The Department of Justice should incentivize and encourage state and local law enforcement agencies to more comprehensively collect and report hate crimes data to the FBI, with special attention devoted to large underreporting law enforcement agencies that either have not participated in the FBI Hate Crime Statistics Act program at all or have affirmatively and not credibly reported zero hate crimes. More comprehensive, complete hate crime reporting can deter hate violence and advance police-community relations.

- **Consider whether and how it might be appropriate to designate overseas white supremacist groups as FTOs:** The State Department should examine whether certain white supremacist groups operating abroad meet the specific criteria to be subject to sanctions under its Designated Foreign Terrorist Organization (FTO) authority. The criteria, set out in 8 U.S.C. § 1189(a)[1] are: (1) the organization must be foreign; (2) the organization must engage in terrorist activity or retain the capability and intent to engage in terrorist activity or terrorism; and (3) the terrorist activity or terrorism of the organization must threaten the security of U.S. nationals or the national security of the U.S. It is possible that a white supremacist terrorist group might meet these criteria, and the State Department should determine whether the evidence is there to do so.

- **Address Online Hate and Harassment:** Congress has an important role to play in addressing online hate and harassment.

    - Strengthen laws against perpetrators of online hate
      Hate and harassment translate from real-world to online spaces, including in social media and games, but our laws have not kept up. Many forms of severe online misconduct are not consistently covered by cybercrime, harassment, stalking and hate crime law. Congress has an opportunity to lead the fight against cyberhate by increasing protections for targets as well as penalties for perpetrators of online misconduct. Some actions Congress can take include revising Federal law to allow for penalty enhancements based on cyber-related conduct; updating federal stalking and harassment statutes' intent requirement to account for online behavior; and legislating specifically on cybercrimes such as doxing, swatting, non-consensual pornography, and deepfakes.

    - Urge social media platforms to institute robust governance
      Government officials have an important role to play in encouraging social media platforms to institute robust and verifiable industry-wide self-governance. This could take many forms, including Congressional oversight or passing laws that require certain levels of transparency and auditing. The internet plays a vital role in allowing for innovation and democratizing trends, and that should be preserved. At the same time the ability to use it for hateful and severely harmful conduct needs to be effectively addressed.

    - Improve training of law enforcement
      Law enforcement is a key responder to online hate, especially in cases when users feel they are in imminent danger. Increasing resources and training for these departments is critical to ensure they can effectively investigate and prosecute cyber cases and that targets know they will be supported if they contact law enforcement.

- **Urge technology companies to recognize their role in being part of the solution:** Every social media and online gaming platform must have clear terms of service that address hateful content and harassing behavior, and clearly defined consequences for violations. These policies should state that the platform will not tolerate hateful content

or behavior based on protected characteristics. They should prohibit abusive tactics such as harassment, doxing and swatting. Platforms should also note what the process of appeal is for users who feel their content was flagged as hateful or abusive in error. Companies should be open and transparent – in a third party-verified manner – on how they address these issues on their platforms.

**Conclusion**

Thank you for the opportunity to testify and for calling a hearing on this topic. ADL data clearly and decisively illustrates that hate is rising across America and domestic terrorism will continue to be a grave threat to our communities. The gaps in our government's ability to counter this threat are staggering and must be filled immediately. Everyone who has a bully pulpit must speak out against such hate. We also must also look at our education systems, at our law enforcement capacity and training, and at our laws to ensure we address today's threats holistically. On behalf of the ADL, we look forward to working with you as you continue to devote your urgent attention to the issue.

Written Statement of Maya Berry
Executive Director
Arab American Institute

"Countering Domestic Terrorism: Examining the Evolving Threat"
Hearing Before the U.S. Senate Committee
on Homeland Security and Governmental Affairs

October 9, 2019

On behalf of the Arab American Institute, I am pleased to submit this statement for the record for the September 25, 2019, hearing before the U.S. Senate Committee on Homeland Security and Governmental Affairs on "Countering Domestic Terrorism: Examining the Evolving Threat." We are grateful to Chairman Johnson and Ranking Member Peters for holding a hearing on this important topic and for their commitment to assessing the role of Congress in responding to the threat of white supremacist violence.

As members of this committee are well aware, this threat is not a new one. I would be remiss to point out that on the date this statement was submitted, the Oklahoma Archaeological Survey was using ground-penetrating radar technology to investigate the presence of mass graves related to the 1921 Tulsa Race Massacre,[1] which is believed to be the single worst incident of racial violence in U.S. history.[2] Between May 31 and June 1, 1921, a white mob descended upon the city's wealthy black business district and killed up to 300 people and destroyed more than 1,200 homes.[3] That we have yet to bring closure to this atrocity—and the many others before and after it—should be an indication that our country has not fully confronted what has been described as the legacy of racial terror.

As Americans work to confront the deepest, darkest moments of our nation's history, we must also contend with a resurgent threat of white supremacist violence. From Oak Creek to El Paso and communities in between, the United States has in recent years experienced an increase of white supremacist violence, especially in the form of mass shootings. As mentioned above, this threat has historical antecedents, but what has changed in the current decade is the policy debate about how to

[1] Gabrielle Sorto, *Tulsa Searches for Mass Graves from 1921 Tulsa Race Massacre*, CNN, Oct. 8, 2019, https://www.cnn.com/2019/10/08/us/tulsa-mass-graves-search-race-massacre-trnd/index.html.
[2] Scott Ellsworth, *Tulsa Race Massacre*, THE ENCYCLOPEDIA OF OKLAHOMA HISTORY AND CULTURE (accessed Oct. 9, 2019), https://www.okhistory.org/publications/enc/entry.php?entry=TU013.
[3] Mihir Zaveri, *A White Mob Once Destroyed a Black Neighborhood in Tulsa. The City Wants to Find the Graves.* N.Y. TIMES, Oct. 4, 2018, nytimes.com/2018/10/04/us/mass-graves-tulsa-race-massacre.html.

address it. Whereas the threat of white supremacist violence has historically been treated as a civil rights issue, we have seen it framed increasingly as a matter of national security. To be sure, in the effort to address, prevent, and respond to white supremacist violence, the incorporation of national security perspectives might be helpful, if not appropriate. However, we should not prioritize a national security approach to the exclusion of civil rights voices. As members of this committee continue to address the complex legal and policy issues posed by the prospective response to white supremacist violence, we entreat you to seek the perspectives of advocates and experts representing the civil rights concerns of impacted communities.

The inclusion of these perspectives is critical. As the witness testimonies and other statements for the record demonstrate, the present debate over the policy and legal response to acts of white supremacist violence, which depending on the specific circumstances might also be defined as hate crime, domestic terrorism, international terrorism, and now targeted violence, is not only complicated but also delicate. These are complex issues, made exceedingly fragile by the fact that Americans' constitutional rights hang in the balance.

To cite one example, the federal government has expansive, and in some respects overbroad, authorities when it comes to counterterrorism. As documented in the statements for the record of the American Civil Liberties Union and Professor Shirin Sinnar of Stanford Law School, the overbreadth of these authorities and an associated lack of oversight have created the potential for serious violations of civil rights, civil liberties, and human rights.[4] The consequences have been particularly severe for Arab Americans, South Asian Americans, and American Muslims, who especially since the terrorist attacks of 9/11 have been increasingly "securitized" through various federal counterterrorism and law enforcement efforts.[5] In echoes of the federal government's former targeting of activists involved in the civil rights movement, we have seen members of the black community securitized in a similar way in recent years through the FBI's creation of erroneous terrorism classifications such as "Black Identity Extremism."[6] The lessons from these examples are twofold. First, the federal government already has robust counterterrorism authorities, not to mention additional authorities in the form of civil rights statutes and other federal criminal statutes,

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[4] *See Countering Domestic Terrorism: Examining the Evolving Threat: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs*, 116th Cong. (2019) (statement for the record of the American Civil Liberties Union), *available at* https://www.aclu.org/sites/default/files/field_document/final_aclu_written_statement_of_the_record-the_emerging_domestic_terrorism_threat.pdf. *See id.*, (statement for the record of Shirin Sinnar, Professor of Law, Stanford Law School), *available at* https://www-cdn.law.stanford.edu/wp-content/uploads/2019/09/Prof.-Sinnar-Written-Statement-for-Senate-HS-Hearing-on-Countering-Domestic-Terrorism.pdf.

[5] Roy Austin & Kristen Clarke, Opinion, *Creating a 'Domestic Terrorism' Charge Would Actually Hurt Communities of Color*, WASHINGTON POST, Aug. 26, 2019 ("In the post-9/11 world, the counterterrorism framework targeted and discriminated against Arab Americans, American Muslims and South Asian Americans. This securitized frame of engagement with specific communities sent a false message that Arab, Muslim and South Asian Americans somehow warranted suspicion. An increase in hate crimes against members of these communities soon followed."), https://www.washingtonpost.com/opinions/domestic-terrorism-doesnt-need-to-be-a-chargeable-offense-we-already-have-powerful-hate-crime-laws/2019/08/26/14c6f354-c4eb-11e9-b72f-b31dfaa77212_story.html.

[6] Jana Winter & Sharon Weinberger, *The FBI's New U.S. Terror Threat: 'Black Identity Extremists,'* FOREIGN POLICY, Oct. 6, 2017, https://foreignpolicy.com/2017/10/06/the-fbi-has-identified-a-new-domestic-terrorist-threat-and-its-black-identity-extremists. For more insights into the Black Identity Extremist designation and the FBI's terrorism investigative classifications, *see* Maya Berry & Kai Wiggins, *Leaked Documents Contain Major Revelations About the FBI's Terrorism Classifications*, JUST SECURITY, Sept. 11, 2001, https://www.justsecurity.org/66124/leaked-documents-contain-major-revelations-about-the-fbis-terrorism-classifications.

to investigate and prosecute acts of white supremacist violence. Second, even the slightest augmentation of the federal government's counterterrorism authorities could lead to even greater potential harm to communities caught between securitization and the threat of white supremacist violence.

Because of these concerns, AAI opposes any legislation that seeks to create a new federal criminal statute of "domestic terrorism," as well as the reintroduction or funding of countering violent extremism (CVE) programs and the expansion of surveillance authorities like social media monitoring. These objections are outlined in a September 4, 2019, letter submitted by the Brennan Center for Justice, AAI, and six other civil rights or civil liberties organizations.[7]

Instead, AAI supports efforts that would promote improved hate crime reporting and data collection, incentivize better documentation of investigations into domestic and international terrorism, and enhance oversight of federal counterterrorism activities. These efforts include the Khalid Jabara and Heather Heyer National Opposition to Hate, Assault, and Threats to Equality (Jabara-Heyer NO HATE Act) (S.2043/H.R.3545), which would improve federal hate crime statistics and support law enforcement in the effort to address, prevent, and respond to hate crime, and the Domestic and International Terrorism Documentation and Analysis of Threats in America (DATA) Act, which would require the federal government to report on its counterterrorism efforts.

The Jabara-Heyer NO HATE Act would help law enforcement agencies transition to a modernized form of crime reporting, provide grants for state-run hate crime hotlines, encourage law enforcement agencies to adopt policies and programs that would improve reporting, require the Department of Justice to conduct research on hate crime reporting and data collection, and allow courts to require certain hate crime offenders to participate in community service or education programs as a condition of supervised release. These provisions would address the many factors that contribute to inaccuracies in federal hate crime statistics. Furthermore, they would improve the response to hate crime within law enforcement and the criminal justice system, and reduce barriers to receiving support or assistance that many hate crime victims experience.

The Jabara-Heyer NO HATE Act is named for Khalid Jabara and Heather Heyer, two victims of hate crimes whose murders were prosecuted as hate crimes but not reported as such in official hate crime statistics.[8]

Additionally, AAI supports the House-passed Domestic and International Terrorism DATA Act (H.R.3106). The federal government's approach to counterterrorism is shrouded in secrecy, lacks oversight, and deprioritizes the most significant threat facing our communities: white supremacist violence. In fact, federal law enforcement has often abused the government's robust counterterrorism powers against some of the communities most susceptible to white supremacist violence. These enforcement efforts are excessive, unjust, and discriminatory in effect. The DATA Act would address these problems by requiring the Departments of Justice and Homeland Security,

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[7] Letter from Brennan Center for Justice et al. to Relevant Senate and House Committees on Responding to White Supremacist Violence (Sept. 4, 2019), *available at* https://www.brennancenter.org/our-work/research-reports/brennan-center-and-allies-urge-members-congress-appropriately-address.

[8] Susan Bro & Haifa Jabara, *Hate Crimes Are Slipping Through the Cracks*, N.Y. TIMES (Aug. 12, 2019), https://www.nytimes.com/2019/08/12/opinion/hate-crime-statistics-heather-heyer.html.

along with the Federal Bureau of Investigation, to share detailed information about their counterterrorism efforts, including data on incidents, investigations, and prosecutions. This would promote not only a better understanding of the threats facing communities, but also increased oversight of the federal government's expansive counterterrorism powers. The bill has three main requirements: (1) annual reporting on federal counterterrorism efforts, including domestic and international terrorism incidents, investigations, and prosecutions; (2) regular audits of federal reports to promote oversight and accountability of federal agencies; and (3) additional federal research on domestic and international terrorism.

The federal government must improve its response to white supremacist violence, and that includes publishing data on the nature and extent of the threat. The DATA Act will promote a better understanding and increased oversight of federal counterterrorism efforts without harming the very communities that Congress is trying to protect. We must hold the system accountable, not infuse it with even greater power.

**Conclusion**

In conclusion, I want to emphasize the importance of including civil rights perspectives in the debate over the appropriate policy and legal response to white supremacist violence. Failure to do so could result in policies that do more harm than good by exacerbating existing inequities within the criminal justice system and increasing the potential for civil rights, civil liberties, and human rights violations under the guise of national security and counterterrorism.

Thank you for considering this statement for the record. We are grateful to the Chairman and Ranking Member for holding a hearing on this critical issue. All inquiries may be directed to AAI's Policy Counsel, Ryan J. Suto, at rsuto@aaiusa.org, or 202-429-9210.

**About the Arab American Institute**

The Arab American Institute (AAI) is a nonprofit, nonpartisan organization founded in 1985 to nurture and encourage Arab American participation in political and civic life. Historically, as has been the case for many communities in the United States, threats of hate crime and violence, including white supremacist violence or conduct meeting the definition of domestic terrorism, have prevented Arab Americans from full participation in the democratic process.[9] Despite considerable progress this remains a persistent threat, not only for our community but others as well.[10] Recognizing the recent increase of reported hate crime incidents and escalating concerns over white supremacist violence,[11] AAI devotes considerable time and resources to promoting improved hate crime enforcement and related efforts to protect communities from crimes motivated by race or ethnicity, religion, sexual orientation, gender, disability, or gender identity.

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[9] *Ethnically Motivated Violence Against Arab-Americans: Hearing Before the Subcomm. on Criminal Justice, Comm. on the Judiciary, House of Representatives*, 99th Cong. 130 (1986) (statement of James Zogby, Executive Director, Arab American Institute), *available at* https://babel.hathitrust.org/cgi/pt?id=pst.000014264429;view=1up;seq=134.

[10] Press Release, U.S. Dep't of Justice, Office of Public Affairs, Virginia Man Convicted of Threatening Employees of the Arab American Institute (May 9, 2019), https://www.justice.gov/opa/pr/virginia-man-convicted-threateningemployees-arab-american-institute.

[11] Press Release, Arab American Institute, Hate Crimes Continue to Surge in America (Nov. 13, 2018), http://www.aaiusa.org/hate_crimes_continue_to_surge_in_america.

AAI provides analysis of state and federal hate crime data submitted through the Uniform Crime Reporting (UCR) system, publishes a comparative review of laws and policies designed to prevent hate crime in each state and the District of Columbia, works in coalition with fellow national civil rights organizations to improve the federal response to hate crime, and convenes working groups with community leaders to promote state and local hate crime reform. AAI's current focus is to advance legislation in Congress that would improve the data collected under the Hate Crime Statistics Act (HCSA). That legislation is called the Khalid Jabara and Heather Heyer NO HATE Act (S.2043/H.R.3545).

Additionally, AAI works on ensuring that U.S. counterterrorism efforts, including those focused on domestic terrorism and white supremacist violence, do not undermine constitutional or human rights. AAI firmly believes that the inclusion of civil rights and civil liberties perspectives are imperative to appropriately addressing the increased threat of white supremacist violence. An effective response to the threats facing our communities should not have to put our rights at risk.


**Statement submitted by the Arab Community Center for Economic and Social Services (ACCESS)**

**Hearing on "Countering Domestic Terrorism: Examining the Evolving Threat"**

**United States Senate**
**Committee on Homeland Security & Government Affairs**

**September 25, 2019**

The Arab Community Center for Economic and Social Services (ACCESS) submits this written statement for the record of the United States Senate, Committee on Homeland Security and Government Affairs, hearing entitled, "Countering Domestic Terrorism: Examining the Evolving Threat."

For 48 years, ACCESS, the nation's largest Arab American community nonprofit organization, has built communities and institutions that span multiple sectors with a focus on community empowerment. From human service programs serving recent immigrants, to a national program promoting Arab American philanthropy, ACCESS transitions people from being service recipients to fully engaged citizens able to advance justice and equity. Utilizing our vast experience in human services, ACCESS has developed an integrated and comprehensive program model of service delivery for diverse communities, including low-income and immigrant communities, in the areas of health, education, economic empowerment, workforce development, civic engagement, and arts and culture. Our impact also extends far beyond our regional presence in southeast Michigan. Through our Arab American National Museum (AANM), Center for Arab American Philanthropy (CAAP) and National Network for Arab American Communities (NNAAC), we are leveraging the power of Arab Americans in the arts, philanthropy and advocacy to advance social change on a national level. NNAAC connects over 27 Arab American social services and civic engagement organizations across 11 states.

In 2017, according to FBI data, 7,175 hate crime incidents were reported.[1] This represented a 17% increase over reported incidents in 2016. More specifically, Anti-Arab hate crime increased 100 percent in 2017, with a total of 102 incidents reported.[2] In 2016, hate crimes against Muslims increased 200% since 2001.

White supremacist violence has significantly impacted the communities ACCESS serves. Many perpetrators of hate crimes against Arab Americans have links to white supremacist organizations. In 2015, after then-presidential candidate Donald Trump called for a "total and complete shutdown of Muslims entering the United states," hate crimes against Muslims and Arabs spiked 23% in the ten days following this statement.[3] In 2018, white supremacists were behind the majority of race-based domestic terrorism.[4] The number of anti-Muslim hate groups nearly tripled between 2015 and 2016 – from 34 in 2015 to 101 anti-Muslim hate groups in 2016.

The existing domestic terrorism framework can be used effectively to combat the threat of white supremacist violence if resources were used proportionately to the threat these groups pose. There is no shortage of federal government counterterrorism authority, as we have seen these

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[1] FBI, Uniform Crime Reporting, 2017 Hate Crime Statistics, Incidents and Offenses, *available at* https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses (last visited Sept. 24, 2019).
[2] FBI, Uniform Crime Reporting, 2017 Hate Crime Statistics, Table 1, *available at* https://ucr.fbi.gov/hate-crime/2017/tables/table-1.xls (last visited Sept. 24, 2019).
[3] Michael Kunzelman and Astrid Galvin, "Trump words linked to more hate crime? Some experts think so," AP News, Aug. 7, 2019, *available at* https://www.apnews.com/7d0949974b1648a2bb592cab1f85aa16.
[4] Lauren Frias, "Document reveals alleged white supremacists are behind nearly all cases of race-based domestic terrorism in 2018," Business Insider, Aug. 29, 2019, *available at* https://www.businessinsider.com/white-supremacy-linked-to-race-based-domestic-terrorism-data-shows-2019-8.

powers wielded unjustly towards American Muslims and Arab American communities.[5] White supremacist violence meets the definition of a federal hate crime and the standards of a federal domestic terrorism charge. According to FBI policy, if a hate crime is committed by an individual connected to a white supremacist group, a domestic terrorism investigation must also occur.

Despite the rising tide of hate groups in the United States, only 20% of the FBI's counterterrorism agents focus on domestic issues.[6] The Department of Homeland Security has also reduced the number of agents studying domestic terrorism unrelated to Islam.[7] According to the Assistant Director of the FBI Counterterrorism Division, Michael McGarrity, "there have been more arrests and deaths in the United States caused by domestic terrorists than international terrorists in recent years."[8] In May 2019, according to a senior FBI official, there were 850 domestic terrorism investigations, in which "a significant majority" were related to white supremacists.[9]

We have deep concerns regarding expanding the current national security framework; a framework that has disproportionately targeted communities of color, and specifically Arab and Muslim Americans. In the wake of September 11, 2001, Congress significantly expanded the definition of domestic terrorism. This expansion led to broad, sweeping authority for law enforcement agencies. This led to a wide net of suspicion cast upon the Arab and Muslim communities, who were often the target of surveillance by law enforcement agencies. The FBI has infiltrated houses of worship and spied on Muslim communities.[10] Expansion of the existing domestic terrorism framework could further implicate and expand discriminatory practices used by the same government agencies against communities of color, including the Arab American community. Fusion centers and the Joint Terrorism Task Force (JTTF) have been widely criticized for their lack of transparency and potential implications on individual civil liberties. In fact, in 2012, a bipartisan report published by the Senate Homeland Security Permanent Subcommittee on Investigations criticized fusion centers for endangering civil liberties and privacy rights.[11]

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[5] *See* MLK and the FBI: 50 years on, secrets and surveillance still, The Hill, Apr. 2019, https://thehill.com/opinion/civil-rights/436437-mlk-and-the-fbi-50-years-on-secrets-and-surveillance-still

[6] Vera Bergengruen and W.J. Hennigan, "'We Are Being Eaten From Within.' Why America Is Losing the Battle Against White Nationalist Terrorism," Time, Aug. 8, 2019, *available at* https://time.com/5647304/white-nationalist-terrorism-united-states/.

[7] R. Jeffrey Smith, "Homeland Security Department curtails home-grown terror analysis," Washington Post, June 7, 2011, *available at* https://www.washingtonpost.com/politics/homeland-security-department-curtails-home-grown-terror-analysis/2011/06/02/AGQEaDLH_story.html.

[8] "Feds now tracking 850 possible domestic terrorists across the US, as white supremacy cases jump: Officials," ABC News, https://abcnews.go.com/Politics/feds-now-investigating-850-domestic-terrorists-us-fbi/story?id=62907157

[9] David Shortell, "FBI is Investigating More than 850 Domestic Terrorism Cases," CNN.com, May 8, 2019, https://www.cnn.com/2019/05/08/politics/fbi-domestic-terrorism-cases/index.html.

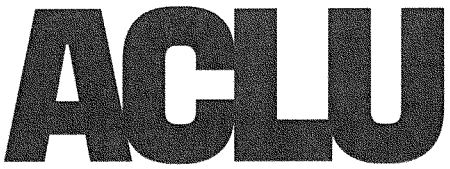
[10] *See e.g.*, ACLU of Southern Cal., Fazaga v. FBI, available at https://www.aclusocal.org/en/cases/fazaga-v-fbi.

[11] Press Release, Permanent Subcomm. on Investigations, Senate Homeland Sec. & Governmental Affairs, Investigative Report Criticizes Counterterrorism Reporting, Waste at State & Local Intelligence Fusion Centers, (Oct. 3, 2012), available at https://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers.

In the reallocation of resources towards combatting the threat of white supremacist violence, ACCESS remains concerned about revisiting Countering Violent Extremism (CVE) programs. CVE programs have unjustly and disproportionately targeted the American Muslim community. CVE was not based on evidence nor the actual threats of domestic terrorism facing the United States. Any reallocation of government resources must be based off of evidence-based investigations that evaluate actual conduct and domestic terrorism threats.

Although white nationalist violence is a growing threat that we must combat, ACCESS does not support expanding the domestic terrorism and national security framework that could further be used to harm the communities currently bearing the brunt of white supremacist violence.

Hassan Jaber
President & Chief Executive Officer
ACCESS



Written Statement of the Record
American Civil Liberties Union

National Political Advocacy Department
Ronald Newman, National Political Director
Manar Waheed, Senior Legislative and Advocacy Counsel

Countering Domestic Terrorism: Examining the Evolving Threat
on
September 25, 2019

Submitted to
U.S. Senate Committee on Homeland Security and Governmental Affairs

On behalf of the American Civil Liberties Union (ACLU) and our more than three million members, activists, and supporters, we submit this statement for the record for the hearing on "Countering Domestic Terrorism: Examining the Evolving Threat" of the U.S. Senate Committee on Homeland Security and Governmental Affairs on September 25, 2019. In light of recent mass shootings and the surge in white supremacist violence, lawmakers are understandably seeking to take action. In this pursuit, it is critical that Congress place at the forefront the needs of communities of color and other marginalized communities—and the impact of any action on them. Otherwise, measures Congress takes may actually harm the very communities it seeks to protect.

To enhance the safety of all communities, Congress should hold law enforcement agencies accountable for their failure to meaningfully focus on increasing levels of white supremacist violence and ascertain the reasons for that failure. It should ensure agencies have the training and resources to address white supremacist violence effectively and consistent with the Constitution. Congress must not expand or entrench domestic terrorism authorities that have harmed Black and brown communities for decades and continue to do so today.

## I. Under current domestic terrorism authorities, law enforcement has a vast array of authorities, from investigation through prosecution, to address white supremacist violence effectively.

Congress enacted a broad definition of "domestic terrorism" in the USA Patriot Act to cover acts dangerous to life that violate criminal laws and "appear to be intended to (1) intimidate or coerce a civilian population; (2) influence the policy of a government by intimidation or coercion; or (3) affect the conduct of a government by mass destruction, assassination, or kidnapping."[1]

Federal law enforcement has for years claimed expansive authorities to investigate domestic and international terrorism. For example, after 9/11, the Federal Bureau of Investigations (FBI) eliminated safeguards put in place after abusive surveillance and investigation practices in the 1960s and 1970s and expanded its ability to conduct investigations even with little or no suspicion of wrongdoing. In 2008, the FBI issued its Domestic Investigations and Operations Guide (DIOG), in which it claimed new and broad authorities to conduct investigations—including initial "assessments" without a factual predicate—with intrusive techniques.[2] It asserted it could engage in the next level of investigation—preliminary investigation—based on "information or an allegation" of wrongdoing, which it has interpreted to include mere speculation that a crime may be committed in the future.[3] In 2011, 2012, and 2013, the FBI amended the DIOG, claiming more expansive powers, including blanket permission for agents to search law enforcement and commercial databases for information about people without even opening a basic assessment investigation.[4]

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[1] USA Patriot Act § 802, 18 U.S.C. § 2331 (2001).

[2] Fed. Bureau of Investigation, *Domestic Investigations and Operations Guide* (Dec. 16, 2008); *See* ACLU, *Expanded FBI Authority* (explaining expanded FBI authorities and recommended reforms), https://www.aclu.org/other/expanded-fbi-authority ("Expanded FBI Authority"); *See also* ACLU, *Unleashed and Unaccountable: The FBI's Unchecked Abuse of Authority* (Sept. 2013), https://www.aclu.org/sites/default/files/field_document/unleashed-and-unaccountable-fbi-report.pdf ("Unleashed and Unaccountable").

[3] ACLU, *Expanded FBI Authority* at 4.

[4] *See generally*, Rachel Levinson-Waldman, *What the Government Does with Americans' Data*, Brennan Ctr. for Justice, https://www.brennancenter.org/sites/default/files/publications/Data%20Retention%20-%20FINAL.pdf; ACLU, *Unleashed and Unaccountable* at 13-19.

Congress has also given the Department of Justice (DOJ) expansive authorities. It has passed more than 50 statutes that relate to domestic terrorism offenses, and material support for domestic terrorism.[5] It has enacted an entire framework of hate crime laws to protect communities of color and other marginalized communities that are overwhelmingly targeted by white supremacist violence. Hate crime laws date back to the 1870s, when white supremacist groups were carrying out attacks, including lynching, on Black people; those laws include the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, enacted in 2009.[6] DOJ can use an array of laws to prosecute white supremacist violence that falls under the federal definition of domestic terrorism—but in recent years has chosen not to prioritize these cases.

A recent case provides a rare example of what DOJ can do with the authorities at its disposal. In 2019, DOJ charged Cesar Sayoc, who mailed pipe bombs to prominent Democrats, under a federal terrorism-related statute prohibiting use of weapons of mass destruction.[7] Because this statute is one of many predicate offenses for a law that also prohibits material support for terrorism, it could also have triggered support liability for anyone who assisted Sayoc.[8] Other charges DOJ brought against Sayoc stemmed from his use of firearms and explosive materials. He was also charged under federal law for making threats.[9] DOJ used the current legal infrastructure to prosecute credible threats of violence before any act of violence was actually committed. Sayoc ultimately pled guilty to all charges and was sentenced to 20 years in prison followed by 5 years of supervised release.

The ACLU has concerns about the overbroad and abusive investigative powers the FBI and other law enforcement agencies have claimed, and DOJ's interpretation and use of terrorism-related laws, especially against communities of color. But there should be no question that Congress has already given law enforcement the authority to investigate and prosecute domestic white supremacist violence effectively.[10] What is lacking, however, is the will to do so.

## II. Law enforcement use of existing domestic terrorism authorities harms communities of color and other marginalized communities, including those engaged in First Amendment-protected activities.

Federal law enforcement has used domestic terrorism authorities to wrongly target marginalized populations—Black civil rights activists, Muslim, Arab, Middle Eastern, and South Asian communities,

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[5] Roy L. Austin Jr. & Kristen Clarke, *Creating a 'Domestic Terrorism' Charge Would Actually Hurt Communities of Color*, Wash. Post (Aug. 26, 2019), https://wapo.st/2Pg5ucZ; Michael German & Sarah Robinson, *Wrong Priorities on Fighting Terrorism*, Brennan Ctr. for Justice (Oct. 31, 2018), https://www.brennancenter.org/publication/wrong-priorities-fighting-terrorism; Michael German & Emmanuel Mauleón, *Fighting Far-Right Violence and Hate Crimes*, Brennan Ctr. for Justice (July 1, 2019), https://www.brennancenter.org/publication/fighting-far-right-violence-and-hate-crimes.

[6] Roy L. Austin Jr. & Kristen Clarke, *Creating a 'Domestic Terrorism' Charge Would Actually Hurt Communities of Color*, Wash. Post (Aug. 26, 2019), https://wapo.st/2Pg5ucZ.

[7] 18 U.S.C. § 2332a. *See also United States v. Sayoc*, No. 18-09159, Complaint (S.D.N.Y. October 26, 2018). https://assets.documentcloud.org/documents/5022033/Sayoc-Complaint.pdf.

[8] 18 U.S.C. § 2339A (Providing Material Support to Terrorists).

[9] 18 U.S.C. § 875(c).

[10] Michael German & Emmanuel Mauleón, *Fighting Far-Right Violence and Hate Crimes*, Brennan Ctr. for Justice (July 1, 2019), https://www.brennancenter.org/publication/fighting-far-right-violence-and-hate-crimes

animal rights and environmental rights activists, or other groups the government views as having "unpopular" or controversial beliefs.

During the civil rights movement, leaders like Martin Luther King, Jr. were investigated and monitored based upon their organizing and civil disobedience in the pursuit of equal rights. More recently, the FBI has used the USA Patriot Act's vague, overbroad, and malleable definition of "domestic terrorism" to investigate and surveil individuals with little basis, including those engaged in First Amendment-protected activities. It has disproportionately and unjustly targeted Muslim, Arab, Middle Eastern, and South Asian communities.

These FBI abuses flow in part from loosened safeguards in the DOJ's investigative guidelines, and the agency's DIOG, which it issued pursuant to those guidelines.[11] The FBI claims the authority to conduct investigations without even a factual predicate of wrongdoing, using intrusive techniques such as physical surveillance, commercial and law enforcement database searches, searches of people's trash, and use of informants.[12] It has also collected, analyzed, and "mapped" racial and ethnic demographic information and the location of ethnic-oriented businesses and facilities based on crude stereotypes about specific minority communities' propensity to crime.[13]

Discriminatory and unjust investigations also flow from bias-based profiling guidelines adopted by the Departments of Justice and Homeland Security. The DOJ's 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies purported to ban bias-based profiling, but created broad exceptions for national security and at the nation's borders.[14] When DOJ updated this guidance in 2014—and the Department of Homeland Security (DHS) later adopted it—both entities kept these broad loopholes in place, over the objections of communities of color, and civil and human rights organizations around the country.[15]

The combination of law enforcement agencies' unjustified and discriminatory investigations and bias-based profiling generates inaccurate or unreliable information used by federal, state, and local agencies in a variety of contexts. Federal intelligence and law enforcement agencies unfairly target people of color, those engaged in First Amendment-protected activities, and other marginalized communities, for investigations and prosecutions, placement on watchlists, and surveillance.[16] The FBI has used domestic

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[11] ACLU, *Unleashed and Unaccountable* at 9-15.
[12] ACLU, *Expanded FBI Authority*.
[13] ACLU, Press Release, *Gov't Linking Various Criminal Behaviors to Certain Racial and Ethnic Groups, Documents Obtained by ACLU Reveal*, https://www.aclu.org/press-releases/foia-documents-fbi-show-unconstitutional-racial-profiling (racial mapping FOIA); ACLU, *ACLU Eye on the FBI: The FBI is Engaged in Unconstitutional Racial Profiling and Racial 'Mapping'* (Oct. 2011), https://bit.ly/2kUWJGN.
[14] U.S. Dep't of Justice, Civil Rights Div., *Guidance Regarding the Use of Race by Fed. Law Enf't Agencies* (June 2003).
[15] The Leadership Conference on Civil and Human Rights, Coalition Letter to the President, *Re: Concerns with the U.S. Department of Justice Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity* (Feb. 24, 2015), https://civilrights.org/resource/re-concerns-with-the-u-s-department-of-justice-guidance-for-federal-law-enforcement-agencies-regarding-the-use-of-race-ethnicity-gender-national-origin-religion-sexual-orientation-or-gender-id/; Chris Rickerd, *A Dangerous Precedent: Why Allow Racial Profiling at or Near the Border?* (Dec. 8, 2014), https://www.aclu.org/blog/speakeasy/dangerous-precedent-why-allow-racial-profiling-or-near-border.
[16] *See generally* ACLU, *Unleashed and Unaccountable*.

terrorism authorities to spy upon Muslim communities, including by infiltrating their places of worship.[17] DHS leads and the FBI participates in a Suspicious Activity Reporting program (SARS), collecting and sharing information about people engaged in activities that are loosely labeled as "suspicious" without even a reasonable suspicion of criminal activity.[18] In addition to encouraging racial and religious profiling, the SARS program targets those engaged in First Amendment-protected activity. Agencies have monitored and infiltrated organizations such as the American-Arab Anti-Discrimination Committee, People for Ethnical Treatment of Animals, and Greenpeace,[19] rather than investigating credible threats of actual wrongdoing. One of these investigations even included contact lists for students and peace activists participating in an on-campus conference.[20] In 2010, the DOJ Inspector General criticized the FBI for misusing its authority by treating potential crimes such as non-violent civil disobedience and vandalism as justification for conducting investigations of civil rights, social justice, and environmental activists.[21] Muslims in America have also for years been unjustly targeted in sting operations and overbroad prosecutions under the guise of preventing or addressing purported terrorism threats,[22] and law enforcement agencies continue to initiate discriminatory investigations and surveil Muslim, Arab, Middle Eastern, and South Asian communities.

Abusive law enforcement continues to escalate under the Trump administration, including through the surveillance of Black Lives Matters actions, family separation protests, and border groups' activities. For example, in August 2017, the FBI Counterterrorism Division issued an "intelligence assessment," identifying "Black Identity Extremists"—an inflammatory term for a group that does not exist—for investigation as a domestic terrorism threat. The FBI disseminated its intelligence assessment to over 18,000 law enforcement agencies claiming, without evidence, that Black people involved in unrelated police killings shared an ideology that motivated their actions.[23] It also focused on Black people who, in the bureau's own words, "perceive[] racism and injustice in American society." Following criticism, the FBI stated that its made up label is no longer in use, but it appears to simply have renamed it. The Bureau has implemented a program, titled "IRON FIST," to target FBI resources on spying, surveilling, and investigating Black activists, including through use of undercover agents.[24]

The FBI has used its authorities to target individuals engaged in immigration advocacy, including border groups' activities and family separation protests. Just this month, government documents indicated that the FBI was conducting surveillance of groups engaged in protests at the border in response to the

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[17] *See, e.g.*, ACLU of S. Cal., *Fazaga v. FBI*, https://www.aclusocal.org/en/cases/fazaga-v-fbi.

[18] ACLU, *Gill v. DOJ – Challenge to Government's Suspicious Activity Reporting Program* (July 11, 2014), https://www.aclu.org/cases/gill-v-doj-challenge-governments-suspicious-activity-reporting-program.

[19] ACLU, Press Release, *New Documents Show FBI Targeting Env'tl. and Animal Rights Groups Activities as 'Domestic Terrorism'* (Dec. 20, 2005), https://www.aclu.org/news/new-documents-show-fbi-targeting-environmental-and-animal-rights-groups-activities-domestic.

[20] *Id.*

[21] Office of Inspector Gen., U.S. Dep't of Justice, *A Review of the FBI's Investigations of Certain Domestic Advocacy Groups* 186 (Sept. 2010).

[22] Human Rights Watch & Colum. Law Sch.'s Human Rights Inst., *Illusion of Justice: Human Rights Abuses in US Terrorism Prosecutions* (July 2014), https://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/final_report_-_illusion_of_justice.pdf.

[23] Nusrat Choudhury and Malkia Cyril, *The FBI Won't Hand Over Its Surveillance Records on 'Black Identity Extremists,' so We're Suing* (March 21, 2019), https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/fbi-wont-hand-over-its-surveillance-records-black.

[24] Ken Klippenstein, *Leaked FBI Documents Reveal Bureau's Priorities Under Trump*, Young Turks (Aug. 8, 2019), https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/mnzAKMpdtiZ7AcYLd5cRR.

Trump administration's immigration policies.[25] A few months ago, documents obtained from DHS indicated that the agency provided information that it received from a private firm regarding family separation demonstrations to Fusion Centers, which are intelligence-gathering hubs in which federal and local law enforcement agencies collaborate and share information.[26] These documents increase concerns that the Trump administration is using Fusion Centers to facilitate surveillance of those engaged in First Amendment-protected activities—including those calling for children not to be unlawfully separated from their parents.[27] For years, Fusion Centers have been the cause of bipartisan concern for reasons including their privacy and civil liberties violations, ineffectiveness, mission creep far beyond an original counter-terrorism goal, and lack of transparency. Indeed, in 2012, the Senate Homeland Security Permanent Subcommittee on Investigations published a bipartisan report on fusion centers in which it criticized DHS for "sometimes endangering citizens' civil liberties and Privacy Act protections."[28]

Congress and law enforcement agencies have not implemented meaningful safeguards to protect communities of color and other marginalized communities from law enforcement abuses of domestic terrorism authorities—and the deeply consequential harms to people's personal and professional lives that result.

## III. Attempts to enhance domestic terrorism authorities, including the creation of a crime, are short-sighted and will harm the communities Congress seeks to protect.

Creating more harmful and unnecessary domestic terrorism authorities is not the solution to white supremacist violence. Evidence in the form of government action, policies, and impacted communities' experiences shows that people of color and other marginalized communities are already the disproportionate targets of these authorities. Enhancing and expanding these authorities will result in more injury to the very communities that Congress seeks to protect—and harm the First Amendment, equal treatment, and due process rights of all people under the Constitution.

Additional "domestic terrorism" crimes are unnecessary and would be harmful. They are unnecessary because, as explained above, existing authorities and crimes can already address domestic terrorism effectively. New domestic terrorism crimes would cause harm by worsening the over-criminalization of Black and Brown communities. Racial and religious discrimination in the criminal justice system is not a new phenomenon. From arrest through incarceration, racial disparities in the criminal justice system are one of the most severe forms of discrimination against Black and brown people.[29] Those sentenced to

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[25] Jana Winter and Hunter Walker, *Exclusive: Document reveals the FBI is tracking border protest groups as extremist organizations*, Yahoo News (Sept. 4, 2019), https://news.yahoo.com/exclusive-document-reveals-the-fbi-is-tracking-border-protest-groups-as-extremist-organizations-170050594.html.

[26] Jesse Franzblau, *New Documents Expose Government Monitoring of Protests Against Family Separation*, Nat'l Immigrant Justice Ctr. (Apr. 29, 2019), https://immigrantjustice.org/staff/blog/new-documents-expose-government-monitoring-protests-against-family-separation

[27] *Id.*

[28] Permanent Subcomm. on Investigations, Senate Homeland Sec. & Governmental Affairs, Press Release, *Investigative Report Criticizes Counterterrorism Reporting, Waste at State & Local Intelligence Fusion Centers*, (Oct. 3, 2012), https://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers.

[29] ACLU, Testimony, *Racial Disparities in Sentencing: Hearing on Reports of Racism in the Justice System of the United States*, Inter-American Commission on Human Rights, 153rd Sess. (Oct. 27, 2014), https://www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf.

death have always been and continue to be disproportionately Black.[30] Efforts to address these stark disparities and systemic and institutional racism in the criminal justice system are finally underway—and more efforts are needed. The additional terrorism-related crimes, criminal penalties, and expansion of the death penalty in many proposals now being made would further incorporate abusive authorities into a discriminatory criminal justice system.

**IV. Congress must demand accountability from the Department of Justice and the Federal Bureau of Investigation for their failure to focus on white supremacist violence and protect impacted communities.**

White supremacist violence must be addressed with solutions that protect all communities. But law enforcement agencies have failed to use the vast array of investigative tools and authorities at their disposal to do so.

Congress should hold government agencies accountable for the lack of focus on white supremacist violence. This accountability begins with requiring agencies to provide meaningful data on their failure to use resources and prioritize efforts to address white supremacist violence. Congress must obtain data regarding the investigation and prosecution of white supremacist violence in order to understand how law enforcement agencies, and in particular, the FBI, are focusing resources. With that data, Congress can ensure that agencies focus on white supremacist violence effectively in order to better protect communities around the country.

Additionally, Congress must pass the Khalid Jabara and Heather Heyer NO HATE Act.[31] Acts of white supremacist violence can meet the federal definition of both hate crimes and domestic terrorism. In fact, the FBI's own policy makes clear that a hate crime in which the perpetrator is connected to a "white supremacist group" must be investigated as domestic terrorism as well.[32] Given the overlap of domestic terrorism and hate crimes investigations and the number of incidents of white supremacist violence that target people based upon their protected class, the Jabara-Heyer NO HATE Act serves as a productive tool to enhance community safety. This legislation is particularly significant because Khalid Jabara and Heather Heyer's deaths were both prosecuted as hate crimes, yet neither of them were counted as such in the FBI statistics. Like these terrible tragedies, many other hate crimes are not counted in FBI statistics due to flaws in the reporting system and data collection. It is essential that data reporting is improved because Congress cannot properly address a problem without knowing its scope. Furthermore, this bill provides resources to address these acts of violence by creating state-run hotlines, law enforcement trainings, and resources for impacted individuals.

As Congress seeks to make our communities safer, it must begin here, with productive proposals that address specific problems—not with proposals that harm the very communities Congress seeks to protect.

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[30] ACLU, *The Case Against the Death Penalty*, https://www.aclu.org/other/case-against-death-penalty (citing Hugo Adam Bedau, *Recidivism, Parole, and Deterrence*, in *The Death Penalty in America* (3d ed. 1982)).

[31] Khalid Jabara and Heather Heyer National Opposition to Hate, Assault, and Threats to Equality Act of 2019, S. 2043, H.R. 2043, 116th Cong. (2019).

[32] Harsha Panduranga and Faiza Patel, *"Domestic Terrorism" Bills Create More Problems Than They Solve*, Just Security (Aug. 28, 2019), https://www.justsecurity.org/65998/domestic-terrorism-bills-create-more-problems-than-they-solve/.

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September 6, 2019

**OPPOSE A NEW FEDERAL DOMESTIC TERRORISM CRIME**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we write to urge you to oppose legislation that would create a new federal crime of domestic terrorism.

As Members of Congress return to session and focus on responses to white supremacist violence, we encourage you to implement common sense legislation that will not target communities of color and marginalized religious groups.

Congress should not enact any laws creating a new crime of domestic terrorism, including the Confronting the Threats of Domestic Terrorism Act (H.R. 4192) and a draft bill expected to be introduced in the Senate "to penalize acts of domestic terrorism." We believe these bills and others with similar provisions being drafted are the wrong approach because they could be used as a vehicle to target marginalized communities, manufacturing threats that do not exist.[1] Members of Congress should not reinforce counterterrorism policies, programs, and frameworks that have inherent flaws rooted in bias, discrimination, and denial or diminution of fundamental rights like due process. Instead, Congress must work with marginalized communities in crafting solutions to white supremacist violence.

The federal government has no shortage of counterterrorism powers, and these powers have been used to unjustly target American Muslim, Arab American, South Asian American, African American communities and those who fight for racial and social justice.[2] The creation of a new federal domestic terrorism crime ignores this reality and does nothing to address the problem of gun violence and hate violence incidents in this country.

Congress should use its oversight and appropriations powers to demand that federal agencies make public how it is using its resources to fight white supremacist violence and Congress must pass pertinent legislation to strengthen laws related to hate violence in this country. We support the Domestic Terrorism DATA Act (H.R.3106), which provides Congress information about the federal government's approach to counterterrorism, including data on investigations and prosecutions. Congress should pass the Domestic Terrorism DATA Act to better understand acts of domestic terrorism and ensure that law enforcement

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[1] *See* Brennan Center, *Countering Violent Extremism in the Trump Era*, Jun. 2018, which discusses investigating so-called "black identity extremism" as a domestic terrorist threat. https://www.brennancenter.org/analysis/countering-violent-extremism-trump-era

[2] *See* MLK and the FBI: 50 years on, secrets and surveillance still, The Hill, Apr. 2019. https://thehill.com/opinion/civil-rights/436437-mlk-and-the-fbi-50-years-on-secrets-and-surveillance-still

stops discriminating in how resources are allocated when enforcing existing laws.[3] In addition, Congress should pass the Khalid Jabara and Heather Heyer National Opposition to Hate, Assault, and Threats to Equality Act (Jabara-Heyer NO HATE Act) (S.2043/H.R.3545) to incentivize accurate data collection; provide hotlines for reporting hate crimes; encourage law enforcement agencies to adopt hate crime policies that assist law enforcement with federal research; and permit courts to require individuals convicted under the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act to participate in community service or educational programs as a condition of supervised release. We also support the Disarm Hate Act (H.R. 2708/S.1462), which will prevent those convicted of misdemeanor hate crimes from obtaining firearms.

The Leadership Conference applauds the House of Representatives for holding hearings during this Congress in its efforts to elevate the fight against white supremacy. We encourage the Senate to do the same. These hearings should feature those communities that are experiencing hate incidents and must be conducted in a way that does not further bigotry.

Divisive rhetoric and discriminatory policies that cast wide aspersions on immigrant, Muslim, and other marginalized communities have heightened concerns that our country is increasingly legitimizing or normalizing hate. We call on every Member of Congress to call these acts of white supremacist violence exactly what they are. It is critical that Congress remain vigilant in only enacting laws that are purposeful, necessary, and do not negatively impact those communities already being victimized by white supremacist violence. We urge you to oppose any legislation that would enact a new federal crime of domestic terrorism given the potentially devastating effect on marginalized communities. We also urge you to pass the Domestic Terrorism DATA Act, the Jabara-Heyer NO HATE Act, and the Disarm Hate Act. If you have any questions, please contact Tamara E. Chrisler, Managing Director of Policy, at chrisler@civilrights.org or 202-466-3311.

Sincerely,

Vanita Gupta
President & CEO

[3] Austin Jr., Roy L. & Clarke, Kristen, Creating a domestic terrorism crime would actually hurt communities of color, *Washington Post*, Aug. 2019 https://www.washingtonpost.com/opinions/domestic-terrorism-doesnt-need-to-be-a-chargeable-offense-we-already-have-powerful-hate-crime-laws/2019/08/26/14c6f354-c4eb-11e9-b72f-b31dfaa77212_story.html

MUSLIM PUBLIC
AFFAIRS COUNCIL

**MUSLIM PUBLIC AFFAIRS COUNCIL**
**STATEMENT FOR THE RECORD**

**Hearing on "Countering Domestic Terrorism: Examining the Evolving Threat"**

**SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE**

**UNITED STATES SENATE**

**SEPTEMBER 25, 2019**

Chairman Johnson, Ranking Member Peters, and Members of the Senate Homeland Security and Governmental Affairs Committee: We, at the Muslim Public Affairs Council (MPAC), appreciate the opportunity to submit this statement for the record regarding the hearing titled, "Countering Domestic Terrorism: Examining the Evolving Threat."

Since 1988, MPAC has been committed to promoting and strengthening American pluralism by increasing understanding and improving policies that impact American Muslims. We thank the Committees for holding such an important hearing, particularly because hate crimes against American Muslims by white supremacists have increased and the fear in our community is palpable.

**Hate crimes have been on the rise in the United States.** During the winter of 2016 - 2017, over 1,370 hate crimes and bias incidents were reported.[1] The Muslim community in the United States has suffered the greatest increase in reported hate crimes. The Federal Bureau of Investigation's (FBI) statistics on total hate crimes in the U.S. in 2016 show a near 200% increase in hate crime incidents toward Muslims since September 11, 2001.[2] Further, the number of anti-Muslim hate

[1] Hatewatch Staff, *Post-Election Bias Incidents Up to 1,372; New Collaboration with ProPublica*, Southern Poverty Law Center: Hatewatch (February 10, 2017), https://www.splcenter.org/hatewatch/2017/02/10/post-election-bias-incidents-1372-new-collaborations-propublica.
[2] Hatewatch Staff, *Anti-Muslim Hate Crimes Surged Last Year, Fueled by Hateful Campaign*, Southern Poverty Law Center: Hatewatch (November 14, 2016),

groups nearly tripled - from 34 in 205 to 101 in 2016 - fueling a 67% increase in hate crimes since 2015 alone.[3]

Negative rhetoric from politicians and other public figures further drive hate and bias-related attacks on Muslim communities.[4] In fact, a recent study done by University of North Texas professors Regina Branton and Valerie Martinez-Ebers, and PhD candidate Ayal Feinberg, found that hate crimes increased by 226% in places candidate-Donald Trump held campaign rallies in 2016.[5] Even more disturbing is the insistence by President Trump that the rise of white nationalism, and subsequently white nationalist violence, does not exist despite evidence proving the contrary.

This year alone, Americans have witnessed horrific violence spread by white supremacists in Gilroy, CA, Poway, CA, El Paso, TX and Dayton, OH.[6] These white supremacist violent attacks targeted everyday shopping malls and festivals to communities of color and houses of worship.

In Portland, OR, we saw two brave men lose their lives and a third critically wounded while defending women of color -- one of whom was Muslim and wore a headscarf -- from a vicious

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https://www.splcenter.org/hatewatch/2016/11/14/anti-muslim-hate-crimes-surged-last-year-fueled-hateful-campaign.

[3] Phil McCausland, *Huge Growth in Anti-Muslim Hate Groups During 2016: SPLC Report*, NBC News (February 16, 2017, 6:07 AM), https://www.nbcnews.com/news/us-news/huge-growth-anti-muslim-hategroups-during-2016-splc-report-n721586.

[4] Brian Levin, *Special Status Report: Hate Crime in The United States, 20 State Compilation of Official Data*, Center for the Study of Hate & Extremism, California State University, San Bernardino (2016), https://www.documentcloud.org/documents/3110202-SPECIAL-STATUS-REPORT-v5-9-16-16.html.

[5] David Choi, *Hate crimes increased 226% in places Trump held a campaign rally in 2016, study claims*, https://www.businessinsider.com/trump-campaign-rally-hate-crimes-study-maga-2019-3.

[6] Silverstein, Jason, *There have been more mass shootings than days this year*, (September 1, 2019), https://www.cbsnews.com/news/mass-shootings-2019-more-mass-shootings-than-days-so-far-this-year/

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attack by a white nationalist.[7] In his court appearance, the alleged killer shouted defiantly, "you call it terrorism; I call it patriotism!"[8] We must call it what it really is: white nationalism is a threat to our nation's security. And just months after this horrific attack, our nation witnessed a white nationalist "Unite the Right" rally, where white nationalists gathered violently to spew their hatred, and ultimately innocent lives were taken.[9]

In October of 2016, a terrorist group called The Crusaders planned to bomb an apartment complex in Kansas home to 120 Somali immigrants with the rabid ideological desire to "wake people up."[10] If their plot had not been thwarted by FBI agents who recognized and took the threat seriously, it could have resulted in one of the deadliest bombings in recent history.

In 2015, our nation reeled from an attack on an African American church in Charleston, South Carolina by white supremacist Dylan Roof, who snarled at his victims that they were "taking over the country," before brutally and mercilessly shooting them.[11]

This kind of hatred and violence knows no borders. In fact, earlier this year, in Christchurch, New Zealand, a self-proclaimed white nationalist killed 50 Muslim worshippers during Friday prayers at two mosques. After the massacre in New Zealand, President Trump still made it a point to announce that he did not believe white nationalism was a rising threat.

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[7] Haag, Matthew, and Jacey Fortin. "Two Killed in Portland While Trying to Stop Anti-Muslim Rant, Police Say." The New York Times. The New York Times, 27 May 2017.
[8] Press, Associated, and Nahal Toosi. "Portland Stabbing Suspect: 'You Call It Terrorism, I Call It Patriotism!'" Politico. Politico.com, 30 May 2017.
[9] Joe Heim, *Recounting a day of rage, hate, violence and death,* https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/?utm_term=.eaa4ef5db931

[10] Potter, Tim, and Amy Renee Leiker. "Three Charged in Kansas Plot to Bomb Homes, Worship Center for Somalis." Kansas City Star. Kansascity.com, 14 Oct. 2016.
[11] "Charleston Shooting." NPR. NPR.org

In fact, his administration has a history of cavorting with white nationalists, and working against the movement trying to combat white nationalism.[12] For example, White House Senior Advisor Stephen Miller[13] is linked to notorious white supremacist Richard Spencer, who sees Miller as an ally of the movement. Former White House Chief Strategist Stephen Bannon,[14] who came from the white nationalist Breitbart News, says that Islam "is the most radical religion" in the world. Both of these individuals are the architects of the Muslim travel ban. And then there's former Deputy Assistant to the President, Sebastian Gorka[15], who is associated with the Hungarian Nazi-tied group Vitézi Rend.[16] And when it came time for Trump to disperse a grant through the Department of Homeland Security that focused on combating various types of violent extremism, Katie Gorka, a Trump administration political appointee in DHS and wife to Sebastian Gorka, made it a point to rescind the grant from a group called Life After Hate. Life After Hate is an organization that works to de-radicalize neo-Nazis and white supremacists. Their grant was revoked weeks before the Unite the Right Rally in Charlotesville, VA.

This increase in xenophobic rhetoric and hate crimes is paralleled by the rise in far-right, extremist terrorism across the West, with the most violent attacks taking place in North America.

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[12] Jessica Schulberg, *Trump Homeland Security Official Suggested Antifascists Were 'The Actual Threats'*,
https://www.huffpost.com/entry/dhs-violent-extremism-katie-gorka-life-after-hate-mpac-antifa_n_5ca787d7e4b0a00f6d3f2e73

[13] Josh Harkinson, *Trump's Newest Senior Adviser Seen as a White Nationalist Ally,*
https://www.motherjones.com/politics/2016/12/trumps-newest-senior-adviser-seen-ally-white-nationalists/

[14] Reilly, Steve and Brad Heath, *Steve Bannon's own words show sharp break on security issues,*
https://www.usatoday.com/story/news/2017/01/31/bannon-odds-islam-china-decades-us-foreign-policy-doctrine/97292068/

[15] Allegra Kirkland, *How Did Sebastian Gorka Go From The Anti-Muslim Fringe To White House Aide?,*
https://talkingpointsmemo.com/dc/sebastian-gorka-washington-experts-dc-anti-islam-ties

[16] Larry Cohler-Esses, *Sebastian Gorka's Ties to Nazi-Allied Group Stretch Back Decades,*
https://forward.com/news/369683/exclusive-sebastian-gorkas-ties-to-nazi-allied-group-stretch-back-decades/

In countries with increased immigration levels, xenophobic rhetoric also increases, which in turn moves right- wing, white supremacist terrorists to action.

The violence in this period has been explained by many in the press, academia, civil society, and members of Congress as outward manifestations of "white supremacy."

**Online Coordination, Exhortation.** White supremacy is a global, interconnected movement, and has tendencies toward anti-government terrorism. Much of early white supremacist coordination occurred on online forums such as LibertyNet and Stormfront. Today, as contemporary white supremacists continue to gravitate to more digitally savvy outfits, radicalization and mobilization take place through online platforms like 8chan, Gab, 4chan, and Telegram,[17] the digital presence of individuals like Stefan Molyneux, Andrew Anglin,[18] and Felicity Gold, and by way of white supremacist websites like The Daily Stormer.[19] On these and other similar platforms, extremists are able to connect the dots between their causes and those of others, thereby creating a sort of informal movement which, at its ugliest, encourages and commits acts of violence.

The threat of white nationalism lives in the real as well as thrives in the digital world. For years, MPAC has raised the red flag to tech companies of the threat of white nationalism in the digital space. White nationalists gather online and share in their hatred and bigotry. They also use digital platforms to organize their activities, often times resulting in death. The Christchurch, NZ mosque shooter used online platforms to live-stream is murderous rampage.

**Anti-Government, Anti-Authority Motivation.** Counterterrorism expert J.M. Berger has described white supremacy as "a worldwide phenomenon" premised on a "crisis narrative" over

[17] Michael Edison Hayden, *Far-Right Extremists Are Calling for Terrorism on the Messaging App Telegram*, Southern Poverty Law Center (June 27, 2019).
[18] Luke O'Brien, *The Making of an American Nazi*, The Atlantic (December 2017).
[19] Karen Zraik, *Neo-Nazis Have No First Amendment Right to Harassment, Judge Rules*, The New York Times (November 15, 2018).

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immigration and issues of "mythic" national or Western identity.[20] Belew describes it as "an inherently anti-American project," whose followers are "trying to overthrow the federal government and create a united white polity that will then eventually eradicate people of color in the country and in the world."[21] Starting in the 1980s and lasting through the 2000s, former Klansmen, neo-Nazis, skinheads, and other white supremacists convened under the umbrella of the Aryan Nations[22] at a compound in Northern Idaho, where they began to formulate "an anti-government social movement"[23] rooted in the belief that "white people of Northern European ancestry are God's chosen."[24] Today, figures like Richard Spencer, whose politics are informed and shaped by white supremacy, write that his movement is best understood as "serious opposition to, not just the left, but also the conservative status quo."[25] White supremacist ideology supports the establishment of a white ethno-state, even if one is won at the expense of a diverse, constitutional democratic republic.

**Global and Interconnected.** In an analysis published this past April, the New York Times described the Christchurch shooter as belonging to "an informal global network of white extremists." According to the Global Terrorism Database, a third of white supremacist killers have admitted to being inspired by perpetrators of similar attacks dating back to 2011 which span continents.[26] Much of this framework is built upon transnational partnerships, as research from

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[20] J.M. Berger, *The New Zealand shooter wrote a manifesto. An extremism expert explains what it means,* Vox (March 18, 2019).
[21] Monica Muñoz Martinez, *Public Thinker: Kathleen Belew on the Rise of "White Power"*, Public Books (April 19, 2019).
[22] Monica Muñoz Martinez, *Public Thinker: Kathleen Belew on the Rise of "White Power"*, Public Books (April 19, 2019).
[23]Meagan Day, *Welcome to Hayden Lake, where white supremacists tried to build their homeland,* Timeline (November 4, 2016).
[24] Bill Morlin, *Some Say Potato, Most Say Aryan Nations*, The Blue Review. Boise State University School of Public Service (February 11, 2014).
[25] Thomas J. Main, *The Rise of the Alt-Right*, Brookings Institution Press (2018): pp. 5.
[26] Weiyi Wai, Simone Landon, *Attacks by White Extremists are Growing. So Are Their Connections*, The New York Times (April 3, 2019).

Michael German[27] and Kathleen Belew[28] demonstrates. White supremacy's global interconnectedness carries with it devastating potential. Shortly after the massacre in Christchurch, it was revealed that the assailant had a long-lasting connection with Martin Sellner, the leader of the Identitäre Bewegung Österreichs (IBÖ), which is part of a white supremacist movement with branches in most Western European countries, North America, and New Zealand.[29] The Christchurch shooter also "saw himself as part of a white collective."[30] In this way, given the global scale of white supremacist collaboration, white supremacist terrorism can be understood, and even classified, as international terrorism.

**Anti-Muslim bigotry.** Sophie Bjork-James says that disparities in Department of Justice (DOJ) reports and Federal Bureau of Investigation (FBI) hate crimes statistics show "that hate crimes appear to be on the rise and remain vastly undocumented and unenforced."[31] In 2017, ProPublica reported that over 100 federal agencies fail to adequately report hate crimes.[32] American Muslim communities stand to be uniquely impacted by the rise in white supremacist violence. Black Muslims, a plurality of the American Muslim community, face a heightened threat of white supremacist violence due to their location at the intersection of two racialized identity groups. Since 2013, hate crimes against Muslims in the United States have more than doubled, and the number of anti-Muslim hate groups has nearly tripled.[33] In 2015, then candidate-Donald Trump said he would strongly consider closing or surveilling mosques and creating a national Muslim

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[27] Michael German, *What We Don't Get About the Far Right*, Brennan Center for Justice (November 20, 2018).
[28] Kathleen Belew, *The Christchurch Massacre and the White Power Movement*, Dissent (March 17, 2019).
[29] Jason Wilson, *Christchurch shooter's links to Austrian far right 'more extensive than we thought'*, The Guardian (May 15, 2019).
[30] Weiyi Wai, Simone Landon, *Attacks by White Extremists are Growing. So Are Their Connections*, The New York Times (April 3, 2019).
[31] Sophie Bjork-James, *What the latest FBI data do and do not tell us about hate crimes in the US*, The Conversation (November 26, 2017).
[32] A.C. Thompson, Ken Schwencke, "*More Than 100 Federal Agencies Fail to Report Hate Crimes to the FBI's National Database*" ProPublica (June 22, 2017).
[33] Southern Poverty Law Center (SPLC), *Hate Map*, SPLC (date accessed: July 19, 2019).

registry.[34] The following year, he said that he thought "Islam hates us."[35] One of his first orders of business as President was signing an Executive Order banning entry into the United States from seven Muslim-majority nations, also known as Trump's Muslim ban.

A recent study suggests a strong connection between anti-Muslim rhetoric from politicians like Trump and increases in violent hate crimes toward American Muslim communities.[36] The study reveals a strong statistical correlation between Trump's tweets about Islam and the number of anti-Muslim hate crimes that take place in the subsequent days and weeks.[37] It also suggests a strong link between spikes in hate crimes and high Twitter usage in particular counties after the start of Donald Trump's presidential campaign.[38] The anti-Muslim rhetoric from politicians and proliferation of similar views online has only further otherized Mulims in the West, and has thus made them easy targets. In the immediate aftermath of the Christchurch shooting, Austrailian politician Fraser Anning said that violence against Muslims was justified because Islam was a "violent ideology."[39] The Christchurch shooter himself claimed that he targeted Muslims because "they are the most despised group of invaders in the West"[40]

**The Reality of the Threat.** Data from the Extremist Crime Database shows that 166 out of 217 ideologically motivated homicide incidents involving far-right extremists between 1990 and 2018 were committed by white supremacists against members of minority communities.[41] From 2011 through 2017, there were nearly 350 white extremist terrorism attacks across Europe, North

[34] Hunter Walker, *Donald Trump has big plans for 'radical Islamic' terrorists, 2016, and 'that communist' Bernie Sanders*, Yahoo! (November 19, 2015).
[35] Theodore Schleifer, *Donald Trump: 'I think Islam hates us'*, CNN (March 10, 2016).
[36] Daisy Grewal, *Do Trump Tweets Spur Hate Crimes?*, The Scientific American (June 26, 2018).
[37] Daisy Grewal, *Do Trump Tweets Spur Hate Crimes?*, The Scientific American (June 26, 2018).
[38] Daisy Grewal, *Do Trump Tweets Spur Hate Crimes?*, The Scientific American (June 26, 2018).
[39] Jen Kirby, *Far-right Australian senator blames New Zealand attack on Muslim immigrants*, Vox (March 15, 2019).
[40] Murtaza Hussain, *New Zealand Suspect's Actions Are Logical Conclusion of Calling Immigrants "Invaders"*, The Intercept (March 18, 2019).
[41] National Consortium for the Study of Terrorism and Responses to Terrorism (START). (2018). Global Terrorism Database [Data file]. Retrieved from https://www.start.umd.edu/gtd

America and Australia.[42] During that same time period, white supremacist terrorism accounted for roughly one-third of all terrorist attacks in the United States.[43] In 2017 alone, 37 out of 65 recorded terror incidents were motivated by right-wing ideologies based in racism, anti-Muslim bigotry, homophobia, anti-Semitism, anti-government sentiment, or xenophobia.[44] Over the course of the last decade, white supremacist extremists were responsible for nearly three-quarters of extremist murders in the United States.[45] This year, white supremacists' propaganda efforts nearly doubled, and they drastically increased their number of rallies and public events.[46] We agree with Acting DHS Secretary Kevin McAleenan when he stated recently, "domestic terrorists, motivated by racially- and ethnically-motivated violent extremism, anti-government and anti-authority violent extremism, and other violent extremist ideologies, represent a growing share of the threat to the Homeland."[47]

**Policy Recommendations.**

Improvements to Hate Crime Reporting and Data Collection

MPAC recommended five steps that Congress could take to repair gaps in hate crime enforcement:

1. Mandating hate crime reporting from federal law enforcement agencies.

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[42] National Consortium for the Study of Terrorism and Responses to Terrorism (START). (2018). Global Terrorism Database [Data file]. Retrieved from https://www.start.umd.edu/gtd

[43] Weiyi Wai, Simone Landon, *Attacks by White Extremists are Growing. So Are Their Connections*, The New York Times (April 3, 2019).

[44] Luiz Romero, *Terrorism is surging in the US, fueled by right-wing ideologies*, Quartz (August 17, 2018).

[45] Adam Serwer, *The Terrorism That Doesn't Spark a Panic*, The Atlantic (January 28, 2019).

[46] Michael R. Sisak, *More white supremacist propaganda showing up on US campuses*, AP News (June 27, 2019).

[47] Killingsworth, Colleen, *White nationalism is now recognized as a major terror threat by the Department of Homeland Security,* (September 20, 2019), http://www.fox5atlanta.com/news/white-nationalism-is-now-recognized-as-a-major-terror-threat-by-the-department-of-homeland-security?utm_source=dlvr.it&utm_medium=twitter

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2. Conducting a comprehensive study on gaps in federal and state hate crime reporting tools.
3. Training law enforcement agencies to investigate and report hate crimes.
4. Modifying the prosecutorial certification of the attorney general in hate crime statutes.
5. Conducting a study on "specific intent" requirements and their impact on hate crime prosecutions.

To that end, Congress should pass the Khalid Jabara and Heather Heyer No Hate Act, a bill which would incentivize greater hate crimes reporting and data collection among federal government agencies as well as state and local governments.

**Including Communities In The Conversation.** In order to help communities deal with the impact of hate-inspired violence, we urge Congress to fully fund the Community Relations Service within the Justice Department, a program which the Trump administration's proposed 2020 budget recommends eliminating.[48] Additionally, we urge Congress to review the current funding of implicit bias training for law enforcement and training for law enforcement to ensure that marginalized communities are afforded equal opportunity to access training grants.

For American Muslims living in a climate of increasing anti-Muslim rhetoric, the perceived and real threats of hate violence is an everyday reality. When a hate crime occurs, there is a significant impact on not just the victim, but the entire community, engendering feelings of vulnerability and isolation. Effective enforcement of hate crimes laws can serve as a deterrent to future offenders. Dealing with white nationalism needs to be a whole of society approach. MPAC is committed to working with Congressional members, advocacy organizations, victims, and public policy professionals to ensure that this hate is mitigated and that minority and marginalized communities are protected.

[48] The United States Department of Justice, *FY 2020 Budget and Performance Summary*, Department of Justice (March 14, 2019).

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Written Statement of Professor Shirin Sinnar

Professor of Law, Stanford Law School

Submitted to the U.S. Senate Committee on Homeland Security and Governmental Affairs

For a Hearing on Countering Domestic Terrorism: Examining the Evolving Threat

September 25, 2019

I thank the U.S. Senate Committee on Homeland Security and Governmental Affairs for investigating the growing threat of domestic terrorism, especially white nationalist violence. As recent events in El Paso, Pittsburgh, and elsewhere have made clear, the scale of this threat requires leadership, prioritization, and resources from a range of government agencies. I submit this statement to caution members of this Committee, and other members of Congress, against establishing new federal terrorism crimes, penalties, or surveillance authorities in an effort to counter this threat.

I am a law professor at Stanford University. I specialize in research and teaching on national security law, civil rights and liberties, and civil procedure. My scholarly work over the past decade has focused on the legal treatment of political violence, including domestic and international terrorism, and on national security oversight through courts and executive agencies.[1] Prior to my appointments at Stanford, I worked as a civil rights lawyer for the Asian Law Caucus and the Lawyers' Committee for Civil Rights in San Francisco.

## I. Existing federal laws provide ample means for the federal prosecution of most domestic terrorism.

The enactment of a new federal domestic terrorism crime is not required for federal prosecution of most domestic terrorism, and could lead to adverse consequences for individuals and communities. As it is, the terrorism chapter of the U.S. criminal code includes a large number of federal crimes and defines an even wider variety of offenses—under approximately fifty listed statutes—as federal crimes of terrorism when committed with an intent to influence government conduct.[2] Many of these statutes apply to terrorism irrespective of an international link. For instance, federal charges can apply to domestic terrorists who use, or seek to use, explosives or chemical or biological weapons.[3] Earlier this year, on the basis of convictions resulting from such charges, a federal judge sentenced three Kansas militia members to between 25 and 30

[1] For samples of this academic scholarship, see *Separate and Unequal: The Law of "Domestic" and "International" Terrorism*, 117 MICH. L. REV. 1333 (2019); *Procedural Experimentation and National Security in the Courts*, 106 CAL. L. REV. 991 (2018); *Rule of Law Tropes in National Security*, 129 HARV. L. REV. 1566 (2016); and *Protecting Rights from Within? Inspectors General and National Security Oversight*, 65 STAN. L. REV. 1027 (2013).

[2] *See* 18 U.S.C. ch. 113B (2012) ("Terrorism"); id. § 2332b(g)(5) (defining a federal crime of terrorism).

[3] *See, e.g., id.* § 229 (acquisition, production, use, or possession of chemical weapons); id. § 832 ("Participation in nuclear and weapons of mass destruction threats to the United States"); id. § 844(i) (destruction or damage to property used in interstate commerce "by means of fire or an explosive"); id. § 2332a ("Use of weapons of mass destruction").

years in prison for plotting to bomb a mosque and apartment complexes housing Somali immigrants.[4] In addition, existing federal terrorism crimes cover violence or threats of violence against federal officials, federal government facilities, and mass transit or communication systems.[5] These charges have particular utility against individuals acting out of anti-government motives, who often target federal buildings or officials.[6] Moreover, an existing terrorism charge for acts of violence and property damage "transcending national boundaries" could apply to the growing number of acts of white nationalist violence in the United States with international connections.[7]

Federal *terrorism-specific* charges may not be available for all acts of terrorism, especially some acts of violence conducted with a gun or vehicle.[8] Even for cases committed with a gun or vehicle, however, a wide range of other federal criminal charges often apply.[9] Federal civil rights charges are especially applicable to cases involving white nationalists, who often target racial or religious minorities or places of worship.[10] In the past several years, federal prosecutors brought hate crimes and/or obstruction with the free exercise of religion charges against domestic terrorists such as Dylann Roof (the 2015 Charleston church shooter)[11]; James Alex Fields, Jr. (the 2017 Charlottesville assailant)[12]; Robert Bowers (the 2018 Pittsburg synagogue suspect)[13]; and John Timothy Earnest (the 2019 Poway synagogue suspect).[14] In no sense are

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[4] Roxana Hegeman, *Militia Members Get Decades in Prison in Kansas Bomb Plot*, U.S. NEWS, Jan. 25, 2019 (noting convictions for conspiracy to use a weapon of mass destruction and conspiracy against civil rights). For a discussion of the use or attempted use of weapons of mass destruction by domestic extremists, see Sinnar, *Separate and Unequal*, *supra* note 1, at 1390-91.

[5] *See, e.g.*, 18 U.S.C. § 351 (assassination, kidnapping, or assault of members of Congress, Supreme Court, and Cabinet); id. § 1114 ("Protection of officers and employees of the United States"); id. § 930(c) (killing during an attack in a federal facility involving a firearm or dangerous weapon); id. § 1751 (assault, kidnapping, or assassination of president or presidential staff); id. § 844(f)(2)–(3) (damage or destruction to federal properties causing or risking death or injury); id. § 1362 ("Communication lines, stations or systems"); id. § 1992 (attacks on railroads and mass transportation systems); id. § 2332f ("Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities").

[6] *See* DEP'T OF HOMELAND SEC., STRATEGIC FRAMEWORK FOR COUNTERING TERRORISM AND TARGETED VIOLENCE 10 (Sept. 2019) (describing "anti-government/anti-authority violent extremism" as a "significant motivating force behind domestic terrorism," and noting examples).

[7] 18 U.S.C. § 2332b (criminalizing murder, serious assaults, and property damage risking serious injury within the United States, including threats, attempts, and conspiracies, where there is "conduct transcending national boundaries"). To be clear, the use of this statute should not be encouraged where international connections are marginal. *See* Sinnar, *Separate and Unequal*, *supra* note 1, at 1353, 1404. For more on the increasing transnational connections among "white supremacist violent extremists," see DEP'T OF HOMELAND SEC., STRATEGIC FRAMEWORK FOR COUNTERING TERRORISM AND TARGETED VIOLENCE 9 (2019).

[8] *See* Sinnar, *Separate and Unequal*, *supra* note 1, at 1352.

[9] For a list of frequently charged, non-terrorism-specific federal laws in domestic terrorism prosecutions, see BRENNAN CTR. FOR JUSTICE, WRONG PRIORITIES ON FIGHTING TERRORISM 10 (2018).

[10] These charges include 18 U.S.C. § 249 ("hate crimes acts") and 18 U.S.C. § 247 ("Damage to religious property; obstruction of persons in the free exercise of religious beliefs").

[11] Indictment, United States v. Dylann Storm Roof (D.S.C., July 20, 2015).

[12] Indictment, United States v. James Alex Fields Jr. (W.D. Va., June 27, 2018).

[13] Superseding Indictment, United States v. Robert Bowers (W.D. Pa., Jan. 29, 2019).

[14] Indictment, United States v. John Timothy Earnest (S.D. Cal., May 21, 2019).

the corresponding penalties light: Roof was sentenced to death for the murder of nine African American parishioners,[15] and Fields received a life sentence.[16]

The use of non-terrorism charges is neither unusual nor restricted to domestic terrorism. Even in international terrorism cases, the federal government frequently charges suspects under statutes not specific to terrorism. In fact, the Justice Department's National Security Division divides international terrorism convictions into two categories: Category I comprises cases charged for violations of "federal statutes that are directly related to international terrorism"; and Category II involves "charged violations of a variety of other statutes," including "fraud, immigration, firearms, drugs, false statements, perjury, and obstruction of justice, as well as general conspiracy charges."[17] Between 2002 and 2015, federal authorities obtained well over 150 convictions in Category II cases.[18] The National Security Division describes Category II charges as an "effective method" of "deterring and disrupting potential terrorist planning and support activities" that "underscores the wide variety of tools available in the U.S. criminal justice system for disrupting terrorist activity."[19]

All of this suggests that the creation of a new federal domestic terrorism charge is unnecessary. But the creation of such a charge would also create new risks. One problem stems from the broad definition of domestic terrorism that legislative proposals now seek to adopt for a new terrorism crime. Current federal law defines terrorism as unlawful activities that "involve violent acts or acts dangerous to human life" that "appear to be intended—(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping."[20] This definition could convert conventional crimes that create public fear, or efforts to influence a government official for entirely personal reasons, into terrorism. These concerns are not merely theoretical. Indeed, numerous states have already created terrorism charges modeled on the federal definition, and some have used such charges in cases far removed from standard conceptions of terrorism.

For instance, under a Michigan terrorism law that criminalized violent felonies "intended to intimidate or coerce a civilian population or influence or affect the conduct of government…through intimidation or coercion," a court convicted a man whose anger at the government stemmed from idiosyncratic—and apparently delusional—reasons.[21] The defendant,

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[15] Alan Blinder & Kevin Sack, *Dylann Roof Is Sentenced to Death in Charleston Church Massacre*, N.Y. TIMES, Jan. 10, 2017.
[16] *White Supremacist James Alex Fields Jr. Sentenced To Life In Prison In Charlottesville Attack*, ASSOC. PRESS, June 28, 2019.
[17] U.S. Dep't of Justice Nat'l Sec. Div., Introduction to the National Security Divison's Chart of Public/Unsealed International Terrorism and Terrorism-Related Convictions From 9/11/01 to 12/31/15, at 1 (released in response to FOIA request by Prof. Shirin Sinnar, Stanford Law School).
[18] Id. at 1-18 (accompanying NSD chart). This number does not include convictions that arose out of the post-9/11 nationwide investigation, since the NSD observes that such cases were listed "regardless of whether investigators developed or identified evidence that they had any connection to international terrorism." Id. at 2.
[19] Id.
[20] 18 U.S.C. § 2331(5) (defining domestic terrorism).
[21] People v. Casteel, No. 321340, 2015 WL 5440195 (Mich. Ct. App. Sept. 15, 2015).

who shot randomly at vehicles over several days, testified that he believed the government had caused him to lose his job, that agents with clipboards were following him, and that "government-controlled advanced technologies…caused his wife to miscarry twice, killed one of his cats, made the other cat ill for a time, and gave his daughter extreme eczema."[22] Despite the lack of a broader ideological motive or systemic threat, an appellate court affirmed the man's terrorism conviction on the grounds that he was aware that his actions made people afraid[23] and that he intended to "send a message" to the government, whom he blamed "for everything that had gone wrong in his life."[24]

Michigan prosecutors likewise brought terrorism charges against an individual who tried to attack the prosecutor in his sexual assault case.[25] Although a court ultimately dismissed the terrorism charge, prosecutors seem to have brought it on the theory that the defendant attempted to influence government conduct.[26] Threatening a judge or law enforcement official to influence a pending court case might well fall within the plain text of a terrorism statute, but scarcely fits the intended focus on systemic threats of violence in service of ideological or political objectives.[27]

Although one proposal for a federal domestic terrorism charge attempts to mitigate the risk of overbroad use by requiring the Attorney General or a deputy to approve its use,[28] that requirement would not preclude its use in marginal cases. In a polarized political environment, an Attorney General might seek political advantage from approving terrorism charges against domestic opponents. An Attorney General might also endorse federal prosecutors' use of onerous terrorism charges to extract plea agreements to lesser criminal charges.[29] Once federal authorities have the power to use a broadly defined new terrorism offense, there is no guarantee that self-restraint will confine its use to genuine terrorist threats.

## II. The expansion of material support charges is neither necessary, nor advisable, to counter domestic terrorism.

Federal authorities use two primary material support laws today: 18 U.S.C. § 2339B, which bans material support to designated foreign terrorist organizations (FTOs), and 18 U.S.C. § 2339A,

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[22] Id. at * 5.
[23] Id. at * 5.
[24] Id. at * 5.
[25] Matt Mencarini, *Man Faces Terrorism Charge In Connection With Lansing Courtroom Attack*, LANSING STATE JOURNAL, Sept. 22, 2016.
[26] *See id.*; *Judge Throws Out Terrorism Charge In Courtroom Attack*, Assoc. Press, Jan. 26, 2017.
[27] Other state courts have interpreted state terrorism laws patterned on the federal domestic terrorism definition to not require a political motive. *See, e.g.*, Muhammad v. Commonwealth, 269 Va. 451, 499-500 (Va. 2005) ("Nothing in the words of these statutes evinces an intent to limit its application to criminal actors with political motives.").
[28] *See* Confronting the Threat of Domestic Terrorism, 116 H.R. 4192 § 2(e) (introduced by Rep. Adam Schiff on Aug. 16, 2019) (requiring certification of the Attorney General, or the "highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions of the offenses in this chapter," that the crime meets the intent requirement of the proposed statute).
[29] *See, e.g.*, Avlana Eisenberg, *Expressive Enforcement*, 61 UCLA L. REV. 858, 864 (2014) (describing prosecutors' incentives to charge penalty-enhancing hate crimes laws in "nonarchetypal cases" to encourage plea agreements to lesser charges).

which bans material support for particular terrorist crimes. Some law enforcement officials have proposed new material support laws to respond to domestic terrorism. Most of these proposals have gained little traction for very good reason: expanding the already broad scope of material support to terrorism laws would present numerous risks for individuals, civil liberties, and our political life.

Any new statute authorizing the listing of purely domestic terrorist organizations could be devastating. The FTO statute already presents significant civil liberties concerns. As it is, the statute prohibits "material support or resources" to listed organizations without regard to the nature of the support or its purpose: thus even speech coordinated with such groups for entirely peaceful purposes might fall within its crosshairs.[30] The expansive reach of the law, the difficulty of challenging designations, the use of the charge in FBI sting operations that risk entrapping individuals, and the stiff penalties associated with it all call for greater oversight, not expansion.[31]

Calls from across the political spectrum to brand movements or groups "terrorist organizations" underscore the risk of expanding designations. Some members of Congress seek to designate groups under the Antifa banner as domestic terrorist organizations;[32] the city of San Francisco passed a resolution labeling the National Rifle Association a domestic terrorist group.[33] Moreover, a statute modeled on the FTO ban might violate the First Amendment, at least as applied to the proscription of speech.[34] Finally, it is unclear whether the designation of domestic organizations would even reach much domestic terrorism, given that intelligence assessments describe such terrorism as primarily stemming from decentralized individuals or small groups.[35]

The second material support statute, § 2339A, is not restricted to international terrorism in its current form. That statute proscribes material support where an individual knows or intends that it will be used to commit, or prepare to commit, enumerated federal terrorism offenses.[36] Most

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[30] *See* Holder v. Humanitarian Law Project, 561 U.S. 1 (2010) (upholding constitutionality of statute as applied to non-profit organizations' activities of training designated foreign terrorist organizations in international law and engaging in political advocacy on their behalf); United States v. Mehanna, 735 F.3d 32 (1st Cir. 2013) (upholding material support conviction of Boston man charged in part with translating materials for a website alleged to be linked to al Qaeda, though on separate grounds).

[31] For more analysis, see Sinnar, *Separate and Unequal*, *supra* note __, at 1354-57, 1400, and accompanying citations.

[32] *See* A Resolution Calling for the Designation of Antifa as a Domestic Terrorist Organization, S. Res. 279, H.R. Res. 525 (introduced July 18, 2019, and July 25, 2019, respectively); Gary LaFree, *Is Antifa a Terrorist Group?* 55 SOC. 248 (2018) (concluding that antifa is not a "group" and that, based on application of Global Terrorism Database criteria through 2017, antifa-associated individuals did not commit terrorist attacks in Charlottesville or "most likely…anywhere else.").

[33] Mariel Padilla, *San Francisco Declares the N.R.A. a 'Domestic Terrorist Organization,'* N.Y. TIMES, Sept. 4, 2019.

[34] *See* Humanitarian Law Project, 561 U.S. at 39 (suggesting that an equivalent ban on material support to domestic organizations in the form of speech might fail constitutional scrutiny).

[35] *See, e.g.*, DEP'T OF HOMELAND SEC. & FED. BUREAU OF INVESTIGATION, JOINT INTELLIGENCE BULLETIN: WHITE SUPREMACIST EXTREMISM POSES PERSISTENT THREAT OF LETHAL VIOLENCE 5 (2017) (describing white supremacist violence as likely to come from "lone offenders or small cells," due to the decentralized nature of the movement).

[36] 18 U.S.C. § 2339A(a). The predicate statutes listed include a "catch-all" offense that includes violations defined as "federal crimes of terrorism." Id. (listing § 2332b(g)(5)(B)).

of the enumerated offenses listed can apply to either domestic or international terrorism.[37] Federal prosecutors have used this charge against at least four individuals accused of providing support to domestic terrorism, and likely could have used it in other domestic terrorism scenarios.[38]

Although the list of predicate offenses in the statute might not cover all domestic terrorism, there are good reasons not to expand the statute to include, for instance, a new domestic terrorism crime. For one thing, the existing charge already facilitates prosecutions of individuals several degrees removed from violent acts—a feature of the law that should be revisited. For instance, because prosecutors can charge conspiracies to provide material support, and the statute includes predicate offenses that are themselves conspiracy crimes, the existing law allows the charging of conspiracies to support conspiracies.[39] Moreover, the manner in which prosecutors have used § 2339A has already raised concern that the government is preemptively punishing individuals who may not have presented a threat.[40] As implemented, this "anticipatory prosecution" approach often raises serious human rights concerns.[41] In sum, the use of material support charges merits greater oversight, not less.

### III. Federal authorities have sufficient powers to investigate domestic terrorism threats, many of which require greater oversight rather than expansion.

Federal agencies have broad authority to investigate threats of terrorism, whether international or domestic. In recent decades, successive versions of the Attorney General's Guidelines for Domestic FBI Operations have expanded the scope of information the FBI may obtain, reduced the degree of connection to criminal activity required, and weakened procedural protections.[42] For instance, the FBI now has the explicit authority to conduct "assessments" of potential criminal activity with "no particular factual predication."[43] Assessments allow agents to search (potentially vast) commercial databases, track a person's movements, and even task a confidential informant to report on the person's activities.[44] While there must be an "authorized

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[37] *See* BRENNAN CTR. FOR JUSTICE, WRONG PRIORITIES ON FIGHTING TERRORISM 5 (2018) (counting 51 of these 57 crimes as applicable to domestic terrorism).
[38] Id. at 8; Scott Sullivan, *Prosecuting Domestic Terrorism as Terrorism*, JUST SECURITY (Aug. 18, 2017) (describing non-use in factual circumstances that could have justified a charge).
[39] *See* 18 U.S.C. § 2339A(a) (extending liability to attempts and conspiracies and listing predicate statutes).
[40] For one example, see United States v. Hayat, 710 F.3d 875 (9th Cir. 2013) (Tashima, J., dissenting) (describing prosecution of defendant under § 2339A as "a stark demonstration of the unsettling and untoward consequences of the government's use of anticipatory prosecution as a weapon in the 'war on terrorism.'"). Hayat's conviction for material support to terrorism was vacated in 2019 on the basis of constitutionally inadequate assistance of counsel. United States v. Hayat, 2019 WL 3423538 (E.D. Cal. July 30, 2019).
[41] For more analysis of these concerns, see HUMAN RIGHTS WATCH, ILLUSION OF JUSTICE: HUMAN RIGHTS ABUSES IN US TERRORISM PROSECUTIONS (2014); WADIE E. SAID, CRIMES OF TERROR: THE LEGAL AND POLITICAL IMPLICATIONS OF FEDERAL TERRORISM PROSECUTIONS (2015); Amna Akbar, *Policing "Radicalization,"* 3 U.C. IRVINE L. REV. 809, 845–68 (2013).
[42] BRENNAN CTR. FOR JUSTICE, DOMESTIC INTELLIGENCE: NEW POWERS, NEW RISKS 13-22 (2011).
[43] DEP'T OF JUSTICE FED. BUREAU OF INVESTIGATION, DOMESTIC INVESTIGATIONS AND OPERATIONS GUIDE 5-1 (as released Mar. 2, 2016 and updated Sept. 28, 2016) [DIOG].
[44] Id. at 5-34.

purpose" and "clearly defined objective" for such assessments, FBI agents need not demonstrate facts suggesting a basis for suspicion.[45]

Nor are the standards for opening preliminary or full investigations especially demanding. Agents may open a preliminary investigation—permitting more intensive surveillance—on the basis of "information or an allegation" indicating that a federal crime "has or may have occurred, is or may be occurring, or will or may occur" and where the investigation may help elicit relevant information.[46] Full investigations, which permit additional investigative methods, require an "articulable factual basis" that "reasonably indicates" that a federal crime has or *may* occur.[47] In addition, Justice Department guidelines permit the FBI to conduct far-reaching enterprise investigations of groups suspected of supporting domestic terrorism.[48]

Although FBI investigations generally require a tie to a prospective federal criminal violation, there is little indication that this requirement practically limits the FBI's domestic terrorism investigations. First, as discussed above, a wide range of federal criminal laws are already available for domestic terrorism. Second, even if a federal crime cannot ultimately be charged, investigations can be predicated on the possibility of a future violation—a significantly lower standard. Finally, the FBI has additional jurisdiction to investigate violations of state law in certain circumstances, such as felony killings of state or local law enforcement officers.[49]

Moreover, the Attorney General Guidelines and the FBI's internal rules explicitly permit investigations implicating First Amendment rights. These guidelines prohibit investigations based *solely* on the exercise of such rights.[50] But they clarify that agents acting with an authorized purpose, such as assessing a potential criminal violation, may observe and collect First Amendment-protected speech and review its content.[51] For example, FBI agents may monitor a political group's advocacy of unspecified "action" against perceived enemies, even if the government cannot suppress the advocacy itself.[52]

Reviewing these guidelines, the Justice Department Inspector General concluded in 2010 that they "allow the FBI wide latitude to pursue" investigations "that may implicate First Amendment considerations."[53] The Inspector General further stated that existing policies and guidelines "allow the FBI to open preliminary and full investigations through standards that are easily met."[54]

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[45] Id.
[46] Id. at 6-3.
[47] Id. at 7-3, 7-7, 7-8.
[48] U.S. DEP'T OF JUSTICE, THE ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC FBI OPERATIONS 23 (2008).
[49] DIOG, *supra* note 43, at 6-2; 28 U.S.C. § 540 ("Investigation of felonious killings of State or local law enforcement officers").
[50] DIOG, supra note 43, at 4-4.
[51] Id. at 4-7.
[52] Id. at 4-7.
[53] U.S. DEP'T OF JUSTICE INSPECTOR GEN., A REVIEW OF THE FBI'S INVESTIGATIONS OF CERTAIN DOMESTIC ADVOCACY GROUPS 3 (2010).
[54] Id.

Therefore, the idea that the FBI has limited power to investigate white supremacist violence is simply wrong. Existing restrictions are minimal. To the extent that First Amendment guidelines provide any constraint, they do so for good reason: to discourage freewheeling investigations of political speech or ideas in the absence of a genuine criminal threat.

**IV. New terrorism charges or surveillance powers, if enacted, may be misdirected towards unwarranted investigations and prosecutions of communities of color or political dissenters.**

An expansion of terrorism charges or associated surveillance powers is ill-advised in light of both the government's historical response to political threats and systemic racial inequalities in the criminal justice system. The FBI's sweeping programs to surveil and disrupt anti-war protestors and civil rights activists during the 1950s and 1960s, including Dr. Martin Luther King Jr., are well-known. According to historian David Cunningham, the FBI viewed "any challenge by nonwhites…as threatening to a conventional vision of an ideal America."[55] At the same time, the FBI conducted a more limited campaign against the Ku Klux Klan and other white supremacist groups because the agency opposed those groups' violence but accepted their beliefs.[56] Historians have observed that liberal support for the FBI's infiltration of "white hate" groups gave the agency a freer hand for its more intense targeting of black activists and anti-war groups.[57]

There are at least two historical lessons to draw from such accounts: first, that law enforcement agencies' approach to threats may vary based on the underlying ideologies and communities implicated; and second, that political support for addressing white supremacist violence can sometimes lead to diminished oversight of law enforcement powers—to the detriment of marginalized communities.

Law enforcement officials often dismiss such concerns as antiquated. Yet in recent decades, the FBI and other law enforcement agencies have continued to focus inordinate attention on communities of color—particularly U.S. Muslim communities—and on political activists. For example, the FBI and other agencies have "mapped" Muslim communities in the United States, deployed informants throughout these communities, solicited intelligence through community engagement programs, conducted wide-scale "voluntary interviews," and extensively monitored Internet activity—all with little oversight or accountability.[58] According to Professor Amna Akbar, misguided radicalization theories "transformed the project of counterterrorism intelligence gathering into one squarely focused on gathering as much information as possible about Muslim life in the United States, with a particular emphasis on political and religious cultures of Muslim communities."[59]

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[55] DAVID CUNNINGHAM, THERE'S SOMETHING HAPPENING HERE: THE NEW LEFT, THE KLAN, AND FBI COUNTERINTELLIGENCE 113 (2004).
[56] Id. at 127-45.
[57] Id. at 111 (citing WILLIAM KELLER, THE LIBERALS AND J. EDGAR HOOVER (1989)).
[58] Amna Akbar, *Policing "Radicalization,"* 3 U.C. IRVINE L. REV. 809, 854-68 (2013).
[59] Id. at 845.

The FBI's investigations of domestic civil society groups or their members have also generated concern. In 2010, the Justice Department Inspector General issued an extensive report on allegations that the FBI had improperly investigated certain anti-war, animal rights, and environmental advocacy groups.[60] The Inspector General concluded that, while the FBI had not targeted the groups solely on the basis of First Amendment activities, it had sometimes opened investigations without a sufficient factual basis, extended investigations that should have ended (leading to individuals remaining on terrorist watchlists without justification), improperly classified lawful protest activities as terrorism, and collected and retained information related to non-violent civil disobedience.[61]

Still more recently, the FBI's publication of a threat assessment on a broadly defined category of "black identity extremists"[62] and its investigations of an indigenous-led oil pipeline protest movement[63] have magnified concerns over how the agency conceptualizes terrorism. For instance, despite the largely peaceful nature of pipeline protests, considerable industry and political support has led to the increasing scrutiny of pipeline disruption as terrorism. In at least 31 states, legislators have introduced bills to curtail pipeline protests, some of which expand definitions of terrorism, and 84 members of Congress wrote to the Justice Department inquiring whether damaging pipelines qualifies as domestic terrorism.[64] While law enforcement agencies should direct attention to individuals credibly threatening actual violence across ideologies, the risk is that individuals from marginalized communities—or those opposing dominant economic or political interests—will receive the greatest scrutiny and most punitive treatment, and in circumstances that blur the line between terrorism and dissent.

## V. Conclusion

This Committee is undertaking a critically important review of the federal government's approach to domestic terrorism. Many have proposed commendable measures to improve understanding of the threat and direct attention and resources towards combatting it. Proposals to create new terrorism offenses or expand surveillance authorities, however, are misguided. The existing legal framework for addressing terrorism merits greater oversight, not expansion.

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[60] U.S. DEP'T OF JUSTICE INSPECTOR GEN., A REVIEW OF THE FBI'S INVESTIGATIONS OF CERTAIN DOMESTIC ADVOCACY GROUPS (2010).
[61] Id. at 173-91.
[62] *See* Jana Winter & Sharon Weinberger, *The FBI's New U.S. Terrorist Threat: 'Black Identity Extremists,'* FOREIGN POLICY, Oct. 6, 2017.
[63] Sam Levin, *Revealed: FBI Terrorism Taskforce Investigating Standing Rock Activists*, THE GUARDIAN, Feb. 10, 2017.
[64] Nicholas Kusnetz, *Harsh New Anti-Protest Laws Restrict Freedom of Speech, Advocates Say*, WASH. POST, Aug. 22, 2018; Letter from Rep. Ken Buck, et al, to Attorney Gen. Jeff Sessions, Oct. 23, 2017, at https://buck.house.gov/sites/buck.house.gov/files/wysiwyg_uploaded/Protecting%20Energy%20Infrastructure.pdf. At least two signatories of the congressional letter on pipeline disruption, Rep. Randy Weber and Sen. Martha McSally, have introduced or circulated bills to create new domestic terrorism crimes or penalties. *See* Domestic Terrorism Penalties Act of 2019, 116 H.R. 4187 (introduced in House by Rep. Weber on Aug. 13, 2019, proposing to amend criminal code to add specific penalties for domestic terrorism-related offenses); Bill to Penalize Acts of Domestic Terrorism (circulated but not yet introduced by Sen. McSally, and proposing to create new federal domestic terrorism crime), https://assets.documentcloud.org/documents/6270558/OLL19714-1.pdf.

**Post-Hearing Questions for the Record**
**Submitted to William Braniff**
**From Senator Kyrsten Sinema**

**"Countering Domestic Terrorism: Examining the Evolving Threat"**
**September 25, 2019**

1) *The hearing and your testimony helped establish the need to improve information sharing between federal, state and local law enforcement entities, but also with non-governmental organizations.*
   a. *Where do Department of Homeland Security Fusion Centers fit in regarding how best to meet information sharing challenges among those entities?*
   b. *How can we enhance the role of Department of Homeland Security Fusion Centers in information sharing?*

Answers: [The author requested and received input from the National Fusion Center Association to prepare answers to questions 1a and 1b.]

a. Fusion centers have become central to information sharing among local, state and federal law enforcement agencies as well as NGOs. Today, there are 80 designated fusion centers in operation across the United States sharing information daily on all threats including domestic terrorism. The 80 centers make up what is referred to as the National Network of Fusion Centers. However, it is important to understand that these are not "Department of Homeland Security Fusion Centers." They are neither owned nor operated by DHS. State and local governments created fusion centers in the years following 9/11 to improve information sharing, and they continue to operate them today. State and local governments provide roughly two-thirds of all resources that support fusion centers. For example, the Arizona Fusion Center is operated by the Arizona Department of Public Safety. DHS has historically provided support to fusion centers through grant awards, policy and procedural guidance, national security clearances for fusion center personnel, and embedded DHS Intelligence Officers and Reports Officers. The FBI is also involved with fusion centers across the nation and frequently embeds personnel in them as well.

   The unique nature of fusion centers enables them to address the needs of their respective areas of responsibility (states and regions), meet the needs of their parent organizations, and support information requests that come from around the nation - including federal partners. They have the ability to rapidly share information and intelligence among the entire National Network and with the FBI, DHS, and other partners. Each fusion center has methods of distribution across local, regional, and statewide technical and personal networks that Federal investigative and intelligence agencies could not build or maintain with their own resources.

The information sharing process among fusion centers and their stakeholders has steadily improved. Through secure platforms such as the Homeland Security Information Network (HSIN) as well as classified systems of the FBI and DHS, mechanisms are in place to ensure information is shared among fusion centers, state and local governments, and the federal government on all threats including domestic terrorism.

Importantly, Fusion Centers can play a pivotal role in terrorism prevention by bridging criminal justice and non-criminal justice capabilities. For example, the Colorado Information Analysis Center (CIAC), Colorado's State fusion center, currently leads the collaborative Preventing Targeted Violence (PTV) program for the State. One of the CIAC programs is the Threat Liaison Officer (TLO) program. A TLO is a vetted individual from a local, state, federal or private sector entity who acts as a point of contact between their agency and the CIAC for information, and when appropriate, intelligence sharing. The PTV program leverages the extant TLO network to raise awareness of the terrorism threat and to highlight each entity's respective role in terrorism prevention, empowering individuals and organizations beyond the law enforcement community to recognize concerning behavior regarding violent extremism, take it seriously, and do something about it.

The PTV program also leverages the Safe2Tell program, which includes an anonymous reporting system and associated training program for youth and adults in communities and schools to report concerning behaviors. The CIAC Preventing Targeted Violence program is responsible for the intake, processing and distribution of these reports, and is able to refer criminal and imminent public safety concerns to law enforcement. Just as importantly, the PTV program is able to direct reports that do not warrant a criminal justice intervention to a non-criminal justice network of service providers, including school safety teams, social workers and mental health providers, and other civil society actors who can mitigate the future risk of violence and criminality.

This network has been built and trained to do violence prevention work through the efforts of a CIAC threat prevention program liaison, a representative of the DHS Office of Targeted Violence and Terrorism Prevention who works in Colorado and surrounding states, and a local university research center with expertise in culturally competent and trauma-informed violence prevention. As an anonymous hotline, and one that can lead to the provision of positive services to help individuals at-risk, Safe2Tell is designed to increase reporting and facilitate interventions. To date, suicidal ideation is the most commonly reported concern through Safe2Tell, but there have also been at least 40 non-criminal justice interventions involving individuals engaging with a wide spectrum of violent extremist networks or content.

b. As noted above, the 80 fusion centers are not owned or operated by DHS. However, many of them are sustained and enhanced through FEMA preparedness grant funds including the State Homeland Security Grant Program (SHSGP) and the Urban Area Security Initiative (UASI) Grant Program. DHS Intelligence & Analysis provides critical support for the National Network and plays a key role in coordinating federal interactions with the National Network. Some fusion centers are co-located with federal agencies which offsets certain expenses. Enhancement of the National Network of Fusion Centers can be accomplished through sustained grant funding, and even dedicated funding streams that could directly support fusion center staffing, operations and programs. In particular, DHS can help enhance fusion center capabilities by ensuring:

   1) Strong federal support for fusion centers through SHSGP and UASI grant funding, and accountability behind the Law Enforcement Terrorism Prevention (LETP) requirement in current law.

   2) Strong engagement by DHS, FBI, and other federal partners directly with fusion centers including the forward deployment of DHS Office of Terrorism Prevention and Targeted Violence representatives, and Intelligence Officers and analysts at fusion centers.

   3) Strong training and network development between fusion centers, police chiefs, sheriffs, fire chiefs, rank and file, emergency management and other public safety partners at all levels of government and across all geographies to ensure tips, leads, suspicious activity, and criminal intelligence data are flowing efficiently for analysis and sharing. The High Threat Liaison Program funded by a FEMA UASI grant in the National Capital Region is one example that can be scaled over time.

   4) The National Threat Evaluation and Reporting (NTER) program at DHS should receive increased resources. This program is the successor to the Nationwide Suspicious Activity Reporting Initiative (NSI). It provides training and technical assistance resources, facilitates outreach efforts, and provides guidance to partners – including fusion centers – that are building or improving their tips/leads and suspicious activity reporting and analysis capabilities for all threats including domestic terrorism.

2) *One of the critical things my office heard from the Tucson and Phoenix police departments on this topic is the sometimes upside-down nature of how federal task forces work in the general area of domestic terrorism. Often law enforcement task forces flow up with local crimes being prosecuted at the federal level. However, with domestic terrorism related issues, it can be the reverse, with federal partners identifying a threat but local law enforcement prosecuting the charges. My police departments say this flexibility, where information and responsibility flows in both directions, is critical. During any discussion about how to improve definitions of domestic terrorism and*

*develop more specificity regarding domestic terrorism, what steps does Congress and the Administration need to take to protect this type of needed flexibility for law enforcement?*

Answer: If one is trying to protect the flexibility currently inherent in our collective approach to domestic terrorism, it would be important to prevent any new federal legislation or policy from making it impossible (either legally or politically) to prosecute a given perpetrator under state laws, including in those states that have domestic terrorism laws. Similarly, the U.S. Attorneys' Offices around the country can and do engage their state-level counterparts to think through prosecution strategies, and we would not want to limit their ability to communicate about domestic terrorism cases inadvertently. Further, the Joint Terrorism Task Forces around the country currently conduct investigations into both international and domestic terrorism, and because they include federal, state, local and tribal law enforcement participants, they allow for this kind of information sharing and multi-level approaches to a given investigation. We should be sure to preserve the JTTF construct as such. Finally, the Counterterrorism Section of the Department of Justice's National Security Division currently help adjudicate what classified intelligence collected by the intelligence community can be declassified or otherwise used in federal international terrorism prosecutions. If the intelligence community becomes more active regarding domestic terrorism, given the increasingly transnational nature of what the government refers to as "domestic terrorism," the Counterterrorism Section at DoJ would need to provide the same service to allow intelligence to be used as evidence in state-level domestic terrorism prosecutions, as necessary.

3) *One of the great challenges we have in any discussion regarding domestic violence, its causes and how to stem it is confusion. I ask the following questions rhetorically and I don't expect an answer to them. How can we, as a society, tell when free speech veers into incitement to violence? What constitutes a domestic terrorism crime and how does creating a federal criminal definition lead to increased deterrence, prevention, and prosecution? How do we positively impact individuals and groups susceptible to hate with traditional law enforcement tools and personnel? The answers to any of those questions are going to be filled with confusion.*

*The questions I would like you to answer are these.*

   a. *What steps can Congress and the Administration take to reduce the inherent confusion and complexity on this topic?*
   b. *What role can academic experts and non-governmental organizations play in reducing confusion on this topic?*
   c. *How can Congress and the Administration enhance the ability of academic experts and non-governmental organizations to reduce confusion?*

Answers: While your questions focus on "confusion and complexity," the confusing and complex nature of this topic (which I will address below) is exacerbated greatly by the political nature of terrorism and our current political climate. The most important thing that we can do collectively is minimize political, racial and religious polarization. Instead, if we can foster civic discussion and debate, when a lightning-rod issue like terrorism does emerge, we can discuss it professionally without assuming that every mention of far right terrorism, far left terrorism, Muslim extremism or white supremacy is intended to score political points against "the other."

To foster more civic dialogue, when terrorist individuals, groups or movements self-identify as part of a larger political, religious, or racial group, discussants can use a qualifier like "self-identified" to communicate that the description is not intended to insinuate anything derogatory about that broader social group in question. For example, given the names chosen by the extremist community who comprised the "Unite the Right" Rally, and the "Alt-Right" movement, a discussant can refer to them as the "self-identified right wing extremists." This is similar to how many observers refer to the "so-called Islamic State" to be both specific (Islamic State is the self-given name of the terrorist organization) and to avoid communicating inadvertently that the observer feels that the terrorist organization is representative of Islam or Muslims.

Regarding the confusing and complex nature of the topic:

a. The federal government could dispatch with the rhetorical distinction between international terrorism and domestic terrorism, and simply use the label, "terrorism" when an actual or threatened use of violence meets the legal definition of international or domestic terrorism. As I stated in my written testimony:

   "Intellectually, the lines between domestic and international terrorism are blurry, bordering on arbitrary. Many domestic terrorist movements are inspired by organizations or movements that originated oversees (e.g., Neo-Nazis and the Nazi Party, the Animal Rights Liberation Front), and/or are participants of ongoing international movements."

   Similarly, the federal government could use the phrase "terrorism and hate crime" when describing either terrorism or a hate crime to communicate a moral equivalency regarding the two forms of ideologically motivated violence. If the two crimes are grouped together consistently, it may undermine the notion that terrorism is somehow more reprehensible than hate crime, and thereby minimize the political fallout that occurs when a domestic terrorist is ("only") charged with a hate crime and not a terrorism charge.

b. Academics and NGOs should use traditional best-practice when writing or discussing these issues, and specifically, should define their terms clearly, make the data and/or

evidence upon which they draw conclusions publicly available, and be transparent about their sources of funding.

c. As I testified, it is critical that the federal government support non-partisan, transparent and rigorous data collection and analysis on these topics at Universities, where laws, policies and norms are established to guard both civil rights and civil liberties, as well as objectivity and transparency. START has regularly been called on by both sides of the aisle, by all three branches of government in the U.S., by governments around the world, and by civil society groups domestically and internationally because we are trusted to deliver rigorous, non-partisan, transparent data and findings as a public good. Through the dissemination of data, we can help governments and civil society groups establish a common operating picture of the current threat landscape across ideologies, geographies and time. We cannot do this without resources, however, and given the clear national security implications, private sector funders do not see this work as their responsibility to fund.

4) *During your testimony, you mentioned that there are groups and tools that can assist with online assessment of threats that can help local law enforcement deal with identify and interdict domestic terror related crimes and issues. What steps do you recommend that federal agencies, such as FBI, take to get such online resources and assistance to local law enforcement?*

Answer: In my testimony I encouraged Congress, and I have been encouraging executive agencies and departments, to support the Domestic Terrorism Data Act or similar legislation that will allow organizations like START, or Moonshot CVE, to provide useful data to local law enforcement while also protecting the civil rights and civil liberties of U.S. citizens. Better data allows for better risk, threat and vulnerability assessments that will allow local law enforcement, and other actors, make better resource allocation decisions to reduce risk more effectively.

In addition, I stressed that the law enforcement community is often not the best placed, nor legally authorized, to identify a U.S. citizen who is flirting with a violent ideology online or offline but has not yet broken any laws. It is essential that the U.S. Government invest resources in civil society-led violence prevention programs, and enlist the support of teachers, social workers, families, peers, counselors and health care providers to engage in violence prevention. I recommended a complementary program to the State Homeland Security Grant Program (SHSGP) and the Urban Area Security Initiative (UASI) Grant Program to be run out of the Department of Health and Human Services to create a non-securitized, public health infrastructure to foster violence prevention. Several of the Senators present at the hearing balked at "throwing more money at the problem," but given that Constitutional protections create a systemic challenge to

criminal justice disruptions for domestic terrorism and hate crimes, these acts of violence often succeed in killing and injuring people. Civil-society led violence prevention programs are therefore logical, and much cheaper than responding to violent incidents after the fact, not to mention the lives that can be saved.

5) *In Arizona, the FBI leads Task Forces related to Domestic Terrorism. The Tucson and Phoenix police departments report these task forces are a great tool. But both those departments are large enough that they can assign officers full-time to the Task Force. That is not the case for smaller departments. What changes to the existing FBI Task Force effort on domestic terrorism need to be made so that smaller local law enforcement departments can access needed information and share what they are seeing on the ground with the appropriate federal authorities?*

   Answer: We should make better use of the National Threat Evaluation and Reporting (NTER) program (formerly NSI), which allows local law enforcement to report suspicious activity into a national, federated database. This provides DHS and the FBI visibility into what local law enforcement communities are seeing, and allows them to follow up on leads quickly when appropriate, while preserving local law enforcement community ownership of their individual reports and greater visibility of the national threat picture. It is likely that we can encourage greater NTER reporting if we invest resources in mining NTER for valuable insights that can be shared with state and local law enforcement. If we can create a culture around NTER that is more than just "a report," but an opportunity for much greater situational awareness and proactive risk mitigation, we can better empower local law enforcement and avail them of federal resources when necessary.

6) *One of the great challenges that always comes up with federal programs is Information Technology. It is important to form Task Forces and other groups, but it may be just as important to ensure that local departments can interface with key federal databases.*

   a. *In your research on this topic, have you come across IT challenges that hamper information sharing? For example, one of Arizona's police department reports it is difficult to access certain threat profile software programs, partly because licenses to use the program are cost prohibitive and there are no funds to provide additional access.*
   b. *What steps would you recommend the federal government take to overcome IT challenges in the general domestic terrorism space?*

   Answer:

a. I do not have unique insight into this challenging problem. Clearly, as software and hardware evolves more and more quickly, interoperability is often a problem and especially for government entities that may not have the budget to refresh their IT footprint frequently. In addition, the private sector often has better data on U.S. persons, and better data science tools at their disposal, which means that government entities are often beholden to the private sector to do their jobs, either by requesting access to data or purchasing software capabilities on the market.
b. Organizations like the Department of Homeland Security could negotiate a license agreement with software and data providers to make those products available across state, local and tribal law enforcement entities to streamline dissemination and reduce overall costs. Again, we recommend that the federal government make relevant data itself available (either by funding data collection, purchasing licenses for broad dissemination, or through their own data collection efforts) for use in whatever analytical platform a given end-user is using, or empower organizations like START to make unclassified data publicly available through data visualization platforms that protect civil rights and civil liberties while still informing local counterterrorism practice.

**Post-Hearing Questions for the Record**
**Submitted to Clinton Watts**
**From Senator Maggie Hassan**

**"Countering Domestic Terrorism: Examining the Evolving Threat"**

**September 25, 2019**

Responses from witness, Clinton Watts, Distinguished Research Fellow at the Foreign Policy Research Institute.

1. How can the federal government improve its counterterrorism architecture to increase information sharing and ensure that we are providing law enforcement partners at the federal, state, and local level with the information they need to address Domestic Terrorist threats?

   I believe the federal government has done a good job since the terrorist attacks of September 11, 2001 shaping a counterterrorism system that is well equipped for detecting and countering international terrorism. This system, in organization and function, is not employed in the same way for detecting and disrupting domestic terrorism.

   The federal government, its current Joint Terrorism Task Forces and associated intelligence fusion centers, could use the same structure and methods for international terrorism to incorporate domestic terrorism threats. Doing this would require:
   - Improved terrorist designation processes which would standardize who and what organizations can be investigated and which groups and individuals necessitate intelligence collection that can be passed in a coordinated and controlled way down to the state and local level.
   - Training on domestic terrorist threats consistent with the level of training offered to law enforcement regarding international terrorism.
   - Additional intelligence products discussing and examining the threat of domestic terrorism in local jurisdictions. These would include indicators and warnings to look for with respect to each ideologically inspired extremist group.

**Post-Hearing Questions for the Record**
**Submitted to Clinton Watts**
**From Senator Kyrsten Sinema**

**"Countering Domestic Terrorism: Examining the Evolving Threat"**
**September 25, 2019**

Responses from witness, Clinton Watts, Distinguished Research Fellow at the Foreign Policy Research Institute.

1) The hearing and your testimony helped establish the need to improve information sharing between federal, state and local law enforcement entities, but also with non-governmental organizations.
    a. Where do Department of Homeland Security Fusion Centers fit in regarding how best to meet information sharing challenges among those entities?

    DHS Fusion Centers have progressively moved to an "All Threats, All Hazards" approach as the time since the September 11, 2001 terrorist attacks has grown. This was a smart application of federal resources to increase the efficacy of expenditure and address threats to public safety. Until recently though, these fusion centers played a small or no role in domestic terrorism. In the future, the fusion centers should expand their counterterrorism focus to account for and evaluate *all* terrorism threats using the same methods they constructed for the international terrorism threat over the past two decades. Including all ideologically inspired terrorist threats in a single portfolio, regardless of whether it occurs inside or outside U.S. borders, would assist state and local law enforcement and homeland security facing violence in local communities to understand what offenses rise to the threshold of terrorism.

    b. How can we enhance the role of Department of Homeland Security Fusion Centers in information sharing?

    I believe the federal government has done a good job since the terrorist attacks of September 11, 2001 shaping a counterterrorism system that is well equipped for detecting and countering international terrorism. This system, in organization and function, is not employed in the same way for detecting and disrupting domestic terrorism.

    The federal government, its current Joint Terrorism Task Forces and associated intelligence fusion centers, could use the same structure and methods for international terrorism to incorporate domestic terrorism threats. Doing this would require:

    - Improved terrorist designation processes which would standardize who and what organizations can be investigated and which groups and individuals necessitate intelligence collection that can be passed in a coordinated and controlled way down to the state and local level.

- Training on domestic terrorist threats consistent with the level of training offered to law enforcement regarding international terrorism.
- Additional intelligence products discussing and examining the threat of domestic terrorism in local jurisdictions. These would include indicators and warnings to look for with respect to each ideologically inspired extremist group.

2) One of the critical things my office heard from the Tucson and Phoenix police departments on this topic is the sometimes upside-down nature of how federal task forces work in the general area of domestic terrorism. Often law enforcement task forces flow up with local crimes being prosecuted at the federal level. However, with domestic terrorism related issues, it can be the reverse, with federal partners identifying a threat but local law enforcement prosecuting the charges. My police departments say this flexibility, where information and responsibility flows in both directions, is critical. During any discussion about how to improve definitions of domestic terrorism and develop more specificity regarding domestic terrorism, what steps does Congress and the Administration need to take to protect this type of needed flexibility for law enforcement?

   I believe the inclusion of state and local prosecutors with federal level U.S. Attorneys is a necessity. Only if prosecutors at all levels understand the mix of prosecutorial options at each level can they make efficient and effective charging decisions based on the locale where domestic terrorism suspects and perpetrators reside and attack. One note of caution, however, the push down of charges to the state and local level for domestic terrorism cases, while sustaining federal level charges for international terrorism, may quickly create an imbalance and an uneven application of the law for offenses. For example, a U.S. citizen or U.S. person charged at the federal level for material support to a terrorist group, may not be charged at all or given a lighter charge for the same offense if pursued as a domestic terrorism investigation at the state and local level. Charges, convictions and then sentencing for these offenses related to domestic terrorism often carry lesser penalties than the same offense in the context of international terrorism. This occurs because there is no domestic terrorism crime or designation process similar to what has been used for international terrorism (i.e. al Qaeda and Islamic State designated cases.)

3) One of the great challenges we have in any discussion regarding domestic violence, its causes and how to stem it is confusion. I ask the following questions rhetorically and I don't expect an answer to them. How can we, as a society, tell when free speech veers into incitement to violence? What constitutes a domestic terrorism crime and how does creating a federal criminal definition lead to increased deterrence, prevention, and prosecution? How do we positively impact individuals and groups susceptible to hate

with traditional law enforcement tools and personnel? The answers to any of those questions are going to be filled with confusion.

The questions I would like you to answer are these.

a. What steps can Congress and the Administration take to reduce the inherent confusion and complexity on this topic?

One solution may be to standardize terrorism across the government by removing the distinction of domestic or international. This would mean establishing a firm definition of terrorism and then designating international and domestic terror groups and terrorists through the same process.

To this day, 18 years after September 11, we do not have consistency in terrorism law and terminology across the federal government. Standardization would help ease much of this confusion.

Second, the so-called domestic terrorist threats we've discussed in recent routinely have international connection online. There is not now, nor will there be in the age of a global internet and social media, a clear distinction between domestic and international.

Third, the federal government, once its standardized its terms, must create consistent measures of terrorist activity. As of now, the counting of international terrorism incidents and domestic terrorists incidents are not the same. Hate crimes also come into play domestically and must be integrated or accounted for to understand the threat of domestic extremism.

b. What role can academic experts and non-governmental organizations play in reducing confusion on this topic?

Academic institutions can assist in measurement and research on the efficacy of counterterrorism. For example, the UMD START program should be resourced to measure and account for domestic terrorism in the way they provide an essential service to the country in the international terrorism space. Groups like START can assist with research understanding where the line between protected free speech and mobilization to terrorist violence occurs. (See START here: https://www.start.umd.edu/)

NGO's can play an essential role in countering violent extremism before it occurs. Law enforcement has too many threat to assess and counter. NGO's can provide valuable assistance with actionable information and in-person interventions to preempt violence.

c. How can Congress and the Administration enhance the ability of academic experts and non-governmental organizations to reduce confusion?

During the fight against al Qaeda and later the Islamic State, enormous amounts of federal resources were given to researchers to understand the ideological motivations and operational elements employed by terrorists. Today, there is a paucity of resources in the domestic terrorism space. My own research teams would like to create the parallel of the *Militant Ideology Atlas* project for understanding motivations and overlap of domestic terrorist threats. Last decade, the *Militant Ideology Atlas* was an essential tool for government practitioners and researchers to establish definitions, understand ideological tenets and reduce confusion.

(See the *Militant Ideology Atlas* here: https://ctc.usma.edu/app/uploads/2012/04/Atlas-ResearchCompendium1.pdf)

Creating a domestic extremist version of this project is both doable and easier than the original project from a research standpoint as there is a plethora of data. But researchers need access to that data from social media companies and resources to conduct the analysis. To date, both of these are lacking. Congress and Silicon Valley could assist with both of these deficiencies.

4) During your testimony, you mentioned that there are groups and tools that can assist with online assessment of threats that can help local law enforcement deal with identify and interdict domestic terror related crimes and issues. What steps do you recommend that federal agencies, such as FBI, take to get such online resources and assistance to local law enforcement?

For online assessments and working to conduct interventions before the outbreak of violence, I recommend the work of Moonshot CVE. Moonshot CVE has done this work in both the international and domestic extremist context and they offer a range of resources. Here is a link to their materials: http://moonshotcve.com/

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November 15, 2019

**Responses to Post-Hearing Questions for the Record**
**Submitted by Robert Chesney**
**To Senator Kyrsten Sinema**

**"Countering Domestic Terrorism: Examining the Evolving Threat"**
**September 25, 2019**

Dear Senator,

Thank you again for the opportunity to speak with you and your colleagues during this important hearing. Below, please find my responses to the post-hearing QFRs you submitted to me. I am standing by to answer other questions as needed.

1) **The hearing and your testimony helped establish the need to improve information sharing between federal, state and local law enforcement entities, but also with non-governmental organizations.**

   a. **Where do Department of Homeland Security Fusion Centers fit in regarding how best to meet information sharing challenges among those entities?**

   DHS Fusion Centers are a natural fit for this important task insofar as the flow of information amongst government entities is concerned. Unfortunately, my impression is that many state and local officials have a jaded view of this mechanism, based on a belief that information might flow up from the S/L/T level to the federal level readily enough, but not vice-versa. I am sure this is not always the case, but of course it would be worthwhile to conduct a serious study to determine the truth of the matter, to understand what lingering obstacles continue to disincentivize information sharing, and to judge whether those obstacles should (and can) be removed.

   Improving the flow of information to the standard participants in Fusion Centers might not be enough, however, if the most-relevant institutions—that is, the ones in closest contact with potentially-dangerous persons—are not in that circle. To what extent do school districts, mental-care facilities, and other such institutions receive reliable information, and provide it? All this likely varies sharply from place to place, and bears further inquiry.

**b. How can we enhance the role of Department of Homeland Security Fusion Centers in information sharing?**

Following from my comments above, the first and pressing next step would be to commission a serious and sophisticated study of the scope of participation in the flow of information through such centers, barriers to the flow, etc. This could be a staff effort if sufficiently well-resourced, or an effort undertaken by researchers at a think-tank or academic institution. The results of such a study would make a fine foundation for a subsequent hearing by this committee, of course.

2) **One of the critical things my office heard from the Tucson and Phoenix police departments on this topic is the sometimes upside-down nature of how federal task forces work in the general area of domestic terrorism. Often law enforcement task forces flow up with local crimes being prosecuted at the federal level. However, with domestic terrorism related issues, it can be the reverse, with federal partners identifying a threat but local law enforcement prosecuting the charges. My police departments say this flexibility, where information and responsibility flows in both directions, is critical. During any discussion about how to improve definitions of domestic terrorism and develop more specificity regarding domestic terrorism, what steps does Congress and the Administration need to take to protect this type of needed flexibility for law enforcement?**

One way to think about this important challenge is to ask: What developments might cause disruption to that flexibility? That is, what threat to it do we anticipate? It seems to me the most plausible argument is that passage of a federal domestic terrorism offense might lead to state and local authorities losing priority in and control over these sorts of investigations and prosecutions. I do not think this would have to be a necessary consequence of passage of such legislation, however, and Congress in any event might guard against it by separately clarifying and emphasizing the importance of state and local cooperation through DHS Fusion Centers and perhaps other mechanisms as well.

3) **One of the great challenges we have in any discussion regarding domestic violence, its causes and how to stem it is confusion. I ask the following questions rhetorically and I don't expect an answer to them. How can we, as a society, tell when free speech veers into incitement to violence? What constitutes a domestic terrorism crime and how does creating a federal criminal definition lead to increased deterrence, prevention, and prosecution? How do we positively impact individuals and groups susceptible to hate with traditional law enforcement tools**

**and personnel? The answers to any of those questions are going to be filled with confusion.**

**The questions I would like you to answer are these.**

a. **What steps can Congress and the Administration take to reduce the inherent confusion and complexity on this topic?**

I believe that the rhetoric of leading public officials matters, and that consistency and clarity in the wording and framing used by national leaders (from Senators and presidents to prosecutors and investigators) are critical. I applaud what appears to be a recent trend amongst federal prosecutors of using the language of domestic terrorism when dealing with racist violence like the El Paso attack.

Separately, the point you are making is a good argument for why it might be worthwhile to move federal criminal law from simply defining domestic terrorism (while failing to directly criminalize it as such) to actually making that definition (or something like it) a stand-alone offense. Because there is no current federal offense named as such, journalists and members of the public routinely express confusion about why there seem not to be terrorism charges in domestic terrorism cases. They are mistaken to think that there are no relevant terrorism charges in such cases, to be sure, but the mistake is quite understandable. Unfortunately, the mistake also commonly leads people to wonder if somehow the government just doesn't care enough about this category of crime.

b. **What role can academic experts and non-governmental organizations play in reducing confusion on this topic?**

Non-government commentators can help in their public-facing writing and statements by doing what they can to educate the public on these matters. Journalists probably are the key actors here, given the reach of their work.

c. **How can Congress and the Administration enhance the ability of academic experts and non-governmental organizations to reduce confusion?**

One helpful step is to convene hearings such as this one, inviting experts from NGOs and academia to set forth their views clearly and dispassionately. Sadly, we probably will need more such hearings in the future.

4) **During your testimony, you mentioned that there are groups and tools that can assist with online assessment of threats that can help local law enforcement deal with identify and interdict domestic terror related crimes and issues. What steps do you recommend that federal agencies, such as FBI, take to get such online resources and assistance to local law enforcement?**

On this important question, I probably should defer to the views of my colleagues who testified on this panel, as they are more expert than I am on this particular issue.

5) **In Arizona, the FBI leads Task Forces related to Domestic Terrorism. The Tucson and Phoenix police departments report these task forces are a great tool. But both those departments are large enough that they can assign officers full-time to the Task Force. That is not the case for smaller departments. What changes to the existing FBI Task Force effort on domestic terrorism need to be made so that smaller local law enforcement departments can access needed information and share what they are seeing on the ground with the appropriate federal authorities?**

This question highlights a serious challenge. Smaller entities simply do not have the resources to dedicate personnel for full-time or even half-time involvement in such entities, and that it unlikely to change. It follows that state-level entities might play a key role on their behalf, filtering information and passing it through on a selective basis. Separately, it also follows that automated forms of information sharing are critical, but here too there is a danger: it will always be tempting for the central entity to err on the side of passing things through, yet this will overwhelm the ability of the receiving entity to process and decide whether to act further upon the information. One possible mitigation in response to all this would be for Congress to subsidize states in dedicating centralized resources to this screening-and-sharing function.

6) **One of the great challenges that always comes up with federal programs is Information Technology. It is important to form Task Forces and other groups, but it may be just as important to ensure that local departments can interface with key federal databases.**

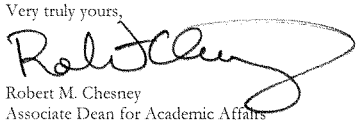
   a. **In your research on this topic, have you come across IT challenges that hamper information sharing? For example, one of Arizona's police department reports it is difficult to access certain threat profile software programs, partly because licenses to use the program are cost prohibitive and there are no funds to provide additional access.**

I am quite confident such issues exist, but am not an expert in what they might be alas.

**b. What steps would you recommend the federal government take to overcome IT challenges in the general domestic terrorism space?**

If Congress undertakes to address these sort of problems, it invariably will lead to recommendations for Congress to provide further funding. And that may well be exactly what is needed. That said, it is important to beware the risk of pouring money inefficiently into one particular part of the problem when there *might* be better results overall if the same funding is directed towards other aspects. For example, is it possible that the funding needed to solve a particular IT problem might yield more benefit in the end if directed instead towards subsidizing a mental-health program in the same state? It might not be possible to know for sure, but it is important to pause to consciously consider these kinds of trade-offs once money is on the table, especially in circumstances where the potential beneficiaries are not equally positioned to advocate directly for their interests.

Very truly yours,



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**Post-Hearing Questions for the Record**
**Submitted to George Selim**
**From Senator Kyrsten Sinema**

**"Countering Domestic Terrorism: Examining the Evolving Threat"**
**September 25, 2019**

1) *The hearing and your testimony helped establish the need to improve information sharing between federal, state and local law enforcement entities, but also with non-governmental organizations.*
   a. Where do Department of Homeland Security Fusion Centers fit in regarding how best to meet information sharing challenges among those entities?
   b. How can we enhance the role of Department of Homeland Security Fusion Centers in information sharing?

   a) Fusion centers are a mechanism for information sharing across different law enforcement agencies, but it is my understanding that there is no standard fusion center model and there is considerable variance in how they function nation-wide. As such, all I can say at this time is that fusion centers should represent the same strategic interests as the agencies that are part of them; that is, all agencies should carefully ascribe to the constraints and civil liberties protections of their respective agency and authorities, but also should prioritize domestic terrorism and lawful information sharing that helps pursue domestic terrorists and other public safety threats
   b) Fusion center support should mirror support to law enforcement, which should include a higher prioritization of domestic terrorism and hate crimes investigations. Further, agencies – and centers themselves, as appropriate – should be transparent with how they see the domestic terrorism threat and how they are addressing it, and the resources they use to counter threats should be proportionate to the (transparently described) threat.

2) *One of the critical things my office heard from the Tucson and Phoenix police departments on this topic is the sometimes upside-down nature of how federal task forces work in the general area of domestic terrorism. Often law enforcement task forces flow up with local crimes being prosecuted at the federal level. However, with domestic terrorism related issues, it can be the reverse, with federal partners identifying a threat but local law enforcement prosecuting the charges. My police departments say this flexibility, where information and responsibility flows in both directions, is critical. During any discussion about how to improve definitions of domestic terrorism and develop more specificity regarding domestic terrorism, what steps does Congress and the Administration need to take to protect this type of needed flexibility for law enforcement?*

Congress should carefully consider the relationship between federal and non-federal criminal statutes and the implications of modifying them. As you know, the federal interest in domestic terrorism leads to investigations that are prosecuted as other charges because there is no "domestic terrorism" charge. As long as the legal framework looks as it does, law enforcement should be fully empowered to prosecute related crimes such as hate crimes and gun offences, including state and local cooperation to further such prosecutions.

A criminal domestic terrorism statute would allow federal authorities to charge domestic terrorism suspects as a terrorist and disrupt or interdict those attempting or conspiring to carry out similar attacks. However, while there is utility to naming the threat and ensuring that federal authorities take the threat of domestic terrorism as seriously as they do other forms of terrorism, there is a reason that such a statute has not been created to date. Although the U.S. can designate foreign terrorist organizations to enable a broad range of prosecutable offenses, First Amendment-protected speech and association rights (which do not apply to terrorists operating abroad) rightly preclude designating domestic groups. Moreover, the federal government has a disturbing history of targeting minorities and political activists or political opponents in the name of national security. As such, Congress should consider options for reform with great care.

3) *One of the great challenges we have in any discussion regarding domestic violence, its causes and how to stem it is confusion. I ask the following questions rhetorically and I don't expect an answer to them. How can we, as a society, tell when free speech veers into incitement to violence? What constitutes a domestic terrorism crime and how does creating a federal criminal definition lead to increased deterrence, prevention, and prosecution? How do we positively impact individuals and groups susceptible to hate with traditional law enforcement tools and personnel? The answers to any of those questions are going to be filled with confusion.*

*The questions I would like you to answer are these.*

a. *What steps can Congress and the Administration take to reduce the inherent confusion and complexity on this topic?*
b. *What role can academic experts and non-governmental organizations play in reducing confusion on this topic?*
c. *How can Congress and the Administration enhance the ability of academic experts and non-governmental organizations to reduce confusion?*

a) Congress and the Administration should look carefully to civil society groups that engage with communities impacted by hate and violence, as well as by law enforcement overreach, to help understand the impact of inaction or overreaction.

Further, provisions such as one in the original version of the Domestic Terrorism DATA Act (H.R.3106) that would fund research into domestic terrorism – and perhaps even create a Center of Excellence for ongoing examination of it – could help clarify federal understanding of some of these nuanced concepts.

b) Academia and civil society are critical, as representatives of communities that study both the threat of terrorism and how it is successfully countered, as well as those that represented the communities impacted. Groups like ADL, other non-profits such as Life After Hate, which works with former white supremacists are critical to countering extremism. Our Center on Extremism and academics from universities and related entities have long studied the threat of domestic terrorism and can provide key insights based on a specialization in understanding white supremacy that the government simply has not granted itself. As such, partnering with and empowering academics and civil society actors is critical if the government is to improve how it addresses the challenge.
c) Listening to academics is critical, which includes staff briefings, ongoing discussions, and inviting experts to testify. Further, legislative provisions to fund related research can enhance the academic market for research into related topics, ranging from terrorism to countering extremism to hate crimes research. The Domestic Terrorism DATA Act originally included funding for academic research into domestic terrorism, and restoring such a provision could go a long way toward empowering the research community.

4) *During your testimony, you mentioned that there are groups and tools that can assist with online assessment of threats that can help local law enforcement deal with identify and interdict domestic terror related crimes and issues. What steps do you recommend that federal agencies, such as FBI, take to get such online resources and assistance to local law enforcement?*

Law enforcement should explore terrorism as it emerges online only through the lens of what they are authorized to do through existing authorities and should seek to preserve free speech. ADL offers a Hate, Extremism, Anti-Semitism, and Terrorism Map (HEAT Map) to help proliferate data on hate and extremism in the United States.

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