

THE RISE OF DOMESTIC TERRORISM IN AMERICA

HEARING

BEFORE THE
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
OF THE
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
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THE RISE OF DOMESTIC TERRORISM IN AMERICA

Wednesday, February 24, 2021

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to call, at 2:23 p.m., in Room 2141, Rayburn House Office Building, Hon. Sheila Jackson Lee [Chair of the Subcommittee] presiding.

Members present: Representatives Jackson Lee, Nadler, Bass, Demings, McBath, Dean, Scanlon, Bush, Cicilline, Lieu, Correa, Escobar, Cohen, Biggs, Jordan, Chabot, Gohmert, Steube, Tiffany, Spartz, Fitzgerald, and Owens.

Staff present: David Greengrass, Senior Counsel; Madeline Strasser, Chief Clerk; Moh Sharma, Member Services and Outreach Advisor; John Williams, Parliamentarian; Ben Hernandez-Stern, Counsel, Crime; Joe Graupensperger, Chief Counsel, Crime; Veronica Eligan, Professional Staff Member, Crime; Jason Cervenak, Minority Chief Counsel, Crime; Ken David, Minority Counsel; Andrea Woodard, Minority Professional Staff Member; and Kiley Bidelman, Minority Clerk.

Ms. JACKSON LEE. In this opening, as I call this Subcommittee to order, without objection the Chair is authorized to declare recesses of the Subcommittee at any time. Just as an aside: Technology will not defeat our work. So, we are gathered here, and I welcome everyone this afternoon to this afternoon's oversight hearing on "The Rise of Domestic Terrorism in America."

Before we begin, I would like to remind Members that we have established an email address and distribution list to circulate exhibits, motions, or other written materials that Members may want to offer as part of our hearing. If you would like to submit materials, please send them to the email address that has been previously distributed to your offices, and we will circulate the materials to Members and staff as quickly as possible.

I would also ask all Members, both those in person and those attending remotely, to mute your microphones when you are not speaking. This will help prevent feedback and other technical issues. You may unmute yourself any time you seek recognition.

I would also remind all Members that guidance from the Office of Attending Physician calls for all Members to wear masks even when they are speaking.

I will now recognize myself for an opening statement and emphasize the importance of this day.

Over the course of the last four years, every corner of the United States has felt the impact of rise of domestic terrorism. Communities of faith, peaceful protesters, and even the United States Congress itself have been attacked by domestic terrorists. The Executive Branch has an array of statutory authorities to prevent attacks and bring charges against domestic terrorists, including those that are White supremacists.

It is abundantly clear, however, that despite pleas from Congress and the American people, these tools have not been fully utilized nor implemented effectively and with the full force of law and all the available resources. We must focus on our Federal Government on the goal of eradicating those homegrown threats in communities across the country. Domestic terrorists pose a clear and deadly threat to the well-being of all Americans.

During the past two years, this Committee has examined the federal response to domestic terrorists each time a horrific and tragic White supremacist attack has taken place. As just one sober example, in August of 2019, a shooting spree at a Walmart in El Paso, the home of our colleague, the Honorable Veronica Escobar, left 22 people dead and 24 more wounded, marking the third deadliest Act of violence by domestic extremists in more than 50 years.

It is certainly troubling that the core of his hatred was based on language and ethnicity.

It is so troubling that there have been so many shocking tragedies in recent years, from the deadly rampage at Pittsburgh's Tree of Life synagogue, religion, and immigration issues, to the 2012 White supremacist attack on the Sikh temple in Milwaukee. So sad that I have been on this Committee through all these horrific attacks. To the brutal murder of nine worshipers at the Emanuel African Methodist Episcopal Church in Charleston. Even our most hallowed houses of worship have become targets of violent and hateful domestic terrorists. The funeral for these precious souls was a powerful statement that we would not tolerate that violence and was taken to another level when President Barack Obama sang the song "Amazing Grace."

For all of those who want to equivocate about the nature of these threats or make false comparison, take a moment to pause and reflect on that statistic. Over the last ten years, 75 percent of all murders have—resulting from domestic terrorism have been the result of right-wing extremists. Attempts to equate White supremacy to anarchists, activists, and other groups who are opposed to White nationalism and other domestic terrorists, ring as hollow today as they did following the alt-right protests in Charlottesville, Virginia. No, there are not good people on both sides.

On January 6th, former President Trump directed a group of his followers, which included an array of hate-filled extremists, to attack the Capitol and Congress at a time when we were fulfilling our sacred constitutional duty in certifying electors. Our citizens have repeatedly seen and have been horrified by the images from that day, including police officers being beaten and bloodied, beatings which caused a death and serious lasting injuries.

There are no both sides in this debate. We must not be misled by efforts to divert the attention and accountability for these acts of right-wing violence and terror. Any attempt to do so, for instance, says that the real problem is something called antifa, is irresponsible and belittles the seriousness of the threat of extreme right-wing violence and misidentifies who the perpetrators predominantly are in this community.

As the FBI director said unequivocally, White supremacists are the most lethal threat for domestic violence in our country. Among domestic terrorists, White supremacy has no equivalent.

I ask all the Members of the Subcommittee to join me today in denouncing domestic terrorism, including White supremacy, in all forms. I wish we would just take an oath or raise our hands.

With this hearing today this Subcommittee comes together again to seek answers to why our Federal Government has not taken the steps necessary to address the rising specter of right-wing and White nationalist domestic terrorism. At the beginning of the last Congress, the Judiciary Committee held a hearing entitled "Hate Crimes and the Rise of White Nationalism." During that hearing we heard from a diverse panel of witnesses who described both the rise of White nationalism and the shortcomings in the current enforcement regime.

What was clear then and is clear now is that our current approach is not working. Enough is enough. It is time for the action. I look forward to hearing from today's panelists on what federal law enforcement must do to swiftly address the rise of domestic terrorism and how Congress can help.

I believe that there are well-reasoned and measured steps that we can take, such as passing Representative Brad Schneider's Domestic Terrorism Prevention Act that would focus the Federal Government's resources on the continuing threats to terrorize and kill Americans. With domestic terrorism, our country has suffered horrendous and repeated attacks on our people and our democracy, attacks not from beyond our borders, but from within. As well, we saw on January 6th, those attacks have been on those innocent law enforcement officers standing in the gap to protect the citadel of democracy.

The wounds are deep, but our resolve is strong. We must not allow this to continue. As we examine this very important time in our history, we must recognize the importance, the very importance of the work that we have to do. The nature of the domestic terrorist threats against our country must be examined. Let us do so today.

As we proceed today, I would like to offer the words of Abraham Lincoln:

The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced.

In this Committee, I hope that we will finish this noble work, and that we will not succumb to this kind of violence in America ever again.

I yield back at this time.

It is now my pleasure to recognize the Ranking Member of the subcommittee, of the subcommittee, the gentleman from Arizona, Mr. Biggs, for his opening statement.

Mr. BIGGS. Thank you, Madam Chair. It is a pleasure for me to serve on this Subcommittee on Crime, Terrorism, and Homeland Security. As this is the first hearing, my first hearing as Ranking Member of this esteemed subcommittee, I want to start out by saying how much I look forward to working with you to combat violent crime, keep our community safe, and stand by the men and women of law enforcement.

Now, when you and I spoke before, I told you I did not intend to show a video. Something in your comments I think causes me to want to change my mind. I will show you in a second.

Turning our attention to today's hearing on the rise of domestic terrorism in America, we must approach this subject with open minds and open eyes. We must acknowledge that all domestic terrorism is wrong and must not only be acknowledged but condemned. This includes domestic terrorism labeled as right- or left-wing.

I fear that my colleagues on the other side will simply want to focus on right-wing domestic terrorism, and I hope that I am mistaken. However, I suppose that they would first need to admit that left-wing domestic terrorism exists. Just last year, for instance, Chair of the whole Judiciary Committee called antifa imaginary.

I suppose our witness today, Mr. Ngo, was beaten and continually threatened by adherents to an imaginary group.

Antifa laid siege to some of our cities much of last year. I hope that we can have a thoughtful and balanced discussion about the issue of domestic terrorism. I remain hopeful that, despite the fact that one of our witnesses here today suggested that ISIS bomb a Trump property in Turkey, I cannot decide which is worse, that a retired naval non-commissioned officer made such a suggestion on Twitter, or that it was thought appropriate to invite him here today to discuss domestic terrorism.

Ideologies that fuel domestic terrorism exist all along the political spectrum. In 2017, in Charlottesville, Virginia, during a Unite the Right rally, James Alex Fields drove his car into counter-protesters, killing Heather Heyer and injuring 28 others. That was evil and unacceptable. Comments made today and other times since that point need to be put into perspective.

With that, let's go with the video, if we may, Madam Chair.

[Video played.]

Mr. BIGGS. Madam Chair, I would ask that we pause that for a second.

Madam Chair, yeah, with the feedback, that I suggest maybe some people do not have their computers on mute. If they have their computers on mute, that will allow, should allow for it to proceed without feedback.

Ms. JACKSON LEE. You may proceed.

Mr. BIGGS. Thank you.

Please proceed with the video.

[Video played.]

Mr. BIGGS. So, the point is this, the previous president, the former President Trump, called out neo-Nazis and White national-

ists and said they should be condemned. I think there is no one in this room that would disagree with that statement.

Earlier that same year we saw politically-inspired domestic terrorism that actually hit much closer to our home. As Republican Members gathered at Eugene Simpson Stadium Park in Alexandria, Virginia, to practice for an annual congressional baseball game for charity, James Thompson Hodgkinson, aged 66, fired at least 70 rounds from a handgun and rifle at the congressmen, staff, and others at the park. Five people were injured during the assault, including Republican Whip Steve Scalise, who was in critical condition and underwent multiple surgeries.

The Commonwealth attorney for the City of Alexandria, a Democrat, concluded “the evidence in this case establishes beyond a reasonable doubt that the suspect, fueled by rage against Republican legislators, decided to commit an act of terrorism.” He was a Bernie Sanders supporter.

We also cannot forget the attack that took place in 2012 at the Family Research Council when Floyd Corkins attempted to “it was to kill as many people as I could” at the Family Research Council center in Washington, DC. According to the sentencing memorandum, he told the FBI he wanted “I wanted to kill the people in the building and then smear a Chicken-fil-A sandwich on their face.”

He was inspired to attack the FRC because it had been identified on Southern Poverty Law Center’s Hate Map.

It was a different set of ideologies that inspired the attacks on West Coast federal buildings than those that inspired an attack on our Capitol. We have seen White and Black supremacist groups inspire domestic terrorist events.

In 2015, in Charleston, South Carolina, Dylann Roof, harboring views of White supremacy, took the lives of nine congregants of the Emanuel African Methodist Episcopal Church.

In 2019, in Jersey City, New Jersey, David N. Anderson and Francine Graham shot and killed three people at a kosher grocery store in Jersey City, New Jersey. The shooters also wounded one customer and two police officers. A Jersey City Police Department detective was shot and killed by the assailants at a nearby cemetery just before the grocery store attack.

David Anderson and Francine Graham, identified as Black Hebrew Israelites, which the Southern Poverty Law Center found that “the extremist fringe of the Hebrew Israelite movement is Black supremacists.” It also wrote that the Members of those groups “believe that Jews are devilish imposters and openly condemn whites as evil personified, deserving only death or slavery.”

I hope that our hearing and the outcome of today will address all forms of domestic terrorism, no matter which ideology inspires that terrorism.

I look forward to hearing from our witnesses. I would like to add the indictment and sentencing memo from the Family Research Council case to the record, if that is okay.

Ms. JACKSON LEE. Without objection, so ordered.

[The information follows:]

MR. BIGGS FOR THE RECORD

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 12-182(RWR)
	:	
v.	:	
	:	
FLOYD LEE CORKINS, II,	:	
	:	
Defendant.	:	

GOVERNMENT’S SENTENCING MEMORANDUM

FBI Agent: [W]hat was your intention . . . You’re . . . a political activist you said?

Corkins: Yeah, I wanted to kill the people in the building and then smear a Chicken-fil-A sandwich on their face

* * *

FBI Agent: And you, what was your intention when you went in there with the gun?

Corkins: Uh, it was to kill as many people as I could.

* * *

On August 15, 2012, a mass killing of innocent civilians at work in our nation’s capital was narrowly averted. The defendant, the lone gunman and perpetrator of this attempted massacre, had the malicious intent and engaged in the requisite planning and effort necessary to achieve his purpose. Fortunately, he was thwarted by the heroic intervening actions of Leonardo Johnson, a building manager/security guard who was seriously injured as a result. Although the defendant largely failed to bring about the violence he sought, he was still able to accomplish one of his objectives—that is, to use acts of violence to terrorize and intimidate those within the District of Columbia and the United States who did not share his political beliefs and views.

On February 6, 2013, faced with the overwhelming evidence of his crimes, the defendant

pled guilty to Act of Terrorism while Armed (Count IV), Assault with Intent to Kill while Armed as to Mr. Johnson (Count II), and Interstate Transportation of a Firearm and Ammunition (Count I). The defendant's crimes are serious and warrant severe sentences—not only to punish the defendant for his actions, but to keep the community safe from him and deter other would-be mass murderers and domestic terrorists from following suit. Accordingly, the Government respectfully requests that the Court sentence the defendant to a combined term of imprisonment of 45 years.

Facts Relevant to Sentencing – Statement of Offense

By virtue of the Statement of Offense in support of his guilty plea, the defendant acknowledged the following facts:

Introduction

On August 15, 2012, the defendant Floyd Lee Corkins, II (hereinafter “Corkins” or “the defendant”), armed with a loaded semi-automatic pistol he had purchased in Virginia, two additional loaded magazines, and a box of ammunition, traveled from Virginia to the office headquarters of the Family Research Council (“FRC”) in Washington, D.C., intending to shoot and kill as many employees of the organization that he could. The FRC is a nationally-recognized conservative lobbying group that, according to its own mission statement, “shapes the public debate and formulates public policy that values human life and upholds the institutions of marriage and the family.” Among other things, the FRC advocates against governmental recognition of gay marriage. When the defendant arrived at the FRC, Leonardo Johnson, a building manager and unarmed security guard seated at the receptionist desk in the first-floor lobby, asked to see the defendant's identification. Corkins reached into his backpack, pulled out the handgun, and pointed it at Johnson. Johnson charged Corkins and a struggle ensued, during which Corkins shot Johnson in the arm. Despite the serious gunshot injury he sustained, Johnson managed to wrestle

the gun away from Corkins and then subdued him at gunpoint until members of the D.C. Metropolitan Police Department ("MPD") arrived. While on the scene, Corkins told Johnson in sum and substance that "it was not about you [Johnson]," but about the FRC and its policies.

The Shooting

On the morning of August 15, 2012, the defendant drove his family's car from Herndon, Virginia, to the East Falls Church Metro Station and took Metro rail into the District of Columbia with the intent of committing the shooting. After getting off the train at the Gallery Place Metro stop, he loaded a Sig Sauer P229 semiautomatic pistol he had purchased in Virginia six days earlier and walked to the FRC's headquarters, located at 801 G Street, NW, Washington, D.C.

At approximately 10:46 A.M., the defendant arrived in front of the FRC's secured front door. To gain access to the building, he falsely told Johnson, who was manning the lobby's receptionist desk at the time, that he was there for an interview as a prospective intern. Upon gaining entry, the defendant approached the receptionist desk and Johnson, and shortly thereafter attempted to shoot and kill him.

Three FRC security cameras captured the shooting incident, almost in its entirety. An exterior FRC security camera captured Corkins entering the front door of the FRC. A second camera positioned inside the lobby captured Corkins approaching the front reception desk, behind which Johnson was seated. The two men engaged in a brief verbal exchange while Corkins stood directly in front of the waist-high desk. After Johnson asked to see the defendant's identification, Corkins unshouldered his backpack, set it down on the floor in front of the desk, and bent down to retrieve something from inside it. Meanwhile, Johnson stood up and moved to one side of the desk. Shortly thereafter, Corkins stood back up and leveled his pistol at Johnson's head/upper body, prompting Johnson to duck and then lunge for Corkins and the gun. Before Corkins could

fire an initial shot, Johnson grabbed Corkins, and the two men struggled. During this struggle, Corkins fired his pistol three times, one shot of which struck Johnson in the left forearm area. Despite the gunshot wound and Corkins's subsequent discharges of the gun, Johnson succeeded over the course of the next 15-20 seconds in disarming Corkins and forcing him to the ground and onto his belly. Johnson then stood over Corkins, subduing him with the weapon. Around this same time, Corkins stated to Johnson in sum and substance, "It's not about you," it's about the FRC and its policies.

Moments later, another FRC employee in the lobby area at the time of the shooting used the front receptionist desk phone to call 911.¹ MPD officers in the vicinity responded to the FRC to find Johnson still holding Corkins at gunpoint. The MPD officers subsequently handcuffed and frisked Corkins on the scene. In a search of his person, the MPD officers discovered two fully loaded magazine clips (15 rounds each) in one of Corkins's front pants pockets, as well as a Metro card and a handwritten list. The handwritten list contained the names of four organizations, beginning with the FRC (and its D.C. street address), as well as the address for the Blue Ridge Arsenal in Virginia where Corkins had purchased the gun and other implements (described more fully below). Each of the four listed organizations are nationally recognized advocacy groups that openly identify themselves as having socially conservative agendas supporting, among other things, legislation defining "marriage" as a relationship between one man and one woman and generally against legislation that would promote gay marriage. While on the scene, various MPD officers also overheard Corkins make several statements, the sum and substance of which included, "I don't like the organization and what it stands for" and "I don't like these people, and I

¹ A third camera captured this employee's movements during the shooting incident. After hearing the first shot, the employee scrambled to the floor and remained there to escape physical harm until Johnson had effectively subdued Corkins.

don't like what they stand for."

After securing the scene, MPD officers transported Corkins to the Federal Bureau of Investigations' Washington Field Office ("FBI's WFO") to be processed for arrest and interviewed. Simultaneously, Johnson was taken by ambulance to Howard University Hospital's Emergency Room to treat his gunshot wound.² MPD officers also called for the MPD's Bomb Unit to inspect Corkins's backpack still on the scene. An MPD bomb technician physically examined the bag and its contents and found, among other items, a box of 50 rounds of 9mm ammunition that was compatible for use in the semi-automatic pistol and 15 individually-wrapped Chick-fil-A chicken sandwiches.³ MPD officers also recovered 3 spent 9mm cartridge casings from the crime scene.

The Defendant's Post-arrest Statements

At the FBI's WFO, two FBI agents booked Corkins and asked him a number of "public safety" questions. Afterwards, Corkins was advised of and waived his Miranda rights, and gave a videotaped statement to two other FBI agents. In his statement, Corkins provided a clear and detailed account of the facts and circumstances relevant to the shooting incident, including acknowledging that: (1) he intended to enter the FRC that day to kill as many people as possible

² Johnson suffered a serious gunshot wound. After being shot and subduing Corkins, Johnson experienced intense pain while waiting for emergency medical personnel to arrive on the scene. After being transported to the hospital, he underwent emergency surgery to treat multiple "comminuted fractures" of his left radius and ulna—the two main bones in Johnson's left forearm were effectively "splintered or crushed" in multiple places. To treat these injuries, a surgeon inserted two metal plates into Johnson's left forearm to allow the shattered bones to heal. The gunshot caused Johnson to suffer soft tissue injuries and numerous bullet fragments remain in Johnson's arms permanently, as it was impractical to remove each and every one of them during surgery. Johnson remained in the hospital for approximately a week. Johnson's arm remained in a cast for several months, and he was unable to work during this time. Depending on how his bones heal, Johnson may have to undergo a bone graft. He is currently undergoing physical therapy.

³ Although not included in the Statement of Offense, it should be noted that during this time, the fast-food chain Chick-fil-A was the focus of controversy regarding same-sex marriage in the wake of public comments by its president that marriage should be defined as between a man and a woman. Advocates of gay marriage called for a boycott, while those against gay marriage, like FRC, rallied in support of Chick-fil-A.

and smother Chick-fil-A sandwiches in their faces; (2) he intended to kill the “guard” who confronted him in the lobby (i.e., Johnson); and (3) he had taken substantial steps in the preceding week in furtherance of carrying out the crimes. Among other things, Corkins made the following statements in sum and substance:

- The night before the shooting, he loaded three magazines with the plan to go to the FRC the next day and “basically opening fire.”
- The night before the shooting, he received firearms training from Blue Ridge Arsenal in Chantilly, Virginia, where he had purchased the gun the week before.
- The day before the shooting, he went to a Chick-fil-A and purchased 15 chicken sandwiches with the intent of smearing them in the faces of his shooting victims “to make a statement against the people who work in that building . . . and with their stance against gay rights and Chick Fil-A. They endorse Chick-fil-A and also Chick-fil-A came out against gay marriage so I was going to use that as a statement.”
- Once inside the FRC on the day of the shooting, he pulled the gun on the “guard,” grappled with him, and in the course of doing so, he intentionally discharged the gun multiple times; the shooting was not an accident.
- He pointed the gun at the guard, and that he intended to shoot and kill the guard, and then go upstairs and shoot and kill “as many people as [he] could.”
- He was a political activist and considered the FRC a lobbying group. He committed the shooting for political reasons. He had identified the FRC as an anti-gay organization on the Southern Poverty Law Center website.
- He had been thinking about perpetrating similar violence for years but just never went through with it.
- He purchased the gun the Friday before the shooting from Blue Ridge Arsenal.
- He converted the pistol from a 20-caliber to a 9mm pistol to “be more effective.”
- If the police had not responded and caught him at the FRC, he planned to go directly to the second organization on his list and perpetrate a similar shooting there.
- He surveilled the FRC two days before the shooting.

- He initially wanted to make a bomb but did not have the patience to do it.

Consistent with Corkins's statement, the FBI's subsequent investigation confirmed that the defendant did not act impulsively in committing the shooting. Rather, in the week before the shooting, the defendant methodically planned it by: (1) purchasing the firearm, (2) researching and surveilling his intended targets, (3) receiving firearms training, and (4) purchasing and employing other implements of the crimes.

The Gun Purchase

On Thursday, August 9, 2012, Corkins went to the Blue Ridge Arsenal in Chantilly, Virginia, to purchase a firearm. He looked at different pistols and ultimately decided to purchase the Sig Sauer P229 semiautomatic pistol, which he had converted from a 22-caliber to a 9 mm firearm. While there, a French television correspondent and her camera crew doing a piece on the ease with which firearms can be purchased in the United States filmed Corkins holding and pointing the P229 pistol, as well as identifying it by make and model to the correspondent. Corkins left and returned the next day, Friday, August 10, to pick up the pistol.

The Selection and Surveillance of the FRC and Other Targets

Consistent with his statement to the FBI, a subsequent search of Corkins's family computer revealed that on the afternoon of Sunday, August 12, Corkins used the computer to visit the Southern Poverty Law Center's website, as well as the websites for the FRC and the second organization on his handwritten list. The FBI later recovered from Corkins's home several printed Mapquest and Google maps, dated August 12, 2012, for directions to the FRC and the second organization, as well as the pad of stationary paper used by Corkins to create his handwritten list of targets.

On the afternoon of Monday, August 13, Corkins rehearsed his planned trip to the FRC.

He drove his parents' car to the East Falls Church Metro stop, boarded the Metro train for downtown D.C., got off at the Gallery Place Metro stop, and walked to the FRC. Corkins went to the door of the FRC that afternoon, claiming to be there to meet someone, and giving the lobby receptionist, another FRC employee, a fictitious name. The FRC employee allowed Corkins access to the lobby area, but told him that there was no one in the building by that name after checking the employee directory. Corkins then left the building.

Obtaining Other Implements of the Planned Crimes at Chick-fil-A and K-mart

On the afternoon of Tuesday, August 14, Corkins went to a Chick-fil-A in Virginia to purchase the 15 chicken sandwiches. The FBI later recovered from Chick-fil-A a date-and time-stamped video and a store receipt of Corkins's purchase that afternoon.

Shortly after visiting the Chick-fil-A, Corkins went to a nearby K-mart in Virginia and purchased the black backpack he used in carrying out the offense. The FBI later recovered from K-mart a time-stamped video and a store receipt of Corkins's purchase that afternoon.

The Firearms Training

On Tuesday evening, August 14, Corkins received approximately two hours of firearms training with his newly-acquired pistol at Blue Ridge Arsenal. The FBI later recovered from Blue Ridge Arsenal a videotaped recording of Corkins engaged in shooting practice at the range that evening.

Other Evidence Relevant to the Defendant's Intent

Pursuant to 22 D.C. Code § 3151, et. seq., Assault with Intent to Kill and Attempted Murder are enumerated "Acts of Terrorism" if committed with the requisite intent. On August 15, 2012, the defendant assaulted Johnson and the FRC with the intent to intimidate or coerce a significant portion of the civilian population of the District of Columbia and/or the United States;

namely, any and all individuals associated with or supporting the FRC, like-minded organizations, or otherwise holding beliefs contrary to or advocating against gay marriage.

Limited Nature of Statement of Offense

As explicitly acknowledged by the defendant, the Statement of Offense proffered at his guilty plea proceeding was not intended to constitute a complete statement of all facts relevant to this case. Rather, the limited purpose of that proffer was to demonstrate that there existed a sufficient legal basis for the defendant's plea of guilty to the charges of Interstate Transportation of a Firearm and Ammunition, Assault with Intent to Kill while Armed (Leonardo Johnson), and Act of Terrorism while Armed.

Other Facts Relevant to Sentencing

In conjunction with the factual narrative set forth in the Statement of Offense, the government also asks that the Court consider the following evidence:

- | | |
|-----------|---|
| Exhibit A | FRC Video Footage (including "Clip #1," a compilation from three different FRC cameras, as well as "Clip #2 and Clip #3," extended footage of the two cameras within the lobby area of the FRC) |
| Exhibit B | Still Photographs from FRC Video Footage |
| Exhibit C | Leonardo Johnson's Injuries on August 15, 2012 |
| Exhibit D | Crime Scene Photographs (with annotations) |
| Exhibit E | Items in the Defendant's Wallet (including his "Target List") |
| Exhibit F | Diagram of Crime Scene (with annotations) |
| Exhibit G | X-ray of the Defendant's Backpack (taken by MPD Bomb Squad) |
| Exhibit H | The Defendant's Internet Searches for Blue Ridge Arsenal on August 7, 2012 |
| Exhibit I | French Film Crew's Video Footage of Blue Ridge Arsenal on August 9, |

- 2012 (showing the defendant shopping for and purchasing the semi-automatic pistol he used in the shooting)
- Exhibit J Still Photographs from French Film Crew's Video Footage of Blue Ridge Arsenal on August 9, 2012
- Exhibit K Gun Purchase Documents (showing that the Defendant purchased the firearm he used in the shooting from Blue Ridge Arsenal on August 9, 2012, and received it on August 10, 2012)
- Exhibit L The Defendant's Internet Searches on FRC and Another Entity on Target List on August 12, 2012
- Exhibit M Additional Evidence that the Defendant Surveilled FRC and Rehearsed His Plan on August 13, 2012
- Exhibit N Chick-fil-A Photographs from August 14, 2012 (showing the Defendant purchasing Chick-fil-A sandwiches brought to FRC)
- Exhibit O K-Mart Video Footage from August 14, 2012 (showing the Defendant purchasing backpack he used in the shooting)
- Exhibit P Still Photographs from K-Mart Video Footage and Receipt from August 14, 2012
- Exhibit Q Video Footage of Firearms Training at Blue Ridge Arsenal on August 14, 2012 (showing the defendant practicing with the firearm he used in the shooting)
- Exhibit R Still Photographs from Video Footage of and Documents from Firearms Training at Blue Ridge Arsenal on August 14, 2012
- Exhibit S East Falls Church Metro Stop Photographs and Record from morning of August 15, 2012 (showing the Defendant taking train to travel into D.C.)
- Exhibit T Photographs of the Defendant after his arrest on August 15, 2012
- Exhibit U Videotaped Statement by the Defendant to the FBI after his Arrest on August 15, 2012 (hereinafter, the "Def.'s Stat.")⁴

⁴ The government has muted the sound in limited portions of the defendant's videotaped statement that make reference to personal identifying information of the defendant, his family members, and certain third parties. Similar redactions appear in the transcript (see Exhibit V).

- Exhibit V Partial Transcript of Videotaped Statement by the Defendant to the FBI after his Arrest on August 15, 2012 (hereinafter, the “Tr. Def.’s Stat.”)
- Exhibit W Other Items Discovered in Search of the Defendant’s Home (including stationery listing two Internet sites providing information on the making of improvised bombs)

Argument

I. Introduction

Consistent with the enormity of his crimes and intended consequences, the defendant pled guilty to committing an Act of (Domestic) Terrorism while Armed, Assault with Intent to Kill while Armed as to Mr. Johnson, and Interstate Transportation of a Firearm and Ammunition. The domestic terrorism and assault charges each carry maximum terms of imprisonment of 30 years, while the related firearms charge carries a maximum term of imprisonment of 10 years. Based on the following, the Government asks the Court to sentence the defendant to 20 years imprisonment on the Act of Terrorism while Armed charge, 15 years imprisonment on the Assault with Intent to Kill while Armed charge, and 10 years imprisonment on the Interstate Transportation of a Firearm and Ammunition charge, all sentences to run consecutive to one another. An effective sentence of 45 years imprisonment is warranted because the defendant committed several distinct crimes that targeted multiple victims. Moreover, such a sentence would appropriately punish the defendant for his actions, keep the community safe from him for the foreseeable future, and deter other would-be domestic terrorists and mass murderers from doing the same.

II. Legal Standards

A. The D.C. Code Offenses – Act of Terrorism while Armed (Count IV) and Assault with the Intent to Kill while Armed (Count II)

The D.C. Code offenses of Act of Terrorism while Armed and Assault With the Intent to

Kill while Armed each carry a penalty of not less than 5 years or more than 30 years imprisonment. D.C. Code §§ 22-401, 22-3152, 3153, and 4502 (2001 ed.). Moreover, the D. C. Sentencing Guidelines are entirely voluntary. Cook v. United States, 932 A.2d 506, 507 (D. C. 2007); District of Columbia Voluntary Sentencing Guidelines (2012) (“D.C.V.S.G.”) §1.2.1 (“These guidelines are voluntary. This means that judges are not required to follow them. It also means that a lawful sentence cannot be appealed whether or not the judge complies with the guidelines or the procedures recommended in these instructions.”)

Although it need not, even if this Court were to consult the D.C.V.S.G. in fashioning the sentences it will impose for the D.C. Code Offenses, the Court should consider other factors particularly relating to the Act of Terrorism while Armed charge. Fortunately, the planned attempt to commit a mass murder of innocents simply to send a political message is not a common occurrence in the District of Columbia. As a result, the D.C. Sentencing Commission has not yet specifically considered or assigned an offense level to the Act of Terrorism while Armed charge. The Group Four Offense assigned in the Presentence Report, therefore, is not a product of the Commission’s careful deliberation and application of the sentencing factors to the specific offense. Rather, it is derived solely from application of a general residual clause in the D.C.V.S.G. See D.C.V.S.G., Appendix C and §2.2.8(b) (indicating that because the Commission has not yet ranked the Act of Terrorism while Armed offense, and it carries a statutory maximum penalty of 30 years, it should be treated as a Group Four Offense).

The resulting ranking of the Act of Terrorism while Armed offense as a Group Four Offense is nonsensical in light of the facts of this case and should be rejected. Namely, the offense of Act of Terrorism while Armed here involved the commission of the underlying offenses

of Attempted Murder and Assault With Intent to Kill while Armed, plus doing so “intend[ing] to (A) Intimidate or coerce a significant portion of the civilian population of: (i) The District of Columbia; or (ii) The United States”). Although to our knowledge Attempted First Degree Murder has not been charged in the District of Columbia since the inception of the D.C.V.S.G, the D.C.V.S.G. specifically provides that an Attempt Crime of Violence while Armed is the same group offense level as the unarmed completed offense—in this case, an unarmed First Degree Murder, a Group One Offense. See D.C.V.S.G., Appendix C at C-4 and §2.1. As such, the Government submits that the Act of Terrorism while Armed offense should also be designated as a Group One Offense.⁵

As calculated by the Probation Office, the defendant’s D.C.V.S.G. range for the crime of Assault With Intent to Kill while Armed is 90-180 months and range for the crime of Act of Terrorism while Armed is 48-120 months. However, if the Court treats the Act of Terrorism while Armed offense as a Group One Offense, then the Act of Terrorism while Armed would have a D.C.V.S.G. sentence recommendation of 360 months.⁶

Separate and apart from the calculated D.C.V.S.G. range for both offenses, the D.C.V.S.G. provides some additional guidance for imposing sentences in circumstances such as this one. First, pursuant to D.C.V.S.G. §5.2.2(4), the Court could depart upward from any recommended sentencing range for Counts Two and Four if it determines that the “crime committed or attempted was substantially premeditated, as evidenced by a high degree of planning or sophistication or planning over an extended period of time.” D.C.V.S.G. §5.2.2(4). Second, pursuant to

⁵ At a minimum, the Act of Terrorism while Armed offense should be designated as the same group offense level as the other underlying felony of Assault with Intent to Kill while Armed. If treated in this manner, both would carry the D.C.V.S.G. range of 90-180 months.

⁶ The range for a Group One Offense is 360-720 months, but the statutory maximum for the offense is 360 months.

D.C.V.S.G. §6.1, sentences for counts involving multiple victims in one event “must be imposed consecutively.” D.C.V.S.G. §6.1.

Finally, pursuant to the Plea Agreement, the defendant acknowledged that his “entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines range.” See Plea Agreement at 5.

B. The U.S. Code Offense – Interstate Transportation of a Firearm and Ammunition

The U.S. Code offense of Interstate Transportation of a Firearm and Ammunition (hereinafter, the “Firearm Offense”) carries a penalty of not more than 10 years. 18 U.S.C. § 924(b). In United States v. Booker, 543 U.S. 220 (2005), the Supreme Court ruled that the United States Sentencing Guidelines are no longer mandatory. However, “[a]s a matter of administration and to secure nationwide consistency, the Sentencing Guidelines should be the starting point and the initial benchmark” for determining the defendant’s sentence. Gall v. United States, 552 U.S. 38, 49 (2007). While, to be sure, “[i]n accord with 18 U.S.C. § 3553(a), the Guidelines, formerly mandatory, now serve as one factor among several courts must consider in determining an appropriate sentence,” Kimbrough v. United States, 552 U.S. 85, 91 (2007), it remains the case that “the Commission fills an important institutional role: It has the capacity courts lack to ‘base its determinations on empirical data and national experience, guided by a professional staff with appropriate expertise,’” id. at 574 (quoting United States v. Pruitt, 502 F.3d 1154, 1171 (10th Cir. 2007) (McConnell, J., concurring)). The Supreme Court accordingly recognized that, “[i]n the ordinary case, the Commission’s recommendation of a sentencing range will ‘reflect a rough approximation of sentences that might achieve § 3553(a)’s objectives.” Kimbrough, 552 U.S. at

89 (quoting Rita v. United States, 551 U.S. 338, 350 (2007)). As one member of this Court has held, “Booker requires judges to engage in a two-step analysis to determine a reasonable sentence.” United States v. Doe, 413 F. Supp.2d 87, 90 (D. D.C. 2006) (Bates, J.)

[A] district court shall first calculate (after making the appropriate findings of fact) the range prescribed by the guidelines. Then, the court shall consider that range as well as other relevant factors set forth in the guidelines and those factors set forth in [18 U.S.C.] § 3553(a) before imposing sentence.

United States v. Hughes, 401 F.3d 540, 546 (4th Cir. 2005).

When weighing the § 3553(a) factors as part of its calculus of an appropriate sentence, the Court should consider not only the nature and circumstances of the offense and the history and characteristics of the defendant, but also the applicable sentencing objectives—that is, that the sentence: (1) reflect the seriousness of the offense; (2) promote respect for the law; (3) provide just punishment; (4) afford adequate deterrence; (5) protect the public; and (6) effectively provide the defendant with needed educational or vocational training and medical care. See 18 U.S.C. § 3553(a)(1) and (2). In addition, the sentence should reflect “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6).

The Probation Office has determined—and the government agrees—that the defendant’s total adjusted offense level for the Firearm Offense is 34, his criminal history category is I, and his sentencing guideline range is 151-188 months. However, pursuant to 18 U.S.C. § 924(b) and U.S.S.G. § 5G1.1(a), the statutorily-authorized maximum sentence for the offense (i.e., 120 months) is greater than the minimum recommended guideline sentence of 151 months under the U.S.S.G. Therefore, the statutorily-authorized maximum sentence for the offense of 120 months shall be the guidelines sentence. Notably, the parties also agreed pursuant to the Plea Agreement

that “solely for the purposes of calculating the applicable range under the U.S.S.G., neither a downward nor upward departure from the Stipulated Guidelines Sentence for Count One set forth above [that is, 120 months] is warranted. Accordingly, neither party will seek any departure to the Stipulated Guidelines Sentence for Count One, nor will either party suggest that the Court consider such a departure.” See Plea Agreement at 4.

III. An Analysis of the Factors Enunciated in 18 U.S.C. § 3553(a) Demonstrates that a Substantial Period of Incarceration Is Warranted

A. The Nature and Circumstances of the Offenses

Without question, on August 15, 2012, the defendant intended to commit a mass killing of innocent civilians. The defendant’s detailed and thoughtful planning of the crimes and near success in carrying them out are sufficient in themselves to establish this disturbing truth. However, the defendant also freely acknowledged as much throughout his statement to the FBI afterwards. Indeed, but for the courageous acts of Mr. Johnson, who was seriously injured in the shooting, the defendant would have almost certainly succeeded in committing a massacre of epic proportions. The overwhelming evidence in this case establishes that much and more.

1. The Defendant Intended to Commit Mass Murder

The defendant clearly intended to kill as many people at the FRC as he could on August 15, 2012. By his own admission, the defendant had been thinking about perpetrating similar violence for years but had just never gone through with it. Tr. Def.’s Stat. at 9-10. On that day, the defendant went to the FRC to “basically open[] fire” and kill “as many people as I could.” Tr. Def.’s Stat. at 1, 4, 6, 8. To do so, he armed himself heavily. Several days before the shooting, he purchased a P229 Sig Sauer semiautomatic pistol and had it converted to a 9mm pistol to “be more effective.” Tr. Def.’s Stat. at 23. Upon entering the FRC lobby, the defendant had no less

than 45 rounds of ammunition readily accessible to him—15 rounds loaded in the pistol itself, and 30 more rounds in two additional 15-round magazines in his front pocket—as well as another 50 rounds of ammunition in his backpack. Once at the front desk, the defendant retrieved the loaded pistol from his backpack, and pointed it directly at the upper chest and head of Mr. Johnson with the intent to kill him in order to carry out his evil rampage. See Exhibits A and B. Fortunately, Mr. Johnson had moved closer to the defendant in order to observe his actions. With the muzzle of the defendant's gun only inches from Mr. Johnson's face, he reached for the defendant in order to disarm him. During the approximately 30-second struggle with Mr. Johnson, the defendant acted on his well-developed convictions by firing his pistol three times (Tr. Def.'s Stat. at 8, 23), striking Mr. Johnson once and sending two other errant, yet equally dangerous, shots into the occupied lobby area.⁷ See generally Exhibit C. Fortunately, Mr. Johnson, faced with a life-or-death situation, fought back and succeeded in overpowering the defendant. Had Mr. Johnson failed, in all likelihood, numerous people would have lost their lives. The defendant acknowledged this afterwards by telling the FBI that he had planned to kill the people at the FRC and then rub Chick-fil-A sandwiches in their faces as a political "statement" of sorts. Tr. Def.'s Stat. at 3-5, 17. He also told the FBI that if the police had not responded and caught him at the FRC, he intended to go to the second organization on his target list and perpetrate a similar shooting there. Tr. Def.'s Stat. at 11-12.

2. The Defendant Meticulously Planned to Commit Mass Murder

The extent of the defendant's prior planning further underscores his commitment to kill

⁷ As shown in the videotaped footage of the shooting, another FRC employee was working in the lobby area of the FRC when the defendant entered the premises that day. After hearing the first shot, that employee quickly went to the ground for cover and then proceeded to crawl on his knees and stomach in an effort to escape the danger.

and terrorize those who disagreed with his beliefs. On August 7, 2012, a full **eight** days before the shooting, the defendant identified the Blue Ridge Arsenal in Virginia on the Internet as the place where he would procure the weapon and ammunition to perpetrate his crimes.⁸ See Exhibit H. Two days later, on Thursday, August 9, he went shopping there and picked out a semi-automatic pistol and a 9mm conversion kit. By coincidence, a French documentary film crew was also at the Blue Ridge Arsenal at the time and captured the defendant holding and pointing the P229 pistol he would ultimately purchase. See Exhibits I and J. Even a cursory viewing of the crew's raw footage shows the unassuming and business-like manner in which the defendant made his selection. He picked up the gun the very next day, along with his two hours of free firearms training on the practice range. See Exhibit K.

According to various accounts, the defendant spent the majority of the weekend interacting closely with members of his immediate and extended family at gatherings in southwestern Virginia and North Carolina. When he arrived home on Sunday, August 12, however, he returned to his planning. As indicated above and further established in the attached exhibits, over the next several days, the defendant: (1) selected multiple organizational targets based on their publically-held positions on gay marriage and gay rights (Exhibit L); (2) mapped their locations to facilitate his travel to those locations (Exhibit L); (3) created a consolidated list of these targets, often noting corresponding addresses (Exhibit E); (4) rehearsed, in its entirety, his planned trip to the FRC by driving to the East Falls Church Metro stop, taking the Metro train to the Gallery Place Metro stop, walking to the FRC, and obtaining entry to the controlled lobby area by falsely giving

⁸ In explaining his actions to the FBI, the defendant stated that he had been thinking about perpetrating similar violence "probably for years," and had even wanted to make a bomb, but "I didn't have the patience for it." Def.'s Stat. at [time]; [time].

a fictitious name and claiming to be there to meet someone (“[j]ust basically trying to go over exactly what I was gonna do today” (Tr. Def.’s Stat. at 18; Exhibit M); (5) purchased the 15 Chick-fil-A chicken sandwiches as crude props to accentuate his “political statement” (Tr. Def.’s Stat. at 3-5, 17; Exhibit N); (6) purchased a new backpack to carry and conceal the loaded pistol, the extra ammunition, and the sandwiches while carrying out the offenses (Exhibits O and P); and (7) received approximately two hours of firearms training at Blue Ridge Arsenal and loaded his magazines the night before (Exhibits Q and R). At almost each step along the way, video cameras captured the quiet and deliberate manner in which the defendant undertook the various tasks. By observing the defendant’s demeanor and interactions with others throughout this planning process, one can readily conclude that the defendant was motivated by a firm resolve and purpose. Indeed, under any application of the standard, the defendant’s crimes were “substantially premeditated, as evidenced by a high degree of planning or sophistication or planning over an extended period of time.” See D.C.V.S.G. §5.2.2(4).

3. Without Remorse or Repentance, the Defendant Used Violence to Advance his Political Cause

Both at the crime scene and later in his statement to the FBI, the defendant made it abundantly clear that he knowingly and unrepentantly embraced violence as a means of garnering attention for his political agenda. After shooting Mr. Johnson and being subdued, he told Mr. Johnson, “It’s not about you,” it’s about the FRC and its policies. And yet, the defendant intentionally shot and attempted to kill Mr. Johnson based solely on his apparent association with FRC.

FBI Agent: And this is so if he [Johnson] didn’t grab it from ya, your, was your intention, it was to shoot him?

Corkins: I would have shot him.

FBI Agent: And, and it was to kill him?

Corkins: Yes.

* * *

FBI Agent: When you guys are struggling with the gun, how did the gun discharge?

Corkins: I pulled the trigger.

FBI Agent: You pulled the trigger? Okay. So it wasn't, it wasn't like you guys were struggling around the gun and the trigger just accidentally went off. You pulled the trigger?

Corkins: Yeah.

Def.'s Stat. at [time].⁹

While still on the crime scene, several MPD officers overheard the defendant repeat his motivation for the crimes: "I don't like the organization and what it stands for" and "I don't like these people, and I don't like what they stand for." See Statement of Offense at 4. Later, in his statement to the FBI, the defendant reiterated this disturbing justification:

FBI Agent: You said you wanted to make a statement.

Corkins: Yeah, it's basically a statement against the people who work in that building.

FBI Agent: Okay.

Corkins: I consider myself a political activist.

FBI Agent: Okay.

Corkins: And with their stance against gay rights and Chicken-fil-A, they endorse

⁹ The defendant later stated "I got a few shots off." Tr. Def.'s Stat. at 23. When asked how many, he replied, "I'm not sure, maybe around 3." Id.

Chicken-fil-A and also Chicken-fil-A [undecipherable] came out against gay marriage . . . so I was going to use that as kind of a statement.

Tr. Def.'s Stat. at 3.

FBI Agent: And then if you would have killed him, what would you, you said, you would have . . . you were trying to . . .

Corkins: I would have gone upstairs. I wanted to go on the elevator and go upstairs to the office part of the building?

FBI Agent: And do what else?

Corkins: Uh, kill as many people as I could.

Tr. Def.'s Stat. at 8.

At no time in his statement to the FBI did the defendant exhibit any remorse for the violence and terror he sought to effect at the FRC. Rather, when asked by the FBI what he thought should happen to him for committing the shooting, the defendant flatly replied, "Nothing."

Def.'s Stat. at 1:02:25.

4. The Defendant Seriously Injured Mr. Johnson

Mr. Johnson did not ask to be a hero on August 15, 2012; rather, the defendant forced him to become one. Fortunately for the other occupants of the FRC building, including another employee working in the lobby area at the time, Mr. Johnson met the threat head on and was ultimately able to overpower a very determined assailant. But for Mr. Johnson's heroic actions, the defendant would likely have killed or severely injured numerous people in the building that day. In acting, however, Mr. Johnson suffered a serious gunshot wound, the prolonged loss of the normal use of his arm, the ongoing need for medical attention, and countless other consequences.

In his victim impact statement ("VIS") to the Court, Mr. Johnson aptly summarized the adverse physical, psychological, and emotional impacts the defendant's violent attack has had on

his life. He has undergone successive surgeries to treat the devastating gunshot injuries to his left arm, followed by additional emergent care for life-threatening blood clots that formed as a result and months of “grueling physical therapy sessions.” Psychologically, Mr. Johnson regularly experiences anger and frustration at how the shooting has either materially inhibited or altogether ended his ability to perform important features of his job, participate in sports and workout (e.g., weightlifting), and consume some of his favorite foods and beverages—all aspects of life that he once enjoyed immensely. These feelings are fueled by what, as Mr. Johnson appropriately describes was “such a senseless crime. Many innocent people were going to be ruthlessly murdered and taken away from their families and friends forever with no remorse.”

5. As the Intended Targets of the Defendant’s Armed Attack, the FRC and its Employees Were Also Victims of Terrorism

The FRC is a conservative lobbying group that, according to its own mission statement, seeks to “shape[] the public debate and formulate[] public policy that values human life and upholds the institutions of marriage and the family.” It is a national non-profit organization with a staff of approximately 80 individuals, the majority of whom work at the FRC’s headquarters building in Washington, D.C.

When the defendant entered and attacked the FRC headquarters building on August 15, 2012, approximately 50 FRC employees were working inside at the time. Leonardo Johnson and one other employee were in the lobby area, while the other FRC employees were working in dedicated office space on the upper floors of the building—a short elevator ride away. Ultimately, because Mr. Johnson interceded, many of the FRC employees did not learn about the attack until after Mr. Johnson had effectively thwarted it in the lobby area. Nonetheless, in the minutes, hours, and days to follow they would quickly learn either from their personal

observations or those of others how close and real the danger had been. In their victim impact statements, the FRC and its employees describe how this new-found terror—generated by the defendant’s attack on the FRC—has invaded their personal security and otherwise peaceful daily existences:

Every day, our staff has to deal with the fact that each of us was a potential victim. For those in our DC headquarters, we enter the building, walk past our armed security guards who were added after the shooting and pass the desk where Leo was shot. We are grateful for Leo’s extraordinary actions, but are pained by his injury and pray for his full recovery. Yet every day many on our team are reminded of the attack and relive the trauma. Our family members are reminded every day that they may have lost a family member that day had Leo not intervened. And their worries continue, wondering about further violence.

VIS of FRC at 1.

On August 15, 2012, my life changed in a way that I would never wish on anyone. It was a bright sunny day, and I was on my way to a daily Mass at a nearby church. I was not anticipating walking out of an elevator to see the blood of a good friend of mine on the back of Mr. Corkins, while he was lying on the floor. In an instant, my sense of security was gone forever. . . . Mr. Corkins may not realize what he did to me that day. I have experienced nightmares in the days and months that followed, as well as the fear I have of certain popping sounds. The most lasting impact is the lack of security I feel on a daily basis, I am angered that this assault made me feel like I can never be safe at the office again.

VIS of FRC Staff Member #2 at 1.

My office—on an upper floor of the FRC headquarters—was far enough away from the action that, to be honest, I never even heard the shots that morning. I learned of the shooting only when colleagues appeared at my door and I saw from my window the arriving first responders. I quickly called my wife at home and assured her of my safety. She seemed calm, and, all things considered, appeared to absorb the shock of the situation well—or so we thought. The cracks would be masked that day, but would soon reveal themselves in a stress-induced illness that would drastically alter the daily life of my family.

VIS of FRC Staff Member #1 at 1.

Like every day I start my day with the expectation that my peace and personal security would be maintained and not be intruded upon. Yet, on that day those

things and more were abruptly and intrusively shattered. At that point, my every day privilege of returning home to family and friends safely were interrupted and my assurance of the same turned into doubt.

VIS of FRC Staff Member #3 at 1.

In short, while only Mr. Johnson was physically injured, numerous FRC employees sustained deeper and, arguably, more harmful psychological injuries. Namely, the persistent fear caused by knowing that someone had sought to unleash unimaginable carnage upon them solely because of their deeply-held moral and political beliefs.¹⁰

B. The History and Characteristics of the Offender

The defendant is an intelligent and educated man, who was raised by a loving family. His incarceration will no doubt be a hardship on them, and the government sympathizes with their situation. There is, however, nothing that indicates that the burden on the defendant's family will be any different from that of the burden borne by the family of other violent criminals.

According to the Probation Office, the defendant is receiving ongoing mental health treatment. In large part, the defendant's attending physicians appear to have treated the defendant through a combination of prescription medications and periodic counseling sessions. Although the defendant appears to suffer from bouts of severe depression and unidentified "psychosis," there is absolutely nothing to indicate that the defendant did not fully comprehend what he was planning and sought to accomplish in the shooting perpetrated at the FRC. Instead, the detailed nature of his planning and execution reveal the deliberate and clear-headed manner in which the defendant acted in this case.

¹⁰ The FRC, as an organization, has detailed the compensatory damages it seeks in the worksheet attached to its organizational victim impact statement. The government asks the Court to order the defendant to pay restitution for all reasonably foreseeable costs to the FRC resulting from his criminal conduct.

In short, the Government submits that the defendant's personal history and his family situation do not present uniquely mitigating circumstances such that they should materially impact his sentence.

C. The Need to Promote Respect for the Law, to Provide Just Punishment, to Afford Adequate Deterrence, and to Protect the Public

Imposing a substantial term of imprisonment in this case is absolutely necessary to promote respect for the law, provide just punishment, afford adequate deterrence, and serve to protect the public from the defendant. Standing alone, the violence the defendant wrought was reprehensible and warrants a significant term of imprisonment. And yet, his conduct was exponentially more egregious in that he employed violence instead of accepted forms of expression—that is, free speech, peaceful protest, and the democratic process—to advance a political cause. This was exactly what the D.C. Council was seeking to punish and deter in criminalizing acts of domestic terrorism such as this.

The District of Columbia's Omnibus Anti-Terrorism Act of 2002 defines an Act of Terrorism as "an act or acts that constitute a specified offense [e.g., Assault with Intent to Kill and Attempted Murder] . . . that are intended to (A) intimidate or coerce a significant portion of the civilian population of: (i) The District of Columbia; or (ii) The United States" 22 D.C. Code § 3152. There is no case law interpreting or defining "intimidate or coerce a significant portion of the population." However, the relevant legislative history provides some additional insight into what the D.C. Council meant:

By "intimidate or coerce" a population, the Committee intends to capture violent acts that are committed with the specific intent of purposely inspiring fear and intimidation among a population, in much the same way Americans have been affected by the September 11, 2001 attacks. As noted in the beginning of this report, the effects of terrorist crimes reach beyond the immediate victims and their

families to affect broader populations of people. The purpose of Title I of this legislation is to punish the perpetrators of terrorist crimes who have an agenda that goes beyond the specified offense itself and that perpetuates a broader attempt to intimidate a population or to influence the policy or conduct of government.

By using the term “significant portion of the civilian population,” the Committee intends to capture violent acts that affect not only the entire populations of the District or the United States, but also a substantial number of people within those populations, or entire subsets, discreet groups, or communities of people. This would include, for example, violent acts that are meant to intimidate or coerce the District’s Jewish or African American communities, either the entirety of those communities or a portion of them. A further example of a significant portion of the population could be a portion of the community with an identifiable political association, for example, republicans or District-based supporters of a Palestinian state.

Council of the District of Columbia, Committee on the Judiciary Report, Subject: Bill 14-373, the “Omnibus Anti-Terrorism Act of 2002,” p. 17 (April 4, 2002).

Here, the defendant’s armed assault on the FRC and its employees constituted nothing less than a direct attack on our democratic system, an essential component of which is the freedom of persons and entities to engage in political speech and expression. In that respect, the defendant’s act of terrorism clearly achieved one of its intended purposes—to inject fear into the hearts of those associated with the FRC or its political causes and otherwise intimidate or coerce them from openly participating in the democratic process. By imposing a sufficiently severe sentence in this case, the Court will be sending the appropriate message: namely, the use of violence as a means to obtain political ends in the District of Columbia and the United States will not be tolerated.

D. The Need to Provide the Defendant with Educational or Vocational Training

The defendant does not appear to need such training. In any event, the other factors bearing on the seriousness of the offenses and the need for strong deterrence outweigh this element in fashioning a just sentence.

E. The Need to Avoid Unwarranted Sentence Disparities Among Defendants with Similar Records Who Have Been Found Guilty of Similar Conduct

The District of Columbia's Omnibus Anti-Terrorism Act (the "Act") was enacted in 2002. Since that time, this is the first case in which a defendant has been prosecuted and convicted for a violation of sections 3152 and 3153 of the Act ("Definitions" and "Acts of Terrorism; Penalties," respectfully). Accordingly, there are no prior sentences available for direct comparison. The below cases, however, are somewhat instructive.

In United States v. Gorbey, 54 A.3d 668 (D.C. 2012), the defendant was successfully prosecuted and convicted for, among other things, a violation of a different section of the Act, section 3154, which prohibits the manufacture or possession of a weapon of mass destruction.¹¹ Because the Gorbey case was prosecuted under the same Act and shares some factual similarities to this case, it is an appropriate case for comparison.

The essential facts of Gorbey, as articulated by the District of Columbia Court of Appeals, are as follows:

On January 18, 2008, at about 1:00 p.m., a woman approached a United States Capitol Police ("USCP") Officer near the intersection of Delaware and D Streets, N.E., and told the officer that a man with a gun had asked her for directions to the United States Supreme Court. From the USCP command center, an officer watched the video feed from surveillance cameras in the area around the U.S. Capitol and saw images of a man walking with a shotgun. As shown on a recording from those cameras, USCP officers stopped and arrested the man—appellant Michael Gorbey—at the intersection of First and D Streets, N.E. At the time he was stopped, appellant had a shotgun in his hand and a sword on his back. Twenty-seven shotgun shells were stored in the bulletproof vest he was wearing, and he also was in possession of hunting knives and a .45-caliber round, which officers found in the backpack he was carrying. Appellant claimed that he was en route to a meeting with Chief Justice John Roberts of the United States

¹¹ To our knowledge, other than this case and Gorbey, there are no other cases involving the successful prosecution of an offense delineated under the Act.

Supreme Court.

Minutes after appellant was stopped, USCP officers found a truck illegally [citation omitted] parked nearby and could see in it “heavy gauge wire coming out of [the] radio ... to the glove compartment ... [a]nd then ... coming out of the back of the vehicle,” as well as “the stock of a rifle and a homemade bow and arrow” . . . [USCP officers ultimately] conducted a search of the inside of the truck (which was “in some disarray” from the disruptive tool). They found ammunition on the floorboard of the passenger compartment but, during this initial search, they did not find an explosive device. USCP officers found the keys to the truck in appellant’s pocket and the certificate of title to the truck in the backpack appellant had been carrying at the time of his arrest.

The USCP officers moved appellant’s truck to a secure storage area at 800 North Capitol Street, N.W., and, on February 8, 2008, conducted another search of the passenger compartment, pursuant to a search warrant. After moving the passenger seat forward, officers found an object that one of the officers described as a “home-made bomb.” The object (hereafter referred to as the “device”) consisted of “a metal can spray painted red” and “a clear bottle filled with what looked like lead pellets,” and “everything was duct taped.” After the bomb squad used a tool to “disrupt” the device, officers completed a search of the passenger compartment and cab of the truck. They recovered a “large amount” of black powder; firecrackers; lighters; primer or percussion caps; shotgun shells and shotgun cartridges; 550 rounds of long rifle ammunition; 200 rounds of other ammunition of various calibers; a rifle scope; and the (disrupted) components of the device (i.e., the metal can, duct tape, black powder, metal pellets, and glass fragments).

Appellant was charged and subsequently convicted, on May 16, 2008, of fourteen separate offenses in connection with the events described above: unlawful possession of a firearm by a convicted felon; two counts of carrying a dangerous weapon outside the home or business (shotgun and sword) (“CDW”); possession of an unregistered firearm (“UF”); eight counts of unlawful possession of ammunition (“UA”); manufacture, transfer, use, possession, or transportation of explosives for an unlawful purpose; [footnote omitted] and **attempted manufacture or possession of a weapon of mass destruction (“WMD”)**.

Gorbey, 54 A.3d at 675-76. For his crimes, the trial court sentenced Gorbey to an aggregate term of 264 months of imprisonment (i.e., 22 years). The District of Columbia Court of Appeals affirmed the defendant’s convictions and left undisturbed the trial court’s aggregate sentence.

While Gorbey is somewhat instructive in that it represents the only other case prosecuted under the District of Columbia's Omnibus Anti-Terrorism Act, a significantly longer sentence is warranted in this case for many reasons. First, whereas Gorbey involved the commission of D.C. Code offenses only, the defendant here is being sentenced for having also committed a serious federal firearms offense that, by itself, carries the recommended Sentencing Guideline of 10 years. More importantly, by comparison, the defendant's conduct and the specific charges in this case are substantially more egregious than that of Gorbey in every respect.

Unlike Gorbey, whose half-baked, armed appearance near the U.S. Supreme Court was destined to fail from the outset, the defendant methodically planned his crimes with a clear and obtainable objective in mind. Over the course of more than a week, the defendant undertook and accomplished a variety of tasks necessary to his mission. That planning allowed him to gain entry into the FRC, virtually unsuspected, and initiate his violent actions. His overall purpose was clear and unwavering—to kill as many people at the FRC as he could and make a political statement in the process. And, but for the quick actions of Mr. Johnson, he likely would have succeeded.

In recent cases where other defendants have committed or attempted to commit similar acts of terrorism involving a careful and deliberate plan to commit mass murder, many courts have given significantly lengthier sentences than in Gorbey. These sentences reflect the need to punish those who seek to kill and terrorize significant portions of the civilian population, keep the populace safe, and deter others. By way of example:

- On August 10, 2012, Naser Jason Abdo was sentenced in the United States District Court for the Western District of Texas to two consecutive life sentences plus sixty years for his unsuccessful plan to create and detonate a bomb inside a restaurant

frequented by soldiers from Fort Hood military base in Killeen, Texas, and to then shoot any survivors. See Judgment, United States v. Abdo, Cr. No. 11-182 (W.D. Tex. August 10, 2012). Abdo was arrested while in possession of a .40 caliber pistol and bomb-making instructions and components.

- On December 20, 2011, Kevin Harpham was sentenced in the United States District Court for the Eastern District of Washington to 32 years, the maximum allowed pursuant to the plea agreement, for planting a bomb along the parade route of a Martin Luther King Day parade in Spokane, Washington. See Sentencing Memorandum, United States v. Harpham, Cr. No. 11-42 (E.D. Wash. December 27, 2011). The device was discovered and disarmed without incident or injury. Id.
- Several recent cases involving FBI sting operations have also resulted in lengthy sentences. On September 14, 2012, Amine El Khalifi was sentenced to 30 years in prison in the United States District Court for the Eastern District of Virginia for attempting to carry out a suicide bomb attack on the U.S. Capitol. See Judgment, United States v. Khalifi, Cr. No. 12-37 (E.D. Va. September 14, 2012). On April 6, 2012, Antonio Martinez was sentenced in the United States District Court for the District of Maryland to 25 years in prison for planning to detonate a bomb at an armed forces recruiting station. See Judgment, United States v. Martinez, Cr. No. 10-798 (D. Md. April 6, 2012). On May 9, 2011, Michael C. Finton was sentenced in the United States District Court for the Southern District of Illinois to 28 years in prison for driving what he believed to be a bomb to the federal courthouse in

Springfield, Illinois. See Judgment, United States v. Finton, Cr. No. 10-30215 (S.D. Ill. May 9, 2011). On October 28, 2010, Hosam Smadi was sentenced to 30 years in prison in the United States District Court for the Northern District of Texas for his attempt to blow up a downtown Dallas skyscraper. See Judgment, United States v. Smadi, Cr. No. 09-294 (N.D. Tex. October 28, 2010). In each of these cases, the defendants were unwittingly working with undercover FBI employees, and the public was never in any actual imminent danger.¹²

In addition, in this court, on June 29, 1995, United States District Judge Charles R. Richey sentenced Francisco Duran to 40 years for his failed attempt to kill the President, in which Duran drove across country, positioned himself in front of the White House with a semiautomatic assault rifle under his trench coat, and then began firing in the direction of a tour group on the North lawn until he was tackled by a bystander and later arrested. See Judgment, United States v. Duran, Cr. No. 94-447(D.D.C. June 30, 1995); see also United States v. Duran, 96 F.3d 1495, 1497 (D.C. Cir. 1996) (affirming conviction and summarizing facts of the case).

Significantly, in each of the above-referenced cases, nobody was harmed; nor, except for Duran, were they ever in any immediate danger of being harmed. For example, Gorbey's crimes involved the mere possession or attempted possession of dangerous weapons and implements—he was never accused or convicted of actually employing them in a violent manner (e.g., assault, attempted assault, etc.). In this case, however, the defendant intentionally shot and seriously

¹² The government found only one recent FBI sting case that did not involve a longer sentence than that in Gorbey. On November 1, 2012, Rezwan Ferdaus was sentenced in the United States District Court for the District of Massachusetts to 17 years incarceration pursuant to a Rule 11(c)(1)(C) agreement for plotting an attack against the Capital and Pentagon and attempting to provide detonation devices to terrorists. The defendant was working with FBI undercover employees, whom he believed were members of al-Qaeda. See Judgment, United States v. Ferdaus, Cr. No.11-10331 (D. Mass. November 1, 2012)

injured Mr. Johnson, who is still suffering from the physical and emotional effects of that tragic day. Furthermore, by firing his weapon multiple times in an occupied lobby and shooting and injuring Mr. Johnson, the defendant achieved his broader purpose—to terrorize the FRC and its employees, including those who every day walk past the crime scene where they observed their co-worker and friend severely injured in the course of protecting their safety, as well as other like-minded individuals.

In sum, Mr. Johnson's actual pain and suffering, coupled with the emotional trauma endured by the FRC employees, must also be considered in fashioning any overall sentence that the defendant receives. Accordingly, the Government submits that an aggregate sentence of 45 years for the defendant's three separate offenses would be consistent with and not disparate from those of similarly situated defendants.

Conclusion

For the foregoing reasons, the Court should sentence the defendant as recommended in this memorandum.

Respectfully submitted,

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UNITED STATES ATTORNEY
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By: /s/
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United States Attorney's Office
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Mr. BIGGS. Thank you.

Ms. JACKSON LEE. Thank you very much, Mr. Biggs.

I am now pleased to recognize the distinguished Chair of the Full Committee, the gentleman from New York, Mr. Nadler, for his opening statement.

Chair NADLER. I thank Chair Sheila Jackson Lee for holding this important and timely hearing.

Domestic terrorism continues to be a serious and lethal threat to our country, and we must do more to stop it. Much of this threat is driven by racially-motivated hate and animus toward religious minorities. Sadly, many domestic terrorist attacks have taken place through mass shootings, such as the 2019 mass shooting at a Walmart in El Paso, Texas, where a gunman targeted Mexican-American shoppers.

This mass shooting joins other attacks perpetrated by domestic terrorists, including an attack at a Sikh temple in Oak Creek, Wisconsin, the massacre at Emanuel African Methodist Episcopal Church, and the mass murder at the Tree of Life synagogue that has already been mentioned, among a tragic list of others.

Violent extremism also touched the halls of our Capitol on January 6th, resulting in death and destruction. It is clear that the mob that attacked us that terrible day included significant representation from White nationalists, among other hate-filled groups.

We must ensure that our law enforcement resources and priorities are properly directed at this dangerous and growing threat. The FBI's annual Hate Crime Statistics Act report found in 2019, the last year that statistics are available, that there were 7,314 hate crimes, up from 7,120 the year before. These numbers, which hardly show the pain and anguish these attacks brought, is, sadly, near a record high.

FBI Director Christopher Wray also testified that 2019 was the deadliest year for domestic extremist violence since the Oklahoma City bombing in 1995. Senior FBI officials have noted that racially-motivated violent extremists are responsible for the majority of lethal attacks and fatalities perpetrated by domestic terrorists since 2000.

To truly understand what is driving this increase in hate crimes and the link to violent extremists, we still need better and more comprehensive data. The FBI should simplify its data reporting, which must include reliable information from all jurisdictions. This information should be shared with Congress and the American people in a clear format, so that we can better focus resources on our domestic terrorist threats at hand.

We also need to ensure that once informed by the proper data we dedicate resources towards addressing the greatest threats. That is why I support the Domestic Terrorism Prevention Act, a bipartisan measure introduced to do just that. This legislation, of which I am an original co-sponsor, would create offices within the Department of Justice, the Department of Homeland Security, and the FBI, to monitor, investigate, and prosecute cases of domestic terrorism. These newly created offices would be required to focus their resources based on the data collected on the most significant threats.

Domestic violent extremism is not a new phenomenon, but it has become supercharged in recent years. We have seen a surge in hate-filled extremist groups, driven by conspiracy theories based on racism, misogyny, and xenophobia, which has been fueled by success at online recruiting and organizing. When combined with violence, they form a toxic stew that must be met with the resources necessary to address this threat.

We must renew and reinforce our efforts against this scourge by marshaling the resources and authorities we already have so that we are more effective in this endeavor. I am particularly interested in hearing the recommendations of our witnesses today about how best we can do that.

Madam Chair, I ask for unanimous consent to enter into the record two documents. The first is a letter from the Leadership Conference on Civil and Human Rights signed by 156 organizations expressing their opposition to the expansion of terrorism-related legal authorities.

The second letter, from the American Civil Liberties Union, highlights the perils that expanded terrorism authorities may pose to communities of color.

Ms. JACKSON LEE. Without objection, so ordered.

[The information follows:]

CHAIR NADLER FOR THE RECORD

**The Leadership Conference
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January 19, 2021

Dear Members of Congress:

On behalf of The Leadership Conference on Civil and Human Rights (The Leadership Conference), a coalition charged by its diverse membership of more than 220 national organizations to promote and protect civil and human rights in the United States, and the undersigned 156 organizations, we write to express our deep concern regarding proposed expansion of terrorism-related legal authority. We must meet the challenge of addressing white nationalist and far-right militia violence without causing further harm to communities already disproportionately impacted by the criminal-legal system. The Justice Department (DOJ), including the Federal Bureau of Investigation (FBI), has over 50 terrorism-related statutes it can use to investigate and prosecute criminal conduct, including white supremacist violence, as well as dozens of other federal statutes relating to hate crimes, organized crime, and violent crimes. The failure to confront and hold accountable white nationalist violence is not a question of not having appropriate tools to employ, but a failure to use those on hand. To date, DOJ has simply decided as a matter of policy and practice not to prioritize white nationalist crimes.¹ Congress should use its oversight and appropriations authorities to ensure that law enforcement appropriately focuses investigative and prosecutorial resources on white nationalist crimes.

We urge you to oppose any new domestic terrorism charge, the creation of a list of designated domestic terrorist organizations, or other expansion of existing terrorism-related authorities. We are concerned that a new federal domestic terrorism statute or list would adversely impact civil rights and — as our nation's long and disturbing history of targeting Black Activists, Muslims, Arabs, and movements for social and racial justice has shown — this new authority could be used to expand racial profiling or be wielded to surveil and investigate communities of color and political opponents in the name of national security. As Acting U.S. Attorney Michael Sherwin for the District of Columbia stated on January 12, 2021 regarding the January 6 insurrection attack on the Capitol, federal prosecutors have many existing laws at their disposal to hold violent white supremacists accountable.²

The magnitude of last week's attack demands that Congress focus on ensuring that our government addresses white nationalist violence as effectively as possible. Members of Congress should not reinforce counterterrorism policies, programs, and frameworks that are rooted in bias, discrimination, and denial or diminution of fundamental rights like due

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Aphonso B. David
Human Rights Campaign
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National Women's Law Center
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Marc Morial
National Urban League
Janet Murguia
UnidosUS
Debra L. Ness
National Partnership for
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Christian F. Nunes
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American Association of
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Randi Weingarten
American Federation of Teachers
John C. Yang
Asian Americans Advancing Justice |
AAJC

¹ Michael German and Sara Robinson, *Wrong Priorities on Fighting Terrorism*, The Brennan Center (Oct 31, 2018), <https://www.brennancenter.org/our-work/research-reports/wrong-priorities-fighting-terrorism>

² Department of Justice, *Acting U.S. Attorney Michael Sherwin for The District of Columbia and FBI Washington Field Office ADIC Steven D'Antuono Provide Update on Criminal Charges Related to Events at the Capitol on January 6* (Jan 12, 2021) <https://www.justice.gov/opa/video/acting-us-attorney-michael-sherwin-district-columbia-and-fbi-washington-field-office-adic>

process. Rather, as highlighted below, Congress should focus on its oversight and appropriations authority to ensure that the federal government redirect resources towards the ever-growing white nationalist violence plaguing our country, and hold law enforcement accountable in doing so.

White supremacist violence goes back to our nation’s founding, and has never been appropriately addressed—and it manifested last week in an unprecedented way. On January 6, 2021, thousands of pro-Trump supporters, many of them radical, right-wing, white supremacists, unlawfully and violently broke into the nation’s Capitol. The rioters, some with “Camp Auschwitz” shirts, others carrying confederate flags, and some who hung a noose on the Capitol grounds, were intent on blocking the ratification of President-elect Biden’s electoral win. Some carried weapons and zip ties, reportedly to kidnap or kill members of Congress and the Vice President. Because of the violent mayhem that ensued, at least five people lost their lives and countless others were wounded. As this historic event on the nation’s legislative branch by violent white nationalist insurrectionists is being investigated thoroughly, we know that our federal law enforcement officials have more than enough tools at their disposal to address the attack on the Capitol.

Yet, despite overwhelming evidence making clear the source of the threat ⁶, the federal response has failed to prioritize an effective policy to combat white nationalist violence. Instead, the federal government has disproportionately targeted and surveilled Black and Brown people, including increasingly targeting Arabs and Muslims since 9/11, treating them as threats to US national and homeland security. This has led to the over-policing of these communities, including intrusions into community centers, mosques, and almost every aspect of their lives.⁷ US counter-terrorism policy has

⁷ Michael German and Emmanuel Mauleón, *Fighting Far-Right Violence and Hate Crimes* (July 1st, 2019), Page 7, [Report Far Right Violence.pdf](https://www.brennancenter.org/~/media/media-reports-and-publications/2019/07/fighting-far-right-violence-and-hate-crimes) ([brennancenter.org](https://www.brennancenter.org))

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devastated communities of color and religious minorities, and by failing to rein in white nationalist violence in a serious way, those same communities suffer twice over: first by being over-criminalized and securitized and second, by having the state not respond to white nationalists who target them.

What Should Congress Do?

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 in the 116th Congress) or any other new charges or sentencing enhancements expected to be introduced in the 117th Congress “to penalize acts of domestic terrorism.” These bills and others with similar provisions are the wrong approach because, as we have seen, they will continue to be used as vehicles to target marginalized communities as they have done since their inception.⁸ The federal government has no shortage of counterterrorism powers, and these powers have been and will be again used to unjustly target Black and Brown communities, including Muslim, Arab, Middle Eastern, and South Asian communities, as well as those engaged in First Amendment-protected activities.⁹ The creation of a new federal domestic terrorism crime ignores this reality and would not address the scourge of white nationalism in this country.

Instead, Congress should use its oversight and appropriations powers to demand that federal agencies make public how they have and are now using resources to fight white supremacist violence. Moreover, Congress should support other efforts to address the white supremacy at the core of these violent attacks. At the outset, Congress should identify ways to address the white supremacist infiltration of law enforcement that was documented by the FBI. This a clear and present danger, which was highlighted at an Oversight Committee hearing last year, puts lives at risk and undermines the criminal legal system.¹⁰ Hate crimes data should be mandated and made publicly available so federal leaders, as well as those at the state and local level, can address the threat in a manner best suited to their community. Finally, the Leadership Conference encourages Congress to hold hearings featuring communities that are experiencing white nationalist violence in an effort to encourage accountability and transparency. This would allow Congress to provide communities impacted by white supremacist violence support to develop and lead their own programs to meet the needs that they identify.

Please contact Becky Monroe at monroe@civilrights.org and Iman Boukadoum at boukadoum@civilrights.org to further discuss this matter or if there are questions or concerns.

Sincerely,

The Leadership Conference on Civil and Human Rights

⁸ Brennan Center, *Countering Violent Extremism in the Trump Era* (Jun. 2018), <https://www.brennancenter.org/analysis/countering-violent-extremism-trump-era>

⁹ Patrick G. Eddington, *MLK and the FBI: 50 years on, secrets and surveillance still* (Apr. 2019), <https://thehill.com/opinion/civil-rights/436437-mlk-and-the-fbi-50-years-on-secrets-and-surveillance-still>

¹⁰ Press Release Rep Jamie Raskin, *Experts Warn Oversight Subcommittee that White Supremacist Infiltration of Law Enforcement Poses a Threat to Cops, Communities* (Sep. 29, 2020) <https://raskin.house.gov/media/press-releases/experts-warn-oversight-subcommittee-white-supremacist-infiltration-law>



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 Act To Change
 Advancement Project, National Office
 Alabama State Association of Cooperatives
 Aleasa Word
 America's Voice
 American Civil Liberties Union
 American Friends Service Committee
 American-Arab Anti-Discrimination Committee (ADC)
 Americans for Democratic Action (ADA)
 Amnesty International USA
 Andrew Goodman Foundation
 ANYAHS Inc.
 Appleseed Foundation
 Arab American Institute
 Arab Resource and Organizing Center (AROC)
 Asian American Legal Defense and Education Fund (AALDEF)
 Asian Americans Advancing Justice - Asian Law Caucus
 Asian Americans Advancing Justice | AAJC
 Augustus F. Hawkins Foundation
 Autistic Self Advocacy Network
 Bend the Arc Jewish Action
 Black Alliance for Just Immigration
 Borderlands for Equity
 Brennan Center for Justice
 Bridges Faith Initiative
 Brooklyn Defender Services
 Cameroon Community of Milwaukee (CAMCOMM)
 Center for Constitutional Rights
 Center for Democracy & Technology
 Center for Disability Rights
 Center for International Policy
 Center for Law and Social Policy (CLASP)
 Center for Popular Democracy/Action
 Center for Security, Race and Rights
 Center for Victims of Torture
 Center on Conscience & War
 Charity & Security Network
 CLEAR project (Creating Law Enforcement Accountability & Responsibility)
 CODEPINK
 Color Of Change
 Colorado Immigrant Rights Coalition

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Common Cause
Council on American-Islamic Relations (CAIR)
Council on American-Islamic Relations, Washington Chapter
Defending Rights & Dissent
Defender Impact Initiative
Demand Progress
Demos
Detention Watch Network
Drug Policy Alliance
Durham Youth Climate Justice Initiative
Emgage Action
End Citizens United / Let America Vote Action Fund
Equal Justice Society
Equality California
Federal Public and Community Defenders
Fight for the Future
Free Press Action
Freedom Network USA
Friends Committee on National Legislation
Government Accountability Project
Government Information Watch
Greenpeace US
Houston Immigration Legal Services Collaborative
Human Rights Campaign
Human Rights First
Human Rights Watch
Immigrant Justice Network
Immigrant Defense Project
Immigration & Human Rights Clinic
In Our Own Voice: National Black Women's Reproductive Justice Agenda
InterAction
Interfaith Alliance
Japanese American Citizens League
Just Futures Law
Justice for Muslims Collective
Kansas Black Farmers Association/Nicodemus Educational Camps
KinderUSA
Labor Council for Latin American Advancement
Lawyers' Committee for Civil Rights Under Law
Legal Aid Society of Metropolitan Family Services
Louisiana Advocates for Immigrants in Detention
Matthew Shepard Foundation

Montgomery County (MD) Civil Rights Coalition
 MPower Change
 Muslim Advocates
 Muslim Justice League
 Muslim Public Affairs Council
 NAACP
 NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. (LDF)
 National Action Network
 National Alliance for Partnerships in Equity (NAPE)
 National Association of Social Workers (NASW)
 National Bar Association
 National Council of Jewish Women
 National Education Association
 National Employment Law Project
 National Equality Action Team (NEAT)
 National Immigration Law Center
 National Immigration Project of the National Lawyers Guild (NIPNLG)
 National LGBTQ Task Force Action Fund
 National Network for Immigrant & Refugee Rights
 National Organization for Women
 National Partnership for Women & Families
 National Religious Campaign Against Torture
 National Women's Law Center
 NETWORK Lobby
 New America's Open Technology Institute
 North Carolina Association of Black Lawyers Land Loss Prevention Project
 Open MIC (Open Media & Information Companies Initiative)
 Open The Government
 Oxfam America
 Palestine Legal
 Partnership for Civil Justice Fund
 Peace Action
 PEN America
 People's Parity Project
 Presbyterian Church (USA)
 Progressive Turnout Project
 Project Blueprint
 Project On Government Oversight
 Public Advocacy for Kids (PAK)
 Public Citizen
 Public Justice
 Quixote Center

Radiant International
Restore The Fourth
Rethinking Foreign Policy
Rocky Mountain Immigrant Advocacy Network ("RMIAN")
Rural Coalition
S.T.O.P. - The Surveillance Technology Oversight Project
Sisters of Mercy of the Americas Justice Team
South Asian Americans Leading Together (SAALT)
Southeast Asia Resource Action Center (SEARAC)
SPLC Action Fund
TASH: equity, opportunity and inclusion for people with disabilities
Texas Progressive Action Network
The Human Trafficking Legal Center
The Sentencing Project
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Wind of the Spirit Immigrant Resource Center
Workplace Fairness



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

The Rise of Domestic Terrorism in America
on
February 24, 2021

Submitted to
U.S. House of Representatives
Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security

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 “The Rise of Domestic Terrorism in America” on February 24, 2021. Following the January 6th attack on the Capitol, there have been calls for heightened police powers and the creation of domestic terrorism-related crimes. Unfortunately, law enforcement agencies have for decades used existing authorities and crimes to wrongly and unfairly target communities of color, without the safeguards, transparency, and accountability these communities have long sought. Any further expansion of police powers and criminalization will harm the very communities that Congress 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. It should pass legislation prohibiting biased profiling without exceptions for national and border security in order to protect Black and Brown communities that have been targeted by law enforcement. 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.

The ACLU has concerns about the overbroad and abusive investigative powers the Federal Bureau of Investigation (FBI) and other law enforcement agencies have claimed, and Department of Justice’s (DOJ) 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.¹ What is lacking, however, is the will to do so.

When Congress passed the USA Patriot Act, it enacted a broad definition of “domestic terrorism” 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.”²

Federal law enforcement has for years used this definition and claimed expansive authorities to investigate domestic and international terrorism. For example, after 9/11, the FBI eliminated safeguards imposed in response to 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. From 2008 through 2013, the FBI repeatedly claimed new and broad authorities to conduct investigations in its Domestic Investigations and Operations Guide (DIOG)—including

¹ 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>.

² USA Patriot Act § 802, 18 U.S.C. § 2331 (2001).

initial “assessments” without a factual predicate—with intrusive techniques.³ It asserted it could engage in the next level of 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.⁴

Congress has also given 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 with the goal of protecting 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 has an abundance of laws to prosecute white supremacist violence, including those related to domestic terrorism—but has chosen not to prioritize these cases.

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, 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 on 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.

³ 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*, at 4, 13-19 (Sept. 2013), https://www.aclu.org/sites/default/files/field_document/unleashed-and-unaccountable-fbi-report.pdf (“Unleashed and Unaccountable”); 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>.

⁴ ACLU, *Expanded FBI Authority* at 4 (describing standards for preliminary investigations).

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>.

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.⁷ 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.⁸ 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.⁹

Discriminatory and unjust investigations also flow from bias-based profiling guidelines adopted by DOJ and the Department of Homeland Security (DHS). The DOJ's 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies purported to ban biased profiling but created broad exceptions for national and border security.¹⁰ When DOJ updated this guidance in 2014—and DHS later largely adopted it—both entities kept these broad loopholes in place, over the objections of communities of color, and civil and human rights organizations nationwide.¹¹

The combination of law enforcement agencies' unjustified and discriminatory investigations and biased 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 and other marginalized communities, including those engaged in First Amendment-protected activities, for surveillance, investigation, prosecution, and placement on watchlists.¹² The FBI has used domestic terrorism authorities to spy on Muslim communities, including by infiltrating their places of worship.¹³ DHS leads and the FBI participates in the Nationwide Suspicious Activity Reporting Initiative, collecting and sharing "suspicious activity reports" about people engaged in activities that are loosely labeled as "suspicious" without even a reasonable suspicion of criminal activity.¹⁴ Agencies have monitored and infiltrated organizations such as the American-Arab Anti-Discrimination Committee, People for Ethical

⁷ ACLU, *Unleashed and Unaccountable* at 9-15.

⁸ ACLU, *Expanded FBI Authority*.

⁹ 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>.

¹⁰ U.S. Dep't of Justice, Civil Rights Div., *Guidance Regarding the Use of Race by Fed. Law Enf't Agencies* (June 2003).

¹¹ 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>.

¹² See generally ACLU, *Unleashed and Unaccountable*.

¹³ See, e.g., ACLU of S. Cal., *Fazaga v. FBI*, <https://www.aclusocal.org/en/cases/fazaga-v-fbi>.

¹⁴ 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>.

Treatment of Animals, and Greenpeace,¹⁵ 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.¹⁶ In addition to encouraging racial and religious profiling, the SAR Initiative targets those engaged in First Amendment-protected activity. 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.¹⁷ 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.¹⁸

Abusive law enforcement continued to escalate under the Trump administration, including through the surveillance of Black Lives Matter actions, family separation protests, and border groups' activities. For example, last summer, people across the country protested police brutality in the fight for Black lives. The Trump administration's response to these racial justice protests included invocation of "domestic terrorism" and use of broad and abusive terrorism-related powers. In May 2020, then-Attorney General Barr announced that the Justice Department would use the 56 regional FBI Joint Terrorism Task Forces around the country to identify "criminal organizers and instigators."¹⁹ The government has not yet undertaken or made public a full accounting of how those powers were used. Just a few years prior, the FBI Counterterrorism Division issued an "intelligence assessment" to over 18,000 law enforcement agencies identifying "Black Identity Extremists"—an inflammatory term for a group that does not exist—for investigation as a domestic terrorism threat. Among other flaws, the FBI assessment claimed, without evidence, that Black people involved in unrelated police killings shared an ideology that motivated their actions.²⁰ It also focused on Black people who, in the FBI's own words, "perceive[] racism and injustice in American society." Following criticism, the FBI withdrew that inflammatory label but then implemented a program called "IRON FIST" to target FBI resources on spying, surveilling, and investigating Black activists, including through use of undercover agents.²¹

¹⁵ 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>.

¹⁶ *Id.*

¹⁷ 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); see also 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>.

¹⁸ 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.

¹⁹ U.S. Dep't of Justice, Press Release, *Attorney General William P. Barr's Statement on Riots and Domestic Terrorism* (May 31, 2020), <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-riots-and-domestic-terrorism>; Hina Shamsi, *More Military Deployment and Terrorism Investigations are an Outrageous Response to Black Pain, Grief, and Anger* (June 4, 2020), <https://www.aclu.org/news/criminal-law-reform/more-military-deployment-and-terrorism-investigations-are-an-outrageous-response-to-black-pain-grief-and-anger/>.

²⁰ 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>.

²¹ Ken Klippenstein, *Leaked FBI Documents Reveal Bureau's Priorities Under Trump*, *Young Turks* (Aug. 8, 2019), <https://yt.com/stories/4vZLCHuOrYE4uKagy0oyMA/mnzAKMpdTz7AcYLd5cRR>.

The FBI has also used its authorities to target individuals engaged in immigration advocacy, including border groups' activities and family separation protests. For example, government documents indicated that the FBI conducted surveillance of groups engaged in protests at the border in response to the Trump administration's immigration policies.²² DHS also 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.²³ 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 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."²⁴

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—let alone provided transparency and accountability for 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, reinforce a discriminatory criminal legal system, and will harm the communities Congress seeks to protect.

Creating more harmful and unnecessary domestic terrorism authorities and crimes is not the solution to white supremacist violence. New domestic terrorism crimes are not only unnecessary, but would actually cause harm by worsening the over-criminalization of Black and Brown communities.

Racial and religious discrimination in the criminal legal system is not a new phenomenon. From arrest through incarceration, racial disparities in the criminal legal system are one of the most severe forms of discrimination against Black and Brown people.²⁵ Those sentenced to death have always been and continue to be disproportionately Black.²⁶ Efforts to address these stark disparities and systemic and institutional racism in the criminal legal system are finally

²² 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>.

²³ 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>.

²⁴ 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>.

²⁵ 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_jachr_racial_disparities_aclu_submission_0.pdf.

²⁶ 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)).

underway—and more efforts are needed. The additional terrorism-related crimes, criminal penalties, and expansion of the death penalty in previous proposals would further incorporate abusive authorities into a discriminatory criminal legal 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.

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, 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.

If Congress seeks to better protect marginalized communities, it should prohibit biased profiling and surveillance that has long harmed Black and Brown people. It can pass a modified version of the End Racial and Religious Profiling Act, prohibiting any local, state, or federal law enforcement agency or officer from engaging in profiling people on the basis of race, religion, ethnicity, national origin, sexual orientation, and gender identity without any exceptions. Current law enforcement practices not only violate our basic constitutional commitment to equality under the law, but also international principles aimed at eliminating racism.

As Congress seeks to address white supremacist violence and make communities safer, it must begin with productive proposals that address specific problems. Enhancing and expanding domestic terrorism authorities and crimes 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.

Chair NADLER. Thank you, Madam Chair. I yield back the balance of my time.

Ms. JACKSON LEE. I thank the gentleman for his remarks.

It is now my pleasure to recognize the distinguished Ranking Member of the full committee, the gentleman from Ohio, Mr. Jordan, for his opening statement.

Mr. JORDAN. Thank you, Madam Chair. First, let me congratulate Mr. Biggs, our colleague, as the new Ranking Member on our side for this, for his work that he will have in leading here on this important subcommittee.

The violence of January 6th was as wrong as wrong can be. Every American has the right under the First amendment to peacefully protest, but political violence of any kind of unacceptable, and all of us must never tolerate it. We must denounce all forms of domestic terrorism. To discuss one kind of extremism and look the other way on another, as the Democrats are trying to do today and have been doing for almost a year, is, frankly, dishonest and it is wrong. I think the American people see through it.

Republicans have been consistent in denouncing all acts of political violence: The violence that took place on the 6th of January 2021, and violence that took place across our country in major urban areas throughout the summer of last year. Unfortunately, Democrats have not. All last summer Democrats looked the other way as violent left-wing extremists used legitimate protests about policing concerns as a vehicle to incite riots and reap destruction throughout our country.

While Americans watched their cities burn, some prominent Democrats in Congress downplayed the threat. Worse yet, some encouraged the violence. The current Vice President publicly supported the riots last summer, even asking her supporters to contribute money to raise bail funds for violent extremists arrested in the riots.

The Democratic Chair of this Committee, this very committee, the Judiciary Committee, called antifa an imaginary thing, and antifa violence a myth that is only spread in Washington, DC.

My guess is one of our witnesses today will have a little different story to talk about the violence of antifa.

Another Democrat called for there to be “unrest in the streets.” While there was unrest in the streets you have a Democrat member of Congress calling for “unrest in the streets.”

Last July, when former Attorney General Mr. Barr urged this Committee to condemn mob violence and destruction of federal property, not one single Democrat spoke up. Last September we wrote to Chair demanding that we convene a hearing on left-wing violent extremism to confirm that it is not a myth as was claimed. We are still waiting on a response.

Antifa and left-wing violence are certainly no myth. In fact, a recent study showed that attacks by left-wing violent extremists have more than doubled from 2019 to 2020. Violence, whether in Washington, DC, or Portland, Oregon, or any other place in this country should be condemned, all forms of it, all the time, by both parties.

I hope we can have an honest and productive conversation.

Madam Chair, I yield back.

Ms. JACKSON LEE. I thank the gentleman Mr. Jordan for his opening remarks.

It is now my privilege to welcome all our distinguished witnesses. We thank them for their participation.

I will begin by swearing in our witnesses. I ask our witnesses testifying in person to rise. I will stand with you. Also, I ask our witnesses testifying remotely to turn on their audio, make sure I can see your face.

Wave your hand.

I can see you alright. Raise your right hand while I administer the oath.

Witnesses stand or unmute and raise your right hands.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

[Chorus of ayes.]

Ms. JACKSON LEE. Thank you so very much. The witnesses have responded. Let the record show that the witnesses answered in the affirmative.

Thank you and please be seated.

To the Members, let me indicate that we are in the midst of four votes. We are going to attempt to hear at least one or two witnesses. I am keeping my eye on the calendar, the floor, as I know your staff are. Then we will recess and try to get back here as quickly as possible.

Thank you, Mr. Biggs, for your indulgence and your cooperation. We will now proceed with the witness introductions.

Mr. Wade Henderson currently serves as the Interim President of The Leadership Conference on Civil and Human Rights. He previously served as President of the Leadership Conference for more than 20 years.

Prior to joining the Leadership Conference, Mr. Henderson was the Washington Bureau Director of the NAACP; Associate Director of the Washington National Office of the ACLU; and Executive Director of the Council on Legal Education Opportunity.

Mr. Malcolm W. Nance retired from the United States Navy as a Senior Chief Petty Officer. While in uniform, Mr. Nance worked in naval cryptology where the focus was on counterterrorism, intelligence, and combat operations.

Following the September 11th attacks he served as an intelligence and security contractor in Iraq, Afghanistan, the UAE, and North Africa.

He is Founder and Executive Director of the Terror Asymmetries Project on Strategy. In 2016 he published two books: "Defeating ISIS: Who They Are, How they Fight, What they Believe;" and "The Plot to Hack America."

Mr. Andy Ngo is a journalist who has written reports for the New York Post, Newsweek, and others. He is the author of "Unmasked: Inside Antifa's Radical Plan to Destroy Democracy."

Michael German is a fellow with the Brennan Center for Justice's liberty and national security program. He is a former special agent with the FBI. There he conducted undercover operations against White supremacists and far-right militia groups engaged in the manufacture and use of explosives and illegal firearms.

In addition to his current role, Mr. German served as an Adjunct Professor of Law Enforcement and Terrorism at the National Defense University.

Please note that each of your written statements will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in five minutes. To help you stay within that time there is a timing light on your table or where you are virtually viewing it from. When the light switches from green to yellow or your clock starts to down the numbers to two minutes, one minute, you have one minute to conclude your testimony. When the light turns red it signals your five minutes have expired.

Mr. Henderson, welcome. You may begin.

TESTIMONY OF WADE HENDERSON

Mr. HENDERSON. Thank you. Chair Jackson Lee, full Committee Chair Nadler, Chair Biggs, and Full Committee Member Jordan, and Members of the Committee, thank you for holding this hearing today on the federal response to domestic terrorism. I am Wade Henderson, Interim President and CEO of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations working to build an America as good as its ideals.

The hearing, this hearing in the wake of the January 6th attack on the Capitol is important. Last month's attack, fueled in part by White nationalism and antisemitism that has long thrived in our country and horrified us all. For those of us who represent marginalized people, the violence did not surprise us because, sadly, it is not new.

We are all too familiar with the ways in which White supremacy has long thrived in our country. We also know that for too long the threat of White nationalist violence has been weaponized, not only by White supremacists, but also by laws and programs that target us rather than protect us.

I would like to offer four recommendations today:

First, Congress must pass the Domestic Terrorism Prevention Act, without any poison pill amendments, that would create a new charge, and demand that federal agencies show how they are fighting White supremacist violence.

Federal law enforcement already has statutes and investigative powers to combat violence fueled by White supremacy, including over 50 terrorism-related crimes, and over a dozen other criminal laws. It has lacked the will to use them, and the DTPA would help address this.

Importantly, the bill would not create new domestic terrorism charges or sentence enhancements that would ultimately harm our communities. Our nation's long history of misusing its mechanisms, including the use of COINTELPRO against Dr. Martin Luther King, Jr., the post-9/11 targeting of Arabs and Muslims, and the FBI's prioritization of Black identity extremists makes clear that new authority would be used to expand racial profiling, undermine due process, or target political opponents, all in the name of national security.

Instead, we should use existing tools to combat White supremacy without enabling new abuses.

Second, Congress must identify ways to address and dismantle White supremacy in law enforcement. We know most police officers report to duty every day determined to honor their mission. We also know that there are officers who have actively promoted White supremacist groups that incite or use violence.

White supremacy infects so many of our institutions, but its impact on policing is especially devastating and makes us all less safe, including the police.

Congress must demand a full accounting of what is being done to address White supremacy in law enforcement. The White Supremacy in Law Enforcement Information Act is a good first step. Congress and federal agencies must also identify ways to ensure that law enforcement officers who incite racist violence are no longer welcome.

Third, Congress must pass legislation and appropriations to enhance the federal response to hate crimes. White nationalist violence and other hate crime terrorizes communities on a daily basis. We also know that we do not have the accurate data necessary to effectively address it.

The Jabara-Heyer NO HATE Act improves data and community-centered responses. More must be done, including mandatory reporting and implementation by the National Incident-Based Reporting System.

Finally, Congress must pass H.R. 40 to study the efficacy of reparations to African Americans and create a U.S. Commission for Truth, Racial Healing, and Transformation. For over 400 years subjugation of Black people was a major factor in American economic growth. Yet, long after the end of slavery, Black people are still deprived of the benefits of that growth. If we are to address White nationalist violence, we must confront our history, including disinvestment in Black and brown communities because it still remains with us.

Congress must pass H.R. 40 and reckon and account for our history. Reparations are owed, transformation is required. Now is the time to create a shared vision for a country as good as its ideals where all are valued. To do this, we must reckon with White supremacy that was present at our founding and persists to this day.

Thank you for having me here today. I would be happy to take your questions.

[The statement of Mr. Henderson follows:]

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**STATEMENT OF WADE HENDERSON
INTERIM PRESIDENT AND CEO
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

“THE RISE OF DOMESTIC TERRORISM IN AMERICA”

HOUSE COMMITTEE ON THE JUDICIARY

February 24, 2021

Chairman Nadler, Ranking Member Jordan, and members of the Committee: Thank you for holding this timely and important hearing today on the federal response to domestic terrorism. My name is Wade Henderson, and I am the interim president and CEO of The Leadership Conference on Civil and Human Rights. The Leadership Conference is a coalition of more than 220 national organizations working to build an America as good as its ideals. Founded in 1950, The Leadership Conference has coordinated national advocacy efforts on behalf of every major civil rights law since 1957.

As the president of The Leadership Conference on Civil and Human Rights who led the organization for over 20 years, I always appreciate the opportunity to testify before this committee, but I’m particularly grateful today, as we wrestle with the aftermath of the violent January 6 attack on the Capitol and our country. I want to acknowledge and express the respect we have for this committee and its members, your staff, the maintenance personnel and cleaning staff, the food workers, and the law enforcement who work in the Capitol during this time. Your shared commitment to democracy and to service has never been more apparent than now.

Last month’s violent insurrection, fueled by white supremacy and anti-Semitism, horrified us all. For those of us who are a part of and work alongside Black, Brown, Arab, Muslim, Jewish, Sikh, disabled, and LGBTQ communities, the white nationalist violence did not surprise us. Sadly, for the members of our coalition and the people we represent, this violence is not new. Whether this type of violence is manifested through housing, education, employment, voting, or criminal legal systems, it demands that we come together across different communities to combat it.

We are too familiar with the many different systems and institutions through which white supremacy has thrived in our country since its inception. We also know that for too long, the threat of white nationalist violence has been weaponized against Black and Brown communities – by white supremacists and laws and programs that target us rather than

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Women & Families
Christian F. Nunes
National Organization for Women
Rabbi Jonah Pesner
Religious Action Center
Of Reform Judaism
Rebecca Pingle
National Education Association
Lisa Rice
National Fair Housing Alliance
Anthony Romero
American Civil Liberties Union
Fawn Sharp
National Congress of American Indians
Maria Town
American Association of
People with Disabilities
Richard L. Trumka
AFL-CIO
Randi Weingarten
American Federation of Teachers
John C. Yang
Asian Americans Advancing Justice |
AAsJC

Interim President & CEO
Wade Henderson



protect us. That is why we adamantly oppose any legislation that would create an added charge for domestic terrorism or any enhanced or additional criminal penalties. Congress must help ensure that the federal government uses the many tools at its disposal, including over 50 terrorism-related crimes and over a dozen other criminal statutes and authorities, to prioritize and address white nationalist violence now. We continue to support the recently re-introduced Domestic Terrorism Prevention Act (DTPA), as well as efforts to address white supremacy in policing and to improve the federal government's response to hate crimes.

Federal Law Enforcement Has Criminal Statutes and Investigative Authorities to Combat Violence Fueled by White Supremacy. It Has Lacked the Will to Use Them.

The federal government has long had intelligence that demonstrated the threat of violent white nationalists. Indeed, the failure to act on this intelligence, and to instead misdirect federal law enforcement resources to unjustly target Black and Brown communities, has meant that innocent Black and Brown lives were lost while white nationalists were emboldened to commit more acts of hate violence. In September of last year, our coalition called on Congress to hold the Department of Homeland Security (DHS) accountable for their acting leadership's efforts to cover up intelligence detailing that white supremacists posed the greatest terror threat to our national security.¹ Independent academic institutions have also documented the rise in white supremacist threats to our country. Professor Brian Levin, the director of the Center for the Study of Hate and Extremism, testified before the House Committee on Homeland Security in September of 2019, and explained, "[w]hite supremacist/far right extremists are now, the most ascendant transnational terror threat facing the homeland, in a fluid and somewhat diversifying risk matrix."² The Federal Bureau of Investigation (FBI) elevated white supremacist activity to a "national threat priority," and FBI Director Christopher Wray testified before both the House and Senate on just how dangerous white supremacist organizations and the people who ascribe to their racist ideologies are to our national security.³

So why hasn't more been done to address this real and present danger to our country? The failure to confront and hold accountable white nationalist violence is not a question of not having appropriate tools to employ, but a failure to use those on hand. To date, the federal government has simply not prioritized white nationalist crimes. Congress should use its power to ensure that law enforcement appropriately

¹ The Leadership Conference on Civil and Human Rights, "Letter from Civil Rights Organizations Calling for Investigation and Hearings into DHS Coverup of White Supremacist Intelligence", (Sept. 24, 2020), <https://civilrights.org/resource/letter-from-civil-rights-organizations-calling-for-investigation-and-hearings-into-dhs-coverup-of-white-supremacist-intelligence/>; see also Betsy Woodruff Swan, "DHS draft document: White supremacists are greatest terror threat", Politico (Sept. 4, 2020), <https://www.politico.com/news/2020/09/04/white-supremacists-terror-threat-dhs-409236>.

² Center for the Study of Hate and Extremism, "Global Terrorism: Threats to the Homeland, Part I", (Sept. 10, 2019), https://www.csusb.edu/sites/default/files/GLOBAL%20TERRORISM-%20cong%20BL2%2091019_0.pdf.

³ Erin Donaghue, "Racially-motivated violent extremists elevated to 'national threat priority,' FBI director says", CBS News (Feb. 5, 2020), <https://www.cbsnews.com/news/racially-motivated-violent-extremism-isis-national-threat-priority-fbi-director-christopher-wray/>; see also Amy Sherman, *Fact-check: Did the FBI director warn about white supremacist violence?* Austin American Statesman (Oct. 9, 2020), <https://www.statesman.com/story/news/politics/elections/2020/10/09/fact-check-did-fbi-director-warn-about-white-supremacist-violence/114251512/>



focuses investigative and prosecutorial resources on white nationalist crimes. The Department of Justice (DOJ), including the FBI, has over 50 domestic terrorism-related statutes it can use to investigate and prosecute criminal conduct, including white supremacist violence, as well as dozens of other federal statutes relating to hate crimes, organized crime, conspiracy, and violent crimes.

These existing tools include a statute that criminalizes material support that aids in the commission of any one of 57 previously enacted terrorism-related offenses. As our colleagues at the Brennan Center for Justice have detailed, 51 of these statutes, or 89 percent, are applicable to both international and domestic terrorism. Each of these 51 laws can be independently used to prosecute cases of domestic terrorism, providing numerous options for prosecutors to address these threats.⁴

DOJ has dozens of federal criminal statutes to prosecute violent far-right extremists, including white nationalists. And while DOJ has not used these statutes as much as the threat would warrant, it has already used over a dozen of them in prosecuting multiple domestic terrorism cases, demonstrating that they are, indeed, applicable.⁵ With respect to organized groups of violent white nationalists, despite their effort to call themselves “militias,” they are, of course, nothing more than violent criminal gangs that can and should be prosecuted as corrupt criminal enterprises. These groups can be dismantled using statutes like the Racketeer Influenced and Corrupt Organizations (RICO) Act. Conspiracy statutes also provide prosecutors with the ability to charge individuals before they successfully complete a hate crime or domestic terrorist attack.⁶

Congress Must Not Create a New Charge that Would Harm the Same Communities Targeted by Violent White Nationalists

A new federal domestic terrorism charge or list would adversely impact civil rights. Support for such a charge not only fails to recognize the existing tools available to combat violent white nationalism, but it also ignores the experience of Black and Brown communities who have suffered as a result of similar charges, no matter how well intentioned. Our nation’s long and disturbing history of targeting Black activists, Muslims, Arabs, and movements for social and racial justice has demonstrated that this new authority could be used to expand racial profiling or be wielded to surveil and investigate communities of color and political opponents, all in the name of national security.

Members of Congress should not reinforce counterterrorism policies, programs, and frameworks that are rooted in bias, discrimination, and denial or diminution of fundamental rights like due process. Rather, as highlighted below, Congress should focus on oversight, appropriations, and limited legislation like the

⁴ Michael German and Sara Robinson, “Wrong Priorities on Fighting Terrorism”, Brennan Center for Justice. https://www.brennancenter.org/sites/default/files/2019-08/Report_Wrong_Priorities_Terrorism.pdf.

⁵ Michael German and Sara Robinson, “Wrong Priorities on Fighting Terrorism”, Brennan Center for Justice. https://www.brennancenter.org/sites/default/files/2019-08/Report_Wrong_Priorities_Terrorism.pdf.

⁶ Michael German and Sara Robinson, “Wrong Priorities on Fighting Terrorism”, Brennan Center for Justice. https://www.brennancenter.org/sites/default/files/2019-08/Report_Wrong_Priorities_Terrorism.pdf; see also Robert M. Chesney, “Beyond Conspiracy? Anticipatory Prosecution and the Challenge of Unaffiliated Terrorism”, 80 S. Cal. L. Rev. 425, 428, 448–49, 451 (2007).



DTPA that ensures the federal government redirect resources towards the ever-growing white nationalist violence plaguing our country and hold law enforcement accountable in doing so.

The systemic racism that infects the criminal legal system means that “domestic terrorism” approaches to addressing violence inevitably come back to harm communities of color. COINTELPRO, the FBI’s unlawful domestic surveillance operation that was used to try to discredit Dr. Martin Luther King, Jr., and other civil rights leaders in the 1960s, was also justified as a national security program. After 9/11, we saw a counterterrorism framework used to unjustly target and harm Arabs, Muslims, and South Asians. Rather than recognizing the critical role these communities have played in all aspects of making our country better, stronger, and more just, they were treated as suspects. The FBI and other agencies “mapped” Muslim communities, deployed informants throughout communities, and solicited intelligence through community engagement programs, each resulting in devastating discriminatory consequences.⁷ An increase in hate crimes against members of the same communities accompanied these programs.⁸

In addition, in 2017, when the federal government should have been redoubling its efforts to combat white nationalist violence after the Charlottesville tragedy, the FBI chose instead to target people demanding racial justice. The decision by the FBI’s Domestic Terrorism Unit to label African Americans as “Black Identity Extremists” diverted resources that could have been used to address the growing white nationalist threat.⁹ Instead, Black advocates who dared to speak out against injustice were targeted under yet another misdirected domestic terrorism tool.

Addressing White Nationalist Violence Means Dismantling White Supremacist Policies and Practices Across Institutions Inside and Outside the Criminal Legal System, including White Supremacy in Policing

We continue to demand accountability for the white supremacist insurrectionists who attacked our country on January 6, as well as for other violent white nationalists who have committed crimes that devastate our communities. But if we are to truly address white nationalist violence, we must reckon with systemic racism in areas like education, employment, the courts, housing and lending, health care, immigration, voting rights, and our criminal legal system. Our recommendations for legislative action to advance civil rights in each of these areas are therefore important steps in addressing white nationalist

⁷ Written Statement of Professor Shirin Sinnar, “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 (September 25, 2019), p. 149. <https://www.hsdl.org/?abstract&did=835354>.

⁸ Roy L. Austin, Jr. and Kristen Clarke, Creating a ‘domestic terrorism’ charge would actually hurt communities of color, The Washington Post (Aug. 26, 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-b31dfa77212_story.html; see also Kuang Keng Kuek Ser, *Data: Hate crimes against Muslims increased after 9/11*, The World (Sept. 12, 2016). <https://www.pri.org/stories/2016-09-12/data-hate-crimes-against-muslims-increased-after-911>.

⁹ David Dennis, “‘Black Identity Extremists’ and the Dark Side of the FBI”, The Marshall Project (Oct. 17, 2017). <https://www.themarshallproject.org/2017/10/17/black-identity-extremists-and-the-dark-side-of-the-fbi>.



violence.¹⁰ Our national security and the future of our democracy demands that we root out white supremacy across all the institutions and systems that impact our lives. We cannot truly grapple with the ongoing impact of slavery, which was central to our founding as a nation, without truth telling and reparations for the debt that is owed.

White Supremacy in Policing

White supremacy infects so many of our institutions, but its impact on policing is particularly devastating. Police officers, charged with the mandate of protecting and serving our communities, are vested with the extraordinary power to inflict state sanctioned violence. And far too often, this violence is unlawfully targeted at people of color, and particularly at Black people. The murders of Rayshard Brooks, George Floyd, and Breonna Taylor at the hands of police officers put the issue of police brutality in the spotlight during the summer of 2020.¹¹ The nationwide outcry that continues today is not a reaction to one isolated incident or the misconduct of a few individual officers, but to the deadly impact of systemic racism.¹² Last summer, we saw Black-led peaceful protests for racial justice being met with a militarized police response. And on January 6, we saw a complete failure to prepare and respond effectively to white supremacist violence. This disparity in police responses is stunning. Whether it was violent white nationalists who targeted and killed people protesting for racial justice, or militants storming state capitols and then the nation's Capitol on January 6, white supremacy has cost lives and harmed all of our communities.¹³ One data reporting project found that law enforcement was more than twice as likely to attempt to break up protests that were categorized as "left-leaning" (such as protests organized by the Black Lives Matter movement and the NAACP, or protests against former President Trump), – when compared to protests characterized as "right-leaning" (like pro-Trump protests, pro-police demonstrations, and events held by Q-Anon supporters and right-wing militias).¹⁴ They were also more

¹⁰ The Leadership Conference on Civil and Human Rights, "The Leadership Conference on Civil and Human Rights Transition Priorities", (Nov. 24, 2020), p. 4, <http://civilrightsdocs.info/pdf/policy/task-force-priorities/Transition-ShortToplinePriorities-TheLeadershipConference-November2020-FINAL.pdf>.

¹¹ There were also the killings of Dreasjon "Sean" Reed and Tony McDade, who join the all too long list of Black people who have died at the hands of police, including Michael Brown, Freddie Gray, Eric Garner, Alton Sterling, Philando Castile, Sandra Bland, Laquan McDonald, Tamir Rice, and too many more.

¹² The pain and demands for justice that we saw over the summer and that motivated so many to go to the polls during the 2020 election also reflected incidents of heavy-handed enforcement of low-level offenses and "broken windows" policing, and decades of inadequate reform efforts that undermine trust in law enforcement, especially in communities of color. Policies like "zero tolerance" laws, stop-and-frisk tactics, the use of military-style equipment and techniques, and the fueling of a school-to-prison pipeline for thousands of children through the deployment of police in schools. Black and Hispanic people are overrepresented in other enforcement activities, including pedestrian and vehicle stops. And all of these stops increase the chances that people will be seriously injured or killed when engaging with police. All of these policies reflect white supremacist structures in policing.

¹³ For example, shortly before Kyle Rittenhouse, a white man with connections to far-right militants, shot three people, killing two of them, at a protest for racial justice in Kenosha, Wisconsin, he appeared at the protests as part of a self-styled militia there to support law enforcement. In video from the hours before he shot and killed the protestors, law enforcement officers passed by, handing out water to armed white militants who were targeting Black protestors stating "We appreciate you guys. We really do." <https://www.npr.org/2020/08/27/906791713/oh-hell-no-why-the-police-doesnt-need-militias-help-at-riots>

¹⁴ Maggie Koerth, "The Police's Tepid Response to the Capital Breach Wasn't an Aberration", FiveThirtyEight (Jan. 7, 2021), <https://fivethirtyeight.com/features/the-polices-tepid-response-to-the-capitol-breach-wasnt-an->



likely to use force, even when 93 percent of the protests associated with Black Lives Matter were peaceful.

We know that hundreds of thousands of police officers report for duty every day, with a mission to keep us safe and protect us from harm. And we are grateful to the majority of these officers who carry out their mission with dignity and honor — especially to those who give their lives to the cause. But we also know that there are police officers in departments across the country who have been identified as members of white supremacist groups. These officers can take and destroy lives. With scandals in over 100 different police departments across 40 different states where officers sent overtly racist emails, texts, or made comments on social media, it is no wonder that communities are demanding action to address white supremacy in policing.¹⁵ And while we know that this is an issue that is playing out in departments across the country, the participation of current and former law enforcement and military officials in the insurrection has raised alarms. Out of 212 insurrectionists with federal or D.C. charges, 31 served in the military or law enforcement.¹⁶

White supremacy in policing makes us all less safe, including police officers. As we begin to learn more horrific details about the January 6 attack on the Capitol, we are also learning more about years of racist abuse that confronted Black Capitol police officers.¹⁷ And the failure to act on widely available intelligence about white nationalists' plans for violence meant that all people in the Capitol, including law enforcement officers, were at greater risk for serious physical harm. The most recent reports indicated that at least 138 officers from the Capitol Police and the Metropolitan Police Department were injured.

Federal Failures with Respect to Hate Crimes Data and Resources for Communities

White nationalist violence terrorizes communities in the form of hate incidents and hate crimes that target people across the country on a daily basis. When someone is targeted for hate violence on the basis of race, color, national origin, sex (including sexual orientation and gender identity), religion, or disability, the impact goes beyond that person; it devastates an entire community. The Hate Crimes Statistics Act recognized the importance of the federal government capturing accurate data on hate crimes in jurisdictions across the country.¹⁸ Data-driven policy enables law enforcement to effectively target resources, and is critical to enabling communities targeted for hate to access the support and resources that they need. But federal hate crimes data as reported by the FBI through the Uniform Crime Reporting

[aberration/](#); Lois Beckett, “US police three times more likely to use force against leftwing protestors, data finds”, The Guardian (Jan. 14, 2020), <https://www.theguardian.com/us-news/2021/jan/13/us-police-use-of-force-protests-black-lives-matter-far-right>.

¹⁵ Vida B. Johnson, “KKK in the PD: White Supremacists Police and What to do About It”, Lewis & Clark Law Review (Apr. 1, 2019), Vol 23:1, p. 205-261, <https://law.lclark.edu/live/files/28080-lcb231article2johnsonpdf>.

¹⁶ NPR Staff, “The Capital Siege: The Arrested and Their Stories”, NPR (Feb. 12, 2021).

<https://www.npr.org/2021/02/09/965472049/the-capitol-siege-the-arrested-and-their-stories#database>.

¹⁷ Joshua Kaplan and Joaquin Sapien, “‘No One Took Us Seriously’: Black Cops Warned About Racist Capitol Police Officers for Years”, ProPublica (Jan. 14, 2021), <https://www.propublica.org/article/no-one-took-us-seriously-black-cops-warned-about-racist-capitol-police-officers-for-years>.

¹⁸ FBI: Uniform Crime Reporting, *Hate Crime Statistics Act*, (2017). <https://ucr.fbi.gov/hate-crime/2017/resource-pages/hate-crime-statistics-act>.



(UCR) Program is so notoriously unreliable that it is actually undermining the work of law enforcement and community leaders trying to effectively combat hate.

For example, in 2019, the most recent year for which FBI hate crimes data is available, the FBI's UCR Program reported that 7,314 hate crime incidents occurred that year. The data available indicated that 2019 was the deadliest year for hate crimes since reporting began in 1991. And yet, we also know that this number grossly underestimates the actual number of hate crimes in the United States, as the FBI's report is based on voluntary local law enforcement reporting data to the FBI. In 2019, 86 percent of participating agencies did not report one single hate crime to the FBI, including at least 71 cities with populations over 100,000. Just 14 percent of the more than 15,000 participating agencies actively reported at least one hate crime. Meanwhile, the number of law enforcement agencies providing data declined for the second straight year.

Furthermore, in a 2017 Hate Crime Victimization Report published by the DOJ's Bureau of Justice Statistics (BJS), BJS statisticians reviewed data on hate crimes victimization from the DOJ's National Crimes Victimization Survey (NCVS). In that study, they estimated that U.S. residents actually experienced an average of 250,000 hate crime victimizations each year from 2004-2015.¹⁹ The same DOJ that reports around 7,000 hate crimes incidents each year also recognizes that the actual number is closer to 250,000. The Hate Crime Victimization Report estimated that 54 percent of hate crime victimizations were not reported to police.²⁰

When you know that hate crimes have targeted people in your community, and you learn that the police department, and in some cases an entire city or state, has reported to the federal government that no hate crime has occurred, it sends a very clear message about who is protected and who is respected. It can undermine hard-earned trust in communities. While we know that communities are continuing to see an increase in hate incidents and hate crimes, they are often turning to trusted non-governmental organizations to report hate crimes instead of law enforcement. For example, the racist targeting of Asian American and Pacific Islander (AAPI) communities as a result of white supremacist lies and rhetoric around COVID-19 has been documented in real time by organizations like Asian Americans Advancing Justice - AAJC and Stop AAPI Hate.²¹ We know communities fear reporting to law enforcement, and that even if law enforcement does respond to a hate crime, they may not identify a hate crime as a hate crime when investigating and prosecuting it.²²

¹⁹ Lynn Langton and Madeline Masucci, "Hate Crime Victimization, 2004-2005", Bureau of Justice Statistics, (June 29, 2017). <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5967>.

²⁰ Lynn Langton and Madeline Masucci, "Hate Crime Victimization, 2004-2005", Bureau of Justice Statistics, (June 29, 2017). <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5967>.

²¹ Asian Americans Advancing Justice, (2020-2021).

<https://www.standagainthatred.org/stories?offset=1595538420174>; see also Stop AAPI Hate. <https://stopaapihate.org/reportsreleases/>.

²² International Association of Chiefs of Police and Lawyers' Committee for Civil Rights Under Law, "Action Agenda for Community Organizations and Law Enforcement to Enhance the Response to Hate Crimes", (2019). <https://lawyerscommittee.org/wp-content/uploads/2019/04/IACP.pdf>.



Recommendations

Pass the Domestic Terrorism Prevention Act (DTPA) and use oversight and appropriations powers to demand that federal agencies make public how they have and are now using resources to fight white supremacist violence.

The DTPA will help ensure that federal law enforcement authorities use existing criminal legal tools to prioritize addressing white nationalist violence. The DTPA authorizes DOJ, DHS, and FBI offices that are responsible for monitoring threats to offer training and resources to assist state, local, and tribal law enforcement in understanding, investigating, prosecuting, and deterring acts of domestic terrorism. The legislation mandates that these agencies issue joint annual reports to the House and Senate Judiciary, Homeland Security, and Intelligence Committees in order to evaluate the domestic terrorism threat posed by white supremacists; examine domestic terrorism incidents that occurred in the previous year; and offer transparency through a public quantitative analysis of domestic terrorism-related assessments, investigations, incidents, arrests, indictments, prosecutions, convictions, and weapons recoveries. And through its inclusion of the Community Relations Service (CRS), the DTPA recognizes that communities targeted for hate must be at the center of policies and programs intended to address hate violence and to ensure that the people targeted have the resources and support that they identify and need.

Central to our support for the Domestic Terrorism Prevention Act is that it will not create a new domestic terrorism charge or sentence enhancement that would harm our communities. Instead, it implements common sense processes that will combat white supremacy while not falling into tropes of racial and religious groups who may become unintentional targets of proposed policy.

Combat White Supremacy in Policing: Hiring, Policies for Departments, and Accountability

Congress should identify ways to address white supremacy in law enforcement that has been documented by the FBI.²³ The Oversight Committee hearing last year highlighted this threat, which puts lives at risk and undermines the criminal legal system.²⁴ Congress must demand a full accounting for what is being done to address white supremacy in law enforcement, and to get data on the extent of the problem. The White Supremacy in Law Enforcement Information Act is a good first step to obtain some of this information. Congress must also identify ways to ensure that law enforcement officers who actively advocate for and incite violence against people on the basis of race, color, national origin, religion, sex (including sexual orientation and gender identity), and disability are not welcome in federal law enforcement. And federal law enforcement agencies must have clear policies to address and combat white supremacy in policing.

²³ FBI Counterterrorism Division, “White Supremacist Infiltration of Law Enforcement Intelligence Assessment”, (Oct. 17, 2006). https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White_Supremacist_Infiltration_of_Law_Enforcement.pdf.

²⁴ Office of Rep. Jamie Raskin, “Experts Warn Oversight Subcommittee that White Supremacist Infiltration of Law Enforcement Poses a Threat to Cops, Communities”, Sep. 29, 2020). <https://raskin.house.gov/media/press-releases/experts-warn-oversight-subcommittee-white-supremacist-infiltration-law>



Pass Legislation and Budgets to Enhance the Response to Hate Crimes and Improve Hate Crimes Reporting

The Jabara Heyer NO HATE Act is an important first step in enhancing a community-centered response to hate incidents and hate crimes in the United States. The Jabara Heyer Act is named after Khalid Jabara and Heather Heyer, both young people who were murdered in violent hate crimes. The people who killed Heather Heyer and Khalid Jabara were convicted of hate crimes, but their murders were not reported as hate crimes in the FBI's UCR hate crimes data. The Jabara Heyer Act would provide important incentives to improve reporting. Importantly, it also would create the opportunity for community-centered restorative practices in some cases.

But more must be done. Hate crimes data should be mandated and made publicly available so federal leaders, as well as those at the state and local level, can address the threat in a manner best suited to their community. Congress must ensure that the promised transition to the National Incident Based Reporting System (NIBRS) by 2021 is actually implemented. NIBRS is a critical tool for effectively understanding and addressing the rising number of hate crimes in the United States. NIBRS is a more effective data collection system than the current Summary Reporting System (SRS) within the Uniform Crime Report, and studies have concluded that the SRS leads to the underreporting of crimes like hate crimes.²⁵

Congress must also ensure that the DOJ's Civil Rights Division and the Community Relations Service have the resources and the support to work with state and local law enforcement and the FBI to open investigations and bring hate crimes cases under the five hate crimes statutes that they have at their disposal.²⁶

Reparations and Truth, Racial Healing, and Transformation: Pass H.R. 40 and the Truth, Racial Healing, and Transformation Resolution

In the more than 400 years since the first enslaved Africans arrived at Jamestown, Virginia, African people, their descendants, and other marginalized groups have borne the brunt of structural inequality, racism, and discrimination. Subjugation of African Americans was integral to establishing the United States as a world economic power, yet African Americans were continuously denied the right to participate in the economic growth of this country even after the official end of slavery. Policies like American chattel slavery, Black Codes, convict leasing, Jim Crow segregation, redlining, and racial discrimination have all contributed to intergenerational harm to African Americans that continues to

²⁵ The Leadership Conference on Civil and Human Rights, "Comments on the DOJ, FBI, Criminal Justice Information Services (CJIS) Division, Information Collection Request to OMB on the National Incident Based Reporting System", (Nov. 6, 2020). <https://civilrights.org/resource/comments-on-the-doj-fbi-criminal-justice-information-services-cjis-division-information-collection-request-to-the-office-of-management-and-budget-on-the-national-incident-based-reporting-system/>.

²⁶ Michael German and Sara Robinson, "Wrong Priorities on Fighting Terrorism", (2019), Brennan Center for Justice. https://www.brennancenter.org/sites/default/files/2019-08/Report_Wrong_Priorities_Terrorism.pdf; The United States Department of Justice, Hate Crimes at <https://www.justice.gov/hatecrimes>.



persist today.²⁷ The same structural racism that permeates our justice system and sanctions police brutality has also robbed many Black communities of the resources they need and deserve. If we are to address white nationalist violence, we must confront this history. Black communities deserve real justice: structural change to eradicate white supremacy, freedom from unjust and targeted policing, and the space and resources to grieve and heal. We must confront how we have under-resourced and under-invested in Black and Brown communities, leading to gross inequity and overcriminalization.

At long last, Congress must pass H.R. 40 – the Commission to Study and Develop Reparation Proposals for African Americans Act – which was re-introduced by Congresswoman Sheila Jackson Lee this session, as well as the resolution Congresswoman Barbara Lee introduced last session calling for the establishment of the first United States Commission on Truth, Racial Healing, and Transformation. We cannot truly address the white nationalist violence we are here to discuss today without these truthful reckonings and accountings for what is owed with respect to the ongoing legacy of racism and white supremacy in our country. Reparations are owed. Transformation is required. Generations of denied opportunity through systems and a culture of racial hierarchy cannot be permanently disrupted without a nationally coordinated, and community-driven truth, healing, and transformation effort.

And a U.S. Commission for Truth, Racial Healing, and Transformation would enable us to ensure that the reparations that must be a part of this country's transformation are part of a foundation for sustainable systemic change. Together, we must confront and reject the big lie — the hierarchy of human value — residing at the very core of our country's founding beliefs, and that continues to drive white nationalist violence and white supremacist policies and practices. Now is the time to create a shared vision for a country as good as its ideals that centers human dignity. A country where all are valued equally regardless of their race, ethnicity, religion, sex, disability, or socioeconomic status. In order to do this, we must reckon with the white supremacy that was present at our founding and continues to infect all of our institutions, policies, and practices.

²⁷ “The Descendants: From slavery to Jim Crow, a call for 21st century abolition”, Harvard Law Today, (Mar. 19, 2018). <https://today.law.harvard.edu/descendants-slavery-jim-crow-call-21st-century-abolition/>.

Ms. JACKSON LEE. Thank you. The gentleman's time has expired. Now, we recognized Mr. Malcolm W. Nance for five minutes of testimony.

Mr. Nance, you are recognized.

TESTIMONY OF MALCOLM W. NANCE

Mr. NANCE. Thank you, Madam Chair and all the Members of this Committee.

20-seven years ago, on April 19th, 1995, I was a U.S. Navy Cryptologic Intelligence Chief Petty Officer aboard a Los Angeles Class submarine carrying out operations in the eastern hemisphere. I was sitting in the radio communications space monitoring a report from our higher headquarters. One item dominated the unclassified significant events: "truck bomb explodes in Oklahoma City. Dozens killed."

As a specialist in Middle East terror groups, I was convinced that one of our adversaries had infiltrated the American homeland and perpetrated a major Act of violence. I was so sure, that I bet an entire month's salary. I quickly lost that bet.

The terrorist that conceptualized, built, and delivered the 4,500-pound ammonium nitrate and fuel oil bomb at the Alfred P. Murrah Federal Building was a decorated U.S. Army veteran named Timothy James McVeigh. He conspired with two others, including his platoon leader Terry Nichols, to exact revenge against the government for the deaths of the Branch Davidian religious extremists in Waco, Texas. However, there was a larger ideological belief at play.

McVeigh was a White supremacist who had self-radicalized. He came to believe that a race war was imminent in the United States. He used the 1978 fictional novel, "The Turner Diaries," as a blueprint to ignite a civil war which would lead to a White domination of North America.

"The Turner Diaries," written by American neo-Nazi, William Pierce, describes America as a dystopia where Black and Hispanic crime runs rampant, 800,000 whites are mass-arrested, and guns are confiscated. The fictional Earl Tuner is a member of the terrorist group called "The Order." In that book, a 5,000-pound truck bomb is detonated at the headquarters of the FBI in Washington, DC, as the "go sign" for a war to overthrow "the system."

"The system" which represented America was led by "The Jews," the news media, Hollywood, and liberal government politicians. The Order carries out reprisal lynchings on liberal whites they call "race traitors" in "the Day of the Rope." The book ends when the fictional hero dies in a kamikaze airplane bombing of the Pentagon. Then came real life: McVeigh copied the described bomb and just altered the target.

Another White supremacist, Robert Mathews, a close associate of Pierce, formed a terror group of the same name in the 1980s to carry out robberies, assassination, bombings, and fund a network of White supremacist terror groups' terror training camps in the rural U.S. Mathews would later be killed in a shootout with the FBI.

There is a long history of anti-government extremism in our nation. That mistrust is often based on myths, conspiracy theories,

paranoia laced with a healthy dose of rebellion nostalgia. Most domestic violent extremists seek to protect and defend rights, not as they are written in the Constitution, but as they wish they had been written. They live in an alternate information space which bends them out of objective reality.

Major violent extremist subclasses include the Ku Klux Klan and White heritage groups; neo-Nazi and fascist international groups; Christian identity movement groups; anti-tax extremists; anti-government militia groups; anti-abortion extremists; anti-immigrant macro-nationalists; clash of civilization groups; White ethnostate accelerationist groups; conspiracy theory-driven DVEs; and autocrat political cultist DVEs.

The 2008 election of President Barack Obama would be a watershed moment that would start the consolidation of the disparate wings of the domestic violent extremist movements. The 2016 election of President Donald Trump gave them a tribal chieftain they can all rally behind.

Most right-wing extremists have poorly formed cells with limited capacity or knowledge of terrorist operations. However, many veterans in the military could lend in-depth operational planning and improvised explosive skills to any group. These groups may be amateur but can demonstrate devastating capability if not detected in time.

The former president's 2020 defeat has led to a completely new wave of DVE organizations and preparedness that could potentially realize their most violent fever dream fantasies as patriotic resistance fighters straight from the movie "Red Dawn." If they do not understand there is a national rejection of their behaviors, then they may feel compunction to act on that potential. We could see future attacks that make Oklahoma City bombing pale in comparison.

Thank you. I look forward to answering your questions, even the silly ones.

[The statement of Mr. Nance follows:]

Written testimony of Malcolm W Nance, Terror Asymmetries Project on Strategy, Tactics and Radical Ideologies (TAPSTRI)

WRITTEN STATEMENT

Twenty seven years ago, on April 19, 1995 I was a US Navy Cryptologic Intelligence Chief Petty Officer aboard a Los Angeles Class submarine carrying out operations in the eastern hemisphere. I was sitting in the radio communications space monitoring a report from our higher headquarters. One item dominated the unclassified significant events: TRUCK BOMB EXPLODES IN OKLAHOMA CITY. DOZENS DEAD. As a specialist in Middle East terror groups, I was convinced that one of our adversaries had infiltrated the American homeland and perpetrated a major act of violence. I was so sure I bet a month's salary that it was a foreign terror group ... I quickly lost that bet.

The terrorist who conceptualized, built and delivered the 4,500lb Ammonium Nitrate and Fuel Oil (ANFO) bomb at the Alfred P. Murrah federal building was a decorated US Army veteran named Timothy James McVeigh. He conspired with two others, including his platoon leader Terry Nichols to exact revenge against the government for the deaths of the Branch Davidian religious extremists in Waco, Texas. However, there was a larger ideological belief at play.

McVeigh was a white supremacist who had self radicalized. He came to believe that a race war was imminent in the United States. He used the 1978 fictional novel, *The Turner Diaries* as a blueprint to ignite a racial war which would lead to a white dominated North America.

The Turner Diaries, written by American neo-Nazi William Pierce, describes America as a dystopia where black and Hispanic crime runs rampant, 800,000 whites are mass arrested and guns are confiscated. The fictional Earl Turner is a member of the terrorist group called "The Order." In that book a 5,000lb truck bomb is detonated at the FBI headquarters in Washington DC as the "go sign" for war to overthrow "the system." The system represents America led by "The Jews", the news media, Hollywood, and liberal

Written testimony of Malcolm W Nance, Terror Asymmetries Project on Strategy, Tactics and Radical Ideologies (TAPSTRI)

government politicians”. The Order carries out reprisal lynchings of liberal whites they call “race traitors” in “the Day of the Rope.” The book ends when the fictional “hero” dies in a kamikaze airplane bombing of the Pentagon. Then came real life. McVeigh copied the described bomb and altered the target.

Another white supremacist, Robert Mathews, a close associate of Pierce, formed a terror group of the same name in the 1980s to carry out robberies, assassination, bombings and fund a network of white supremacist terror training camps in the rural US. Mathews would later be killed in a shootout with the FBI.

There is a long history of anti government extremism in our nation. We tend to focus on large data points, like Oklahoma City and the Olympic Park bombing but there is an undercurrent of mistrust of government that has always existed. That mistrust is often based on myths, conspiracy theories, paranoia laced with a healthy dose of rebellion nostalgia. Most Domestic Violent Extremists (DVEs) seek to protect and defend rights not as they are written in the Constitution, but as they wish they had been written. They live in an alternate information space which bends them out of objective reality.

Major of DVEs subclasses include:

- Ku Klux Klan & White Heritage groups
- Neo-Nazi / Fascist Internationale Groups
- Christian Identity Movement groups
- Anti-Government / Anti-Tax extremists
- Anti-Government Militia Movement groups
- Anti-Abortionist extremists
- Anti-Immigrant Macro-Nationalists / Clash of Civilization groups

Written testimony of Malcolm W Nance, Terror Asymmetries Project on Strategy, Tactics and Radical Ideologies (TAPSTRI)

- White Ethnostate Accelerationist Groups
- Conspiracy Theory Driven DVE
- Autocratic Political Cultist DVE

The 2008 election of President Barack Obama would be a watershed moment that would start the consolidation of the disparate wings of DVE movements. But the 2016 election of President Donald Trump gave them a tribal chieftain they could all rally behind.

Most rightwing extremists have been poorly formed cells with limited capacity or knowledge of terrorist operations. However, many veterans of the military could lend in-depth operational planning and improvised explosive skills to any amateur group. These groups may be amateur but can demonstrate devastating capability if not detected in time.

The 2018 Charlottesville rally was another key point for the movement's subgroup. However, after a period of public shaming they consolidated into an almost immutable coalition under the banner of the pro-Trump campaign and rejection of the Black Lives Matter movement in the summer of 2020. As they are now unified under the banner of insurrection and loyalty to the former President there is little chance they will fracture anytime soon.

Trump's 2020 defeat has led to a completely new wave of DVE organization and preparedness that could potentially realize their most violent fever dream fantasies as patriotic resistance fighters straight from the movie 'Red Dawn.' If they do not understand there is a national rejection of their behaviors then they may feel compunction to act on that potential. We could see future attacks that could make the Oklahoma City bombing pale in comparison.

Ms. JACKSON LEE. The gentleman's time has expired.

Members, there are 185 Members who have not voted. I am going to try and get through at least one more witness because we can vote on at least two votes and, hopefully, the third vote, and we can come back and not have any further interruptions.

If there is a member that wants to leave for the floor now, please feel free.

I would like to continue now with Mr. Ngo for his five minutes.

Mr. Ngo, you are recognized for five minutes. Thank you very much.

TESTIMONY OF ANDY NGO

Mr. NGO. Thank you, Chair Jackson Lee, Ranking Member Biggs, and Members of the Committee.

Being a journalist from Portland, Oregon, I know domestic terrorism well. Since 2016, I have witnessed how violent extremists from antifa, and others have made political violence on the streets of my home city banal. Local politicians turn a blind eye to the violence because they believed the extremism was a justified response to the surprise election win of Donald Trump. Local fellow journalists did the same in downplaying antifa's violent extremism.

Today, I ask that you don't do the same.

From 2016–2019, Portland and the surrounding areas suffered dozens of violent protests, mass street brawls, and riots that resulted in serious bodily injuries, arson attacks, and property destruction. By 2020, antifa exploited the anger around the death of George Floyd and others to launch an unprecedented, attempted insurrection in Portland. For more than 120 recurring days, antifa carried out nightly riots targeting federal, county, and private property.

They developed a riot apparatus that included streams of funding for accommodation, travel, riot gear, and weapons, which resulted in a murder, hundreds of arson attacks, mass injuries, and mass property destruction.

To put that into context for those here today, similar actions that occurred at the Capitol Hill riot on the 6th of January 2021, were repeated every night, months on end in the Pacific Northwest. In Seattle, antifa and far-left extremists seized six blocks of city territory that they said was "autonomous." It resulted in six shootings and two murders over a period of three weeks.

In July 2020, then-DHS Deputy Secretary Ken Cuccinelli reported to Congress at a Senate hearing that at least 277 injuries had been inflicted on about 140 federal agents protecting the Mark O. Hatfield U.S. Courthouse in Portland. With my own eyes, I witnessed black-clad, masked militants setting fires to buildings occupied by people. The antifa came armed with homemade IEDs, guns, and knives.

They blinded their targets with powerful lasers before throwing projectiles like rocks, glass, and frozen water bottles. Some of them even brought electric power tools to cut apart the fencing that was set up to protect the courthouse. Andrew Faulkner, one of the few federal suspects indicted over rioting charges, allegedly possessed pipe bomb components and a machete at the time of his arrest.

The following month, a self-described antifa member hunted down a Trump supporter in downtown and shot him dead point blank before fleeing out of State and being killed by federal authorities the following week. He left behind a trail of posts on his social media indicating his desire for an armed conflict with the state, which he viewed as fascist.

I am encouraged today to see lawmakers discussing the important subject of domestic terrorism. I am concerned that our representatives are increasingly viewing this through a partisan lens. This puts all Americans at risk.

Those speaking before and after me can illuminate and educate us on far-right terrorism, a threat extremely well-tracked by government agencies, non-profits, and journalists. Much less understood is the terrorism threat from the far left, particularly antifa.

Far-left terrorism isn't new in the U.S. It has a long history in the second half of the 20th Century where groups like the Weather Underground, the Black Liberation Army, and the May 19 Communist Organization carried out bombings, robberies, and jailbreaks in the name of "anti-racism." antifa are continuing that legacy today and use the cloak of "anti-fascism" to shield themselves from criticism, and to fool well-meaning people into becoming allies.

In September 2020, FBI Director Chris Wray told lawmakers that antifa is real and that the FBI investigates the threat coming from violent anarchist extremists who identify with antifa. We should heed his warnings.

Domestic terrorism is not partisan. Both the far left and the far right seek to delegitimize and destabilize the republic.

Thank you. I look forward to your questions.

[The statement of Mr. Ngo follows:]

Committee on the Judiciary
The Subcommittee on Crime, Terrorism, and Homeland Security
"The Rise of Domestic Terrorism in America"
February 24, 2021
Andy Ngo testimony

Thank you, Chairwoman Jackson Lee, ranking member Biggs, and members of the Committee.

Being a journalist from Portland, Ore., I know domestic terrorism well. Since 2016, I've witnessed how violent extremists from Antifa and others have made political violence on the streets of my home city banal. Local politicians turned a blind eye to the violence because they believed the extremism was a justified response to the surprise election win of Donald Trump. Local fellow journalists did the same in downplaying Antifa's violent extremism.

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¹ "Submitted Written Testimony of Senior Official Performing the Duties of the Deputy Secretary Ken Cuccinelli before the U.S. Senate Committee on the Judiciary Subcommittee on the Constitution on August 4th."

² "Seven Arrested, Facing Federal Charges after Weekend Riots at Hatfield Federal Courthouse (photo)."

I'm encouraged today to see lawmakers discussing the important subject of domestic terrorism. But I'm concerned that our representatives are increasingly viewing this through a partisan lens. This puts all Americans at risk.

Those speaking before and after me can illuminate and educate us on far-right terrorism, a threat extremely well-tracked by government agencies, nonprofits and journalists. Much less understood is the terrorism threat from the far-left, particularly Antifa.

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In September 2020, FBI Director Chris Wray told lawmakers that Antifa is real and that the FBI investigates the threat coming from violent anarchist extremists who identify with Antifa. We should heed Wray's warnings.

Domestic terrorism is not partisan. Both the far-left and the far-right seek to delegitimize and destabilize the Republic.

Thank you and I look forward to your questions.

- “Seven Arrested, Facing Federal Charges after Weekend Riots at Hatfield Federal Courthouse (photo),” July 7, 2020. <https://www.justice.gov/usao-or/pr/seven-arrested-facing-federal-charges-after-weekend-riots-hatfield-federal-courthouse>.
- “Submitted Written Testimony of Senior Official Performing the Duties of the Deputy Secretary Ken Cuccinelli before the U.s. Senate Committee on the Judiciary Subcommittee on the Constitution on August 4th,” August 4, 2020. <https://www.dhs.gov/news/2020/08/04/submitted-written-testimony-senior-official-performing-duties-deputy-secretary-ken>.

Andy Ngo is a journalist best known for reporting on American antifa. He has written reports for the New York Post, Newsweek and others. He drew national attention when he was beaten by antifa on the streets of Portland in the summer of 2019. His book, "Unmasked: Inside Antifa's Radical Plan to Destroy Democracy," is a New York Times bestseller.

Ms. JACKSON LEE. Thank you, Mr. Ngo. Your time has expired. Thank you so very much.

Mr. Michael German, you are recognized for five minutes.

Members, there are still more than 143 Members waiting to vote that have not yet voted.

Mr. German, you are now recognized for five minutes.

TESTIMONY OF MICHAEL GERMAN

Mr. GERMAN. Thank you, Chair Jackson Lee, Ranking Member Biggs, Chair Nadler, and Ranking Member Jordan, and Members of the Subcommittee for inviting me to testify.

The failure to prepare for the January 6th attack on the Capitol is an indictment of the counterterrorism intelligence enterprise built since 9/11. The Justice Department prioritized international terrorism investigations, which in practice primarily target Muslims, over domestic terrorism investigations which do not.

International terrorism investigations often involve resource-intensive monitoring and infiltration of Muslim American communities to preemptively identify and selectively prosecute individuals who have never committed an Act of violence.

The Federal Government's domestic terrorism efforts, on the other hand, investigate and prosecute only a small percentage of the violent acts actually committed by White supremacists and other far-right militants, including violence committed at rallies all across the country over the last four years.

It is unknown how much this violence has risen because the government [**audio interference**] that White supremacists and far-right militants kill far more Americans, including law enforcement officers, than any other group that the FBI categorizes as domestic terrorists.

Fortunately, Congress has already provided federal law enforcement with all the tools needed to properly address White supremacist and far-right militant violence. I used these tools during domestic terrorism undercover operations as an FBI agent in the 1990s, seizing illegal weapons, solving bombings and hate crimes, and preventing acts of violence. They remain effective.

The Justice Department records indicate it prosecutes twice as many domestic terrorism cases as international terrorism cases, using just one-fifth the investigative resources. There is no lack of authority. There are 52 federal crimes of terrorism that apply to domestic acts, and dozens of civil rights, organized crime, violent crime, and conspiracy statutes that prosecutors regularly use in domestic terrorism cases.

The problem is that the Justice Department and the FBI choose not to prioritize the investigations and prosecution of White supremacists and far-right violence as a matter of policy and practice. They do not even collect accurate data regarding such attacks. Instead, the Justice Department and FBI use these terrorism authorities most aggressively against groups that rarely, if ever, commit fatal attacks.

Targeting individuals or groups engaged in civil disobedience or property crimes as terrorists wastes resources and diverts investigators' attention.

The Trump Administration's efforts to brand anti-fascism as a terrorist threat reportedly distracted the FBI from investigations into violence committed by White supremacists and far-right militants. Despite an aggressive push to investigate protestors as terrorists, federal prosecutors failed to link last year's protest arrests to antifa, according to reports.

Giving the Justice Department more power without increased authority will lead to further abuse. Congress needs accurate data about how the Justice Department and the FBI utilize their domestic resources, but they have thwarted efforts to obtain this data. The Justice Department redacts docket information when it discloses non-sensitive prosecutor data to the public, making it impossible to cross-check claimed statistical accomplishments against case records.

The Brennan Center is suing the Justice Department to obtain these docket numbers in terrorism prosecutions.

The FBI also thwarted congressional demands for data regarding its domestic terrorism program. In 2019, Congress passed the National Defense Authorization Act which required the FBI to produce data by June 2020 that would allow Congress to determine if the FBI was disproportionately investigating groups that committed fewer fatal attacks. The Bureau has not produced it.

The FBI also modified its domestic terrorism categories in a manner that could obscure how it uses its counterterrorism resources.

Finally, the FBI regularly warns its agents that White supremacists and far-right militants they investigate often have active links to law enforcement. So, it isn't surprising that several police officers were among those arrested for breaching the Capitol, and many more remain under investigation.

Oath Keeper Membership records reportedly included applicants claiming to be Immigration and Customs Enforcement officers, a Secret Service agent, and two FBI employees. Yet, the Justice Department has no national strategy to protect communities policed by these dangerously compromised law enforcers. The involvement of law enforcement and military in these groups makes them more dangerous.

Congress should require the Justice Department to do what it has refused to do thus far: Properly prioritize these investigations by producing a comprehensive national strategy to combat White supremacists and far-right militant violence and the infiltration of law enforcement. Failing to do so undermines the Rule of law and the nation's security.

Thank you. I look forward to your questions.

[The statement of Mr. German follows:]



Written Testimony of

Michael German
Fellow

Brennan Center for Justice
at New York University Law School

Hearing: The Rise of Domestic Terrorism in America

Before the United States House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security

Wednesday, February 24, 2021

Chair Jackson Lee, Ranking Member Biggs, and members of the Subcommittee, thank you for inviting me to testify regarding domestic terrorism in the United States. The deadly January 6, 2021 attack on the U.S. Capitol has raised attention to the persistent problem of white supremacist and far-right violence in this country. This attack, which left 5 people dead, including a U.S. Capitol police officer, was explicitly intended to prevent Congress from certifying the electoral college votes in the 2020 presidential election, and therefore clearly meets the statutory definition of domestic terrorism.¹ Two more U.S. Capitol police officers also lost their lives to suicide in the aftermath of the attack. We mourn these losses.

The failure of federal law enforcement to properly prepare for the attack on the Capitol is an indictment of the law enforcement intelligence enterprise that the Justice Department and Department of Homeland Security built since the al Qaeda attacks of September 11, 2001. The Justice Department prioritizes “international terrorism” investigations, which in practice primarily target Muslims, over “domestic terrorism” investigations, which do not. International terrorism investigations often involve aggressive monitoring and infiltration of Muslim, Arab, Middle Eastern, South Asian, and African American communities to pre-emptively identify and selectively prosecute “radicalized” individuals who might express opposition to U.S. foreign policies or support for groups the U.S. designates as foreign terrorist organizations, but have not previously attempted to commit violent acts. The federal government’s “domestic terrorism” efforts, on the other hand, investigate and prosecute only a small percentage of the violent acts actually committed by white supremacists and other far-right militants, including violence committed in public at rallies all across the country over the last four years. It is unknown how much this violence has risen compared to previous years, however, as no government entity has taken responsibility for documenting these attacks, or the fatalities that result, in an objective and comprehensive manner.

Congress Established a Robust Framework to Prosecute Domestic Terrorism

Fortunately, Congress has already done the work necessary to provide federal law enforcement with all the tools it needs to properly address white supremacist and far-right militant violence. I know because I worked successful domestic terrorism investigations as an FBI undercover agent in the 1990s, seizing illegal weapons,

solving bombings and hate crimes, and preventing future acts of violence. And these tools remain effective. Justice Department records over the last decade indicate it prosecutes twice as many domestic terrorism cases as international terrorism cases, using just one-fifth the investigative resources.² The problem is not a lack of authority. I documented the 52 federal crimes of terrorism that apply to domestic acts, and dozens of other civil rights, organized crime, violent crime, and conspiracy statutes that prosecutors regularly use in domestic terrorism cases for a 2018 Brennan Center report, “Wrong Priorities for Fighting Terrorism” (see attachment).³ The problem is that the Justice Department and FBI choose not to prioritize the investigation and prosecution of white supremacist and far-right violence as a matter of policy and practice. They do not even collect accurate data regarding such attacks.

Instead, the Justice Department and FBI use their domestic terrorism authorities most aggressively against groups that are far less violent and rarely, if ever, commit fatal attacks, such as environmentalists, animal rights activists, peace activists, anti-racism activists, and most recently, anti-fascists.⁴ The Justice Department’s failed attempt to prosecute more than 200 anti-Trump activists who were near where some windows were broken during the 2017 Disrupt J20 post-inauguration protests stands in sharp contrast to the relative handful of federal arrests arising from more than four years of far-right rioting across the country where counter-protesters, journalists, and police officers have been beaten, maced, stabbed, run over, shot, and killed.⁵ Recent reporting indicates that the Trump administration’s efforts to brand “antifa” as a terrorist threat distracted the FBI from investigations into violent attacks by white supremacists and far-right militants.⁶ Giving the Justice Department more power without increased accountability is a recipe for abuse. Unfortunately, the Justice Department and FBI have thwarted congressional and public efforts to obtain basic data regarding their use of domestic terrorism resources.

Congress Needs Accurate Data to Enact Sound Policies

Organized white supremacist violence has posed an enduring threat in the United States since its founding, but the Justice Department does not collect or publish data that measures the true nature or scope of this problem. Though white supremacist and far-right militant attacks represent just a tiny proportion of the violence that takes place in the U.S. each year, these crimes demand extra attention because they pose a persistent threat to vulnerable communities, particularly communities of color,

immigrants, LGBTQ people, women, the disabled, and religious minorities. White supremacists and far-right militants also kill law enforcement officers more often than other groups the FBI categorizes as domestic terrorists.⁷ Moreover, the organized nature of the groups that often commit this violence enables them to quickly replace any member who is arrested and incarcerated, and continue committing further acts of violence after any previous crime is successfully prosecuted.

Congress has repeatedly made clear its intent for the Justice Department to investigate and prosecute these crimes. In 1871, Congress passed what was arguably the first domestic terrorism law, the Ku Klux Klan Act.⁸ It later passed five federal hate crimes statutes to address the bias crimes that many white supremacists commit, and 52 terrorism laws that apply to domestic acts. It passed organized crime, violent crime, and conspiracy statutes that the Justice Department can and does use effectively at times, to prosecute violent white supremacist gangs. These statutes all impose substantial penalties for violations. Congress also funded 200 FBI Joint Terrorism Task Forces all across the country, which are designed to leverage state and local laws in the pursuit of terrorists, when federal prosecution, for whatever reason, is unwarranted. All the necessary tools already exist.

What the Justice Department has refused to do thus far, however, is to properly prioritize these investigations by producing a comprehensive national strategy to combat white supremacist and far-right militant violence, or even to collect accurate data about these attacks across all its programs.

Indeed, the multiple pathways Congress has provided to prosecute white supremacist and far-right militant violence inadvertently gave the Justice Department a way to obscure the true nature of the threat. If a white supremacist murders someone, the FBI could consider the crime an act of domestic terrorism, a hate crime, or simply a violent crime. If the FBI categorized it as domestic terrorism, the case would be treated as a top priority (though second in the counterterrorism program to international terrorism), and would be well-resourced and robustly investigated.

If the victim belonged to a protected class, the FBI could categorize the murder as a hate crime, a type of civil rights violation which is the bureau's fifth priority. FBI hate crime investigations typically have a narrow focus, seeking to identify evidence to prove the biased motive for the attack rather than to determine whether the

perpetrator was part of a continuing criminal enterprise. But the FBI probably wouldn't conduct an investigation because the Justice Department has a longstanding policy of deferring investigations of hate crimes to state and local law enforcement, even though some states don't have hate crime laws and many more rarely use them. Only a small percentage (14 percent in 2019) of police agencies acknowledge in federal crime reports that hate crimes occur in their jurisdiction.⁹ Crime victim surveys estimate there are approximately 230,000 violent hate crimes annually, but despite five federal hate crime statutes, the Justice Department prosecutes only about 25 defendants each year.¹⁰

A significant percentage of Justice Department prosecutions of violent white supremacists are not products of Joint Terrorism Task Force investigations or civil rights cases, but federal violent crimes task force investigations. These investigations are sometimes led by the Bureau of Alcohol, Tobacco, and Firearms or the Drug Enforcement Agency rather than the FBI. These cases receive surprisingly little attention, even though serious violent crimes are often alleged, including murders, and dozens of white supremacist gang members are arrested at a time in multi-agency raids. Twenty-four members of Aryan Circle were arrested in Texas in October, 2020, for instance, and 54 members of the New Aryan Empire were arrested in Arkansas in 2019, in just two examples.¹¹ The 2018 arrests of 40 members and associates of the United Aryan Brotherhood in Florida recovered 110 illegal firearms, including two pipe bombs and a rocket launcher.¹² These cases probably do not appear in Justice Department domestic terrorism statistics, but certainly, Congress needs this data to understand the full scope of white supremacist violence in the United States so it can establish effective policies to address it.

To be clear, these federal organized crime and violent crime prosecutions are effective tools the Justice Department can and should use to prosecute violent white supremacist and far-right militant groups. Indeed, this methodology could be effective in addressing violent crimes committed by organized groups like the Proud Boys, whose members have been arrested for acts of violence all across the country, including the attack on the U.S. Capitol. But the Justice Department needs to capture the data from these prosecutions, and the intelligence collected during these investigations, to develop a comprehensive national strategy to address this violence.

Without a national strategy, cases involving violent white supremacists and far-right militants will continue to fall through the cracks. Recent examples of far-right violence that appear to have met the statutory definition of domestic terrorism but resulted in no federal charges include the 2018 slaying of a gay Jewish man in California by a member of the violent neo-Nazi group Atomwaffen Division, the 2017 murder of a black man in New York City by a white supremacist intent on starting a race war, and the 2016 vehicular homicide of a black man in Oregon by a member of European Kindred, a white supremacist prison gang.¹³ State and local prosecutors charged these perpetrators with hate crimes and, in the New York City case, with violating a state terrorism statute. The crimes likely met the federal definition of domestic terrorism as well, as they were deadly and intended to intimidate a civilian population. These crimes did not go unpunished, however, so pursuing state charges may have been an appropriate choice in these cases. But, the Justice Department does not properly tally them as acts of domestic terrorism that need to be accounted for in a national strategy.

The failure to acknowledge the organized and interstate nature of violent far-right militant groups forfeits intelligence that could be used to prepare for and perhaps prevent future attacks. Several prominent members of the Proud Boys, for example, had been arrested by local police prior to the 2021 attack on the Capitol for engaging in violence at public events in Berkeley, California (2017), New York City (2018), Portland, Oregon (2018, 2019, and 2020); Seattle, Washington (2020); and Washington, D.C., (2020).¹⁴ It is hard to understand how federal law enforcement, including the FBI Joint Terrorism Task Forces and DHS-funded intelligence fusion centers, failed to account for these previous examples of Proud Boys' violence in preparation for the Stop the Steal rally.

Justice Department and FBI Intentionally Obscure Domestic Terrorism Data

I have to say these violent crime prosecutions *probably* do not appear in Justice Department domestic terrorism data because the Justice Department redacts the docket numbers when it discloses non-sensitive prosecutive data to the public, making it impossible to cross-check claimed statistical accomplishments against case records. The Brennan Center is currently suing the Justice Department under the Freedom of Information Act to obtain these docket numbers in terrorism prosecutions so the public can understand how the government uses its

counterterrorism authorities.¹⁵ Though the Justice Department acknowledges that it uses this data in congressional reporting, in litigation it argues the docket numbers need to remain secret because some of the defendants convicted in cases it reports as domestic terrorism prosecutions may not be terrorists. In contrast, the Department routinely releases data on cases that it considers to be international terrorism, even where the crimes charged bear no relation to terrorism.

The FBI has also thwarted congressional demands for data regarding its domestic terrorism program. In 2019, Congress passed the National Defense Authorization Act for Fiscal Year 2020, which included provisions requiring the FBI to produce data regarding how it uses its domestic terrorism resources.¹⁶ The bill required the FBI to publish data documenting the number of terrorist incidents and corresponding fatalities, and the number of investigations and prosecutions for each of the FBI's domestic terrorism categories by June 2020. This data would allow Congress to determine if the FBI was disproportionately investigating categories that produced fewer fatal attacks, but the bureau has yet to produce it. In fact, the FBI has taken actions that could further obscure whether its investigative resources are properly focused on the most violent groups.

Two years earlier, Sen. Durbin introduced the Domestic Terrorism Prevention Act of 2017, which sought data documenting the number of terrorist incidents and the number of investigations and prosecutions for each of the 11 domestic terrorism categories that the FBI maintained at the time. These included separate categories for white supremacists, anarchists, environmentalists, far-right militants, and Black Identity Extremists, and others.

Though the bill had not yet passed, Sen. Durbin requested an FBI briefing on the matter for members of the Senate Judiciary Committee. When the FBI finally provided this briefing in April of 2019, it revealed it had collapsed the white supremacist and Black Identity Extremist categories into a new Racially Motivated Violent Extremist category, and the far-right militia and the anarchist categories into a single anti-government and anti-authority violent extremist category. These groupings make little operational sense, as subjects of investigations into white supremacist violence would rarely overlap with subjects of an investigation into Black Identity Extremists, and likewise for militias and anarchists. What these reclassifications would appear to accomplish, however, as Sen. Durbin suggested in a letter to the Attorney General and

FBI director, is the obscuring data that could be used to compare the FBI resources devoted to white supremacists versus Black Identity Extremists, and to far-right militias versus anarchists, which is what his bill originally sought.¹⁷

The Justice Department has no Strategy to Address the Persistent Problem of Racism, White Supremacy, and Far-Right Militancy in Law Enforcement

For decades, the Federal Bureau of Investigation (FBI) has routinely warned its agents that the white supremacist and far-right militant groups it investigates often have active links to law enforcement, as documented in my 2020 report, “Hidden in Plain Sight.”¹⁸ Americans were shocked to learn that several police officers were among those arrested for breaching the Capitol, and many more remain under investigation.¹⁹ One of the alleged Oath Keepers arrested for criminal activity claimed in court filings to have previously been employed by the FBI, and a reporter given access to Oath Keeper membership records identified applicants claiming to be Immigration and Customs Enforcement officers, one person claiming to be a Secret Service agent and two claiming to be FBI employees.²⁰ Yet the Justice Department (DOJ) has no national strategy designed to protect the communities policed by these dangerously compromised law enforcers.

As our nation grapples with how to tackle white supremacist and far-right violence, it is past time for the Justice Department to confront and resolve the persistent problem of explicit racism in law enforcement. We cannot further empower law enforcement with new authorities if it is unwilling to police racist misconduct in the ranks.

Recommendations for A New Approach to Address White Supremacist and Far-Right Violence:

1. Reject Calls to Create a New Domestic Terrorism Crime

Congress and other stakeholders should categorically reject calls for a new federal statute that gives federal law enforcement greater authorities or resources to investigate and prosecute domestic terrorism. As detailed above, such legislation is unnecessary and would likely intensify existing discriminatory impacts of domestic

terrorism investigations and prosecutions that are targeted at groups protesting government policies rather than terrorists.

2. Strengthen Congressional Oversight of Counterterrorism Resources

Domestic terrorism and hate crime data is rife with error, often arbitrary, and based on vague and conflicting categorization schemes. Congress should require the Justice Department to revamp its data collection policies and practices to ensure that it captures the true nature and scope of white supremacist and far-right violence across all programs.²¹

3. Require the Justice Department to Produce a National Strategy to Fight White Supremacist and Far-Right Violence

The Justice Department needs a comprehensive national strategy to properly prioritize and sufficiently resource investigations and prosecutions of white supremacist and far-right violence, and document the true impact it has on American society. Congress should require the FBI and Justice Department to allocate domestic terrorism resources based on an objective assessment of the threat to human life posed by particular groups, with fewer resources devoted to groups that engage in property crimes rather than violence targeting people. The FBI should treat all cases where white supremacist and far-right militants engaged in deadly violence among its top investigative priorities, whether currently classified as domestic terrorism, hate crimes, or violent crimes, rather than deferring these investigations and prosecutions to state and local law enforcement.

4. Reform Police Intelligence Practices to Restore Community Trust

Minority communities are disproportionately victims of many different kinds of violence, including at the hands of law enforcement, and are often denied equal protection when they seek justice. A comprehensive strategy to protect these communities from white supremacist terrorism and hate crimes must include measures to address these disparities and to reform police practices. The Justice Department has an important role in holding law enforcement officials accountable for civil rights violations, but these cases are rarely prosecuted. Recent allegations of police cooperation with or assistance to far-right groups involved in violent protests

should be fully investigated.²² Congress should also investigate what role the FBI played in providing or failing to provide intelligence to state and local police agencies regarding the attack on the Capitol as well as the series of violent far-right riots that took place across the country beginning in 2016.

5. Develop a Restorative Justice Approach to Hate Crimes

White supremacist violence and hate crimes victimize entire communities. Taking action to address these communal injuries and promote a tolerant and inclusive society are essential elements of a strategy to counter far-right violence. A restorative approach to justice focuses on accountability for healing the harm done to victims and impacted communities as a result of criminal acts. It involves victims, offenders, and the community in search for solutions that promote repair, reconciliation, and reassurance.²³ There are many different restorative justice approaches, from victim-offender mediations, to family and community counseling, to truth and reconciliation commissions. Congress should study restorative justice approaches and develop a plan to fund and implement these methods when acts of far-right terrorism and hate crimes occur.

6. Require the Justice Department to Produce a National Strategy to Address Racism, White Supremacy, and Far-Right Militancy in Law Enforcement

The Justice Department has acknowledged that law enforcement involvement in white supremacist and far-right militia organizations poses an ongoing threat, but it has not produced a national strategy to address it. Not only has the department failed to prosecute police officers involved in patently racist violence, it has only recently begun collecting national data regarding use of force by law enforcement officials.

Congress should direct the Justice Department to:

- Immediately establish a working group to examine law enforcement associations with white supremacist and other far-right militant groups to assess the scope and nature of the problem in a report to Congress.
- Develop an evidence-based national strategy designed to protect the security and civil liberties of communities policed by law enforcement officers who are active in

white supremacist or far-right militant organizations. A national strategy will ensure U.S. attorneys and FBI offices across the country properly prioritize these investigations and harmonize their tactics to guarantee equal justice for all. The national strategy should include data and metrics to evaluate the effectiveness of the methodologies it employs.

- Require the FBI to survey its domestic terrorism investigations involving white supremacists and other overtly racist or fascist militant groups to document and report to the DOJ all indications of active links between these groups and law enforcement officials.

- Require the FBI to determine whether any law enforcement officials it investigates for civil rights violations or other criminal matters have connections to violent white supremacist organizations or other far-right militant groups, have a record of discriminatory behavior, or have a history of posting explicitly racist commentary in public or on social media platforms. This information should be provided to FBI agents assigned to domestic terrorism matters for investigative and intelligence purposes, and to federal, state, and local prosecutors to consider their inclusion on Brady lists.

- Require the FBI to report any federal, state, or local official assigned to a federal task force who is discovered during initial screenings or periodic background investigations to have active links to any white supremacist or other militant groups, to have engaged in racist behavior, or to have posted overtly racist commentary to on social media to the DOJ and to their departments. Where appropriate based on available evidence, the Justice Department should bar these officials from further participation with federal task forces and report the information to appropriate departmental heads and state and local prosecutors for potential inclusion on Brady lists.

- Analyze the data collected by the FBI in its law enforcement use of force database to evaluate each use of force complaint for indications that racial, ethnic, or political bias motivated the violence.

- Establish a formal mitigation plan to implement when evidence indicates that an identified law enforcement officer poses a public security threat or a risk of harm to

any protected class or community. Such a plan could include federal, state, or local investigations and prosecutions; civil rights lawsuits and consent decrees; reporting information identifying the officer to other federal, state, or local authorities for appropriate employment action; and placement of identified officers on Brady lists maintained by federal, state, and local prosecutors to ensure that defendants in criminal cases and plaintiffs in civil actions against these officers have appropriate impeachment evidence available.

- Congress should pass the Ending Racial and Religious Profiling Act of 2019 to ban all federal, state, and local law enforcement agencies from profiling based on actual or perceived race, ethnicity, religion, national origin, gender, gender identity, or sexual orientation. Banning racial profiling would mark a significant step toward mitigating the potential harm caused by racist officers undetected within the ranks.

- Strengthen whistleblower protections for federal law enforcement agents.

- The Domestic Terrorism Prevention Act of 2021 (H.R. 350) includes a provision that requires the FBI to assess the threat posed by white supremacist and neo-Nazi infiltration of law enforcement and the military. This assessment should be informed by data collected from FBI investigations and surveys of federal, state, and local law enforcement agencies, and from data collected for the law enforcement use of force database.

Conclusion

The Justice Department's failure to properly prioritize the investigation and prosecution of white supremacist and far-right terrorism, hate violence, and organized crime undermines the rule of law and threatens social cohesion, which ultimately undermines the nation's security. Rethinking this problem requires that Congress increase its oversight to reorient the Justice Department's policies and practices to protect all Americans from all forms of violence.

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

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

² See TRAC Reports, *FY 2019 Domestic Terrorism Prosecutions Twice Number as International Terrorism*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, Aug. 29, 2019, <https://trac.syr.edu/tracreports/crim/572/>; FBI Assistant Director for Counterterrorism Michael McGarrity testified that 80 percent of counterterrorism resources are devoted to international terrorism, and 20 percent to domestic terrorism. See, *Confronting the Rise of Domestic Terrorism in the Homeland—Hearing before the Committee on Homeland Security, House of Representatives*, 116th Cong. 36 (2019), <https://www.congress.gov/116/chrg/CHRG-116hhrg37474/CHRG-116hhrg37474.pdf>. It is important to note that Justice Department data produced by the Executive Office of the United States Attorneys has been repeatedly criticized as unreliable by the Government Accountability Office and the Justice Department Inspector General. See, U.S. GEN. ACCOUNTING OFFICE, *BETTER MANAGEMENT OVERSIGHT AND INTERNAL CONTROLS NEEDED TO ENSURE ACCURACY OF TERRORISM-RELATED STATISTICS* (Jan. 2003), <https://www.gao.gov/new.items/d03266.pdf>; OFFICE OF THE INSPECTOR GENERAL, U.S. DEPT OF JUSTICE, *FOLLOW-UP AUDIT OF THE DEPARTMENT OF JUSTICE'S INTERNAL CONTROLS OF TERRORISM-RELATED STATISTICS*; THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS (Sept. 2013), <https://oig.justice.gov/reports/2013/a1334.pdf>.

³ MICHAEL GERMAN & SARA ROBINSON, BRENNAN CTR. FOR JUST., *WRONG PRIORITIES ON FIGHTING TERRORISM* (Oct. 2018), available at https://www.brennancenter.org/sites/default/files/publications/2018_10_DomesticTerrorism_V2%20%281%29.pdf [hereinafter “WRONG PRIORITIES ON TERROR”].

⁴ See Jack Cloherty and Jason Ryan, *FBI Spied on PETA, Greenpeace, Anti-war Protesters*, ABC NEWS, Sep. 20, 2010, <https://abcnews.go.com/News/Blotter/fbi-spied-peta-greenpeace-anti-war-activists/story?id=11682844>; George Joseph & Murtaza Hussain, *FBI Tracked an Activist Involved With Black Lives Matter as They Travelled Across the U.S.*, *Documents Show*, INTERCEPT, Mar. 29, 2018, <https://theintercept.com/2018/03/19/black-lives-matter-fbi-surveillance/>; Will Parrish & Sam Lavin, *Treating Protest as Terrorism: US Plans Crackdown on Keystone XL Activists*, GUARDIAN, Sep. 20, 2018, <https://www.theguardian.com/environment/2018/sep/20/keystone-pipeline-protest-activism-crackdown-standing-rock>; Adam Goldman, Katie Benner, and Zolan Kanno-Youngs, *How Trump's Focus on Antifa Distracted Attention from the Far-Right Threat*, NY TIMES, Jan. 30, 2021, <https://www.nytimes.com/2021/01/30/us/politics/trump-right-wing-domestic-terrorism.html>.

⁵ See, e.g., Mike Carter & Steve Miletich, *Couple Charged With Assault in Shooting, Melee During UW Speech by Milo Yiannopoulos*, SEATTLE TIMES, Apr. 24, 2017, <https://www.seattletimes.com/seattle-news/crime/couple-charged-with-assault-in-shooting-melee-during-uw-speech-by-milo-yiannopoulos/>; David Kelsen, *7 Charged in Anaheim KKK Melee—But Stabby Klanner Not One of Them*, O.C. WKLY, Jul. 1, 2016, <https://ocweekly.com/7-charged-in-anaheim-kkk-melee-but-stabby-klanner-not-one-of-them-7305812/>; Sam Levin, *Stabbed at a Neo-Nazi Rally, Called a Criminal: How Police Targeted a Black Activist*, GUARDIAN, May 25, 2018, <https://www.theguardian.com/world/2018/may/25/neo-nazi-rally-california-stabbing-police-target-black-activist>; Frank John Tristan, *Huntington Beach Pro-Trump March Turns Into Attack on Anti-Trump Protesters*, O.C. WKLY, Mar. 26, 2017, <https://www.ocweekly.com/huntington-beach-pro-trump-march-turns-into-attack-on-anti-trump-protesters-press-7991623/>; James Queally, *Ku Klux Klan Rally in Anaheim Erupts in Violence; 3 Are Stabbed and 13 Arrested*, L.A. TIMES, Feb. 29, 2016, <http://www.latimes.com/local/lanow/la-me-ln-klan-rally-in-anaheim-erupts-in-violence-one-man-stabbed-20160227-story.html>; Frances Robles, *As White Nationalist in Charlottesville Fired, Police ‘Never Moved’*, N.Y. TIMES, Aug. 25, 2017, <https://www.nytimes.com/2017/08/25/us/charlottesville-protest-police.html>. See also Keith L. Alexander, *Federal Prosecutors Abruptly Dismiss All 39 Remaining Inauguration Day Rioting Cases*, WASH. POST, July 7, 2018, https://www.washingtonpost.com/local/public-safety/federal-prosecutors-abruptly-dismiss-all-remaining-inauguration-day-rioting-cases/2018/07/06/d7055ffe-7ee8-11e8-bb6b-clcb691ff402_story.html?utm_term=.20c01a92836b; Emily Shugerman, *J20 Protests: All You Need to Know About the Nearly 200 People Facing 60 Years in Jail for Protesting Trump*, INDEPENDENT, Nov. 16, 2017, <https://www.independent.co.uk/news/world/americas/j20-trump-protests-trials-jail-threat-inauguration-demonstrations-explained-a8057521.html>; Hannah Allam, *Vehicle Attacks Rise as Extremists Target Protesters*, NPR, Jun. 1, 2020, <https://www.npr.org/2020/06/21/880963592/vehicle-attacks-rise-as-extremists-target-protesters>; Azmi Haroun, *Anti-Lockdown Protesters Storm Oregon State Capitol Building, Clashing With Police Officers*, BUSINESS INSIDER, Dec. 22, 2020, <https://www.msn.com/en-us/news/us/anti-lockdown-protesters-storm-oregon-state-capitol-building-clashing-with-police-officers/ar-BB1c7TgB>.

⁶ Adam Goldman, Katie Benner, and Zolan Kanno-Youngs, *How Trump's Focus on Antifa Distracted Attention from the Far-Right Threat*, NY TIMES, Jan. 30, 2021, <https://www.nytimes.com/2021/01/30/us/politics/trump-right-wing-domestic-terrorism.html>.

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⁸ 42 U.S. Code § 1985.

⁹ In 2019, 15,588 law enforcement agencies participated in UCR hate crime reporting, out of approximately 18,000 law enforcement agencies nationwide. The vast majority of those participating reported zero hate crimes (86.1%). See *Hate Crimes by Jurisdiction, 2019*, FBI: UCR, <https://ucr.fbi.gov/hate-crime/2019/topic-pages/jurisdiction> (last visited Feb. 18, 2021).

¹⁰ LYNN LANGTON, PH.D. & MADELINE MASUCCI, U.S. DEP'T OF JUST., SPECIAL REPORT: HATE CRIME VICTIMIZATION, 2004–2015 2 (June 2017), available at <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>; Press Release, U.S. Dep't of Just., Justice Department Releases Update on Hate Crimes Prosecutions and Announces Launch of New Hate Crimes Website (Oct. 29, 2018), available at <https://www.justice.gov/opa/pr/justice-department-releases-update-hate-crimes-prosecutions-and-announces-launch-new-hate>.

¹¹ Juan A. Lozano, *24 Indicted in Probe of White Supremacist Prison Gang*, ASSOCIATED PRESS, Oct. 15, 2020, <https://abcnews.go.com/US/wireStory/24-indicted-probe-white-supremacist-prison-gang-73636966>; Will Sommer, *Drug Dealing White Supremacist Gang Ordered Hits on Suspected Informants: Feds*, DAILY BEAST, Feb. 12, 2019, <https://www.thedailybeast.com/drug-dealing-arkansas-white-supremacist-gang-ordered-hits-on-suspected-informants-feds>.

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¹⁵ U.S. District Court for the District of Columbia (D.D.C.): 1:18-cv-01860-RDM BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY LAW SCHOOL et al v. UNITED STATES DEPARTMENT OF JUSTICE.

¹⁶ Pub. L. 116-92 (2019).

¹⁷ SEN. RICHARD J. DURBIN, ET AL., LETTER TO ATTORNEY GENERAL WILLIAM P. BARR AND FBI DIRECTOR CHRISTOPHER WRAY, May 2, 2019, <https://www.durbin.senate.gov/imo/media/doc/Letter%20to%20AG%20Barr%20and%20Director%20Wray%20on%20violent%20white%20supremacist%20threat.%205-2-19.pdf>.

¹⁸ MICHAEL GERMAN, BRENNAN CTR. FOR JUST., HIDDEN IN PLAIN SIGHT: RACISM, WHITE SUPREMACY, AND FAR-RIGHT MILITANCY IN LAW ENFORCEMENT (Aug. 2020), available at: <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>.

¹⁹ See, Jonathan Ben-Menachem, *Cops at the Capitol*, THE APPEAL, Jan. 13, 2021 (updated Jan. 25, 2021), <https://theappeal.org/the-cops-at-the-capitol/>; Lindsay Watts, *6 Capitol Police Officers Suspended, 35 Under Investigation After Capitol Riot, Spokesperson Says*, FOX 5 DC, Feb. 18, 2021, <https://www.fox5dc.com/news/6-capitol-police-officers-suspended-35-under-investigation-after-capitol-riot-spokesperson-says>.

²⁰ See, Katie Shepherd, *The Feds Say He is an Extremist Leader Who Directed Rioters. He Also Had Top Secret Clearance and Worked for the FBI, His Lawyer Says*, WASHINGTON POST, Feb. 9, 2021, <https://www.washingtonpost.com/nation/2021/02/09/capitol-riot-oath-keeper-fbi/>; Mike Giglio, *A Pro-Trump Militant Group has Recruited Thousands of Police, Soldiers, and Veterans*, THE ATLANTIC, Nov. 2020, <https://www.theatlantic.com/magazine/archive/2020/11/right-wing-militias-civil-war/616473/>.

²¹ A 2017 Congressional Research Service report outlined why a “regular public accounting” on domestic terrorism is needed. It explained that such reporting would allow policymakers to compare domestic terrorist threats, measure them against threats posed by foreign terrorist groups, help them “assess the effectiveness of the government’s response,” and inform Congress’s “allocation of resources to specific federal counterterrorism efforts.” JEROME P. BIELOPERA, CONGRESSIONAL RESEARCH SERVICE, DOMESTIC TERRORISM: AN OVERVIEW, 59, (2017), available at <https://fas.org/sgp/crs/terror/R44921.pdf>.

²² See Sam Levin, *How a California Officer Protected Neo-Nazis and Targeted Their Victims*, GUARDIAN, Jan. 25, 2019, <https://www.theguardian.com/us-news/2019/jan/25/california-police-neo-nazis-antifa-protest>; Sam Levin, *Anti-fascists Were Stabbed at a Neo-Nazi Rally. Then Police Tried to Charge Them*, GUARDIAN, (Dec. 5, 2018), <https://www.theguardian.com/us-news/2018/dec/05/antifa-charges-california-activists-stabbing>; Katie Shepherd, *Texts Between Portland Police and Patriot Prayer Ringleader Joey Gibson Show Warm Exchange*, WILLAMETTE WEEKLY, (Feb. 14, 2019), <https://www.wweek.com/news/courts/2019/02/14/texts-between-portland-police-and-patriot-prayer-ringleader-joey-gibson-show-warm-exchange/>; Thy Vo, *Contrary to Chief’s Claim, Anaheim Police May Have Known When Controversial Klan Rally Would Begin*, VOICE OF OC, (Apr. 18, 2017), <https://voiceofoc.org/2017/04/contrary-to-chiefs-claim-anaheim-police-may-have-known-when-controversial-klan-rally-would-begin/>.

²³ HOWARD ZEHR, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE 181 (1990).

The Justice Department has ample authority to proactively prevent acts of domestic terrorism committed by far-right groups and others through criminal investigation and prosecution. It simply chooses not to prioritize these cases as a matter of policy and practice, as described fully in two recent Brennan Center for Justice reports, *Wrong Priorities on Fighting Terrorism* and *Fighting Far-Right Violence and Hate Crimes*.¹

Statute 18 U.S.C. § 2339A criminalizes material support that facilitates the commission of any one of 57 previously enacted terrorism-related offenses, which are explicitly listed in the statute.² A review of these 57 federal crimes of terrorism reveals that 51 of them, or 89 percent, are applicable to both international and domestic terrorism. Each of these 51 offenses can be independently used to prosecute cases of domestic terrorism, providing numerous options for prosecutors to address these threats.

FIGURE 1: Predicate Offenses Listed in 18 U.S.C. § 2339A that Can Apply in Cases of Domestic Terrorism

No.	Predicate Offense Listed in 18 U.S.C. § 2339A, as Codified in the U.S. Code	Summary of Offense
1	18 U.S.C. § 32	Destruction of aircraft or aircraft facilities
2	18 U.S.C. § 37	Violence at international airports
3	18 U.S.C. § 81	Arson within special maritime and territorial jurisdiction
4	18 U.S.C. § 175	Prohibitions with respect to biological weapons
5	18 U.S.C. § 175b	Possession of a biological agent or toxin by restricted persons, including those with criminal background or mental incompetency
6	18 U.S.C. § 175c	Knowing production or transfer of the variola virus
7	18 U.S.C. § 229	Prohibitions on the development, acquiring, or transfer of any chemical weapon
8	18 U.S.C. § 351	Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault
9	18 U.S.C. § 831	Prohibited transactions involving nuclear materials
10	18 U.S.C. § 832	Participation in nuclear and weapons of mass destruction threats to the U.S.
11	18 U.S.C. § 842(m)	Import or export any plastic explosive without a detection agent
12	18 U.S.C. § 842(n)	Ship, transport, receive, possess any plastic explosive without a detection agent
13	18 U.S.C. § 844(f)	Maliciously damage, destroy by means of fire or explosive any building or other real or personal property of the U.S.
14	18 U.S.C. § 844(i)	Maliciously damage, destroy by means of fire or explosive any building or other real or personal property used in interstate or foreign commerce
15	18 U.S.C. § 930(c)	Killing any person with a firearm or other dangerous weapon in federal facilities
16	18 U.S.C. § 1030(a)(1)	Knowingly access a computer and obtain restricted information with reason to believe that it could be used to injure the U.S. or advantage a foreign nation
17	18 U.S.C. § 1030(a)(5)(A) with damage as listed in 1030(c)(4)(A)(i)(I)–(VI)	Knowingly transmit program or code that intentionally causes damage to a protected computer, where damage either causes physical injury, modification or impairment of medical treatment, threat to public health or safety or damage affects computer used in furtherance of justice, national defense, or national security
18	18 U.S.C. § 1091	Genocide, whether in time of peace or war with specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group
19	18 U.S.C. § 1114	Killing or attempting to kill any officer or employee of the U.S.
20	18 U.S.C. § 1116	Murder or manslaughter of foreign officials, official guests, or internationally protected persons
21	18 U.S.C. § 1203	Hostage taking
22	18 U.S.C. § 1361	Willful injury or depredation against any property of the U.S.
23	18 U.S.C. § 1362	Willful or malicious destruction of any of the works, property, or material of any communication line, station, or system

FIGURE 1: (CONTINUED)

24	18 U.S.C. § 1363	Willful and malicious destruction or injury of property within special maritime or territorial jurisdiction of U.S.
25	18 U.S.C. § 1366	Destruction of an energy facility
26	18 U.S.C. § 1751	Presidential and Presidential staff assassination, kidnapping, and assault
27	18 U.S.C. § 1992	Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air
28	18 U.S.C. § 2155	Destruction of national-defense materials, premises, or utilities
29	18 U.S.C. § 2156	Production of defective national-defense material, premises, or utilities
30	18 U.S.C. § 2280	Violence against maritime navigation
31	18 U.S.C. § 2280a	Violence against maritime navigation and maritime transport involving weapons of mass destruction
32	18 U.S.C. § 2281	Violence against maritime fixed platforms
33	18 U.S.C. § 2281a	Use of explosive or radioactive material or noxious substance against or on fixed platform when purpose is to intimidate a population or compel government or organization to do or abstain from an act
34	18 U.S.C. § 2332a	Use of weapons of mass destruction within the U.S.
35	18 U.S.C. § 2332b	Acts of terrorism transcending national boundaries
36	18 U.S.C. § 2332f	Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities
37	18 U.S.C. § 2332g	Missile systems designed to destroy aircraft
38	18 U.S.C. § 2332h	Radiological dispersal devices
39	18 U.S.C. § 2332i	Acts of nuclear terrorism
40	18 U.S.C. § 2339	Harboring or concealing terrorists, with respect to certain statutes
41	18 U.S.C. § 2339C	Unlawfully or willingly provide or collect funds with intention that they be used to carry out an act intended to cause death or substantial bodily injury to a civilian, when purpose is to intimidate a population or compel a government or international organization to do or abstain from an act
42	42 U.S.C. § 2122	Prohibitions governing atomic weapons
43	42 U.S.C. § 2283	Protection of nuclear inspectors
44	42 U.S.C. § 2284	Sabotage of nuclear facilities or fuel
45	49 U.S.C. § 46502	Aircraft piracy
46	49 U.S.C. § 46504	Assault of a flight crew member or attendant with a dangerous weapon
47	49 U.S.C. § 46505(b)(3)	Placing or attempting to place an explosive or incendiary device on an aircraft
48	49 U.S.C. § 46505(c)	Using dangerous weapon during flight, placing or attempting to place dangerous weapon, loaded firearm, or explosive or incendiary device during flight, with willful or reckless disregard for safety of human life
49	49 U.S.C. § 46506	Application of certain criminal laws to acts on aircraft if homicide or attempted homicide is involved
50	49 U.S.C. § 60123	Knowing and willful violation of a) marking requirements of pipeline facilities in the vicinity of demolition, excavation, tunneling, or construction, b) safety standards, inspection, or maintenance requirements, allowing access to records, conduct risk analysis and integrity management, c) unauthorized disposal within right-of-way of pipeline
51	49 U.S.C. § 60123(b)	Knowing and willful damaging or destroying of interstate gas pipeline facility

¹ Michael German & Sara Robinson, *Wrong Priorities on Fighting Terrorism*, Brennan Center for Justice, 2018, www.brennancenter.org/sites/default/files/publications/2018_10_DomesticTerrorism_V2%20%281%29.pdf; Michael German & Emmanuel Mauleón, *Fighting Far-Right Violence and Hate Crimes: Resetting Federal Law Enforcement Priorities*, Brennan Center for Justice, 2019, www.brennancenter.org/sites/default/files/publications/2019_06_HateCrimes_FINAL.pdf.

² Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, sec. 120005, 108 Stat. 1796, 2022-23 (codified at 18 U.S.C. § 2339A (2012)).

There are 17 statutes not included in 18 U.S.C. § 2339A's list of terrorism-related predicate offenses that were used in at least four prosecutions categorized by the Justice Department's Executive Office for U.S. Attorneys (EOUSA) as domestic terrorism cases.

FIGURE 2: List of statutes used as lead charges in four or more domestic terrorism prosecutions from FY 2013 to FY 2017 that are not listed as predicate offenses in 18 U.S.C. § 2339A

No.	U.S. Code	Summary of Statute	No. of Prosecutions Listing Statute as Lead Charge	Percentage of Total Prosecutions Listing Statute as Lead Charge
1	18 U.S.C. § 372	Conspiracy to impede or injure person holding public office	57	13.8%
2	18 U.S.C. § 875	Transmittance of interstate communication containing demand for ransom for kidnapped person, extortion, threat to kidnap, threat to injure property or reputation	43	10.4%
3	26 U.S.C. § 5861	Manufacturing, importing, or dealing in fire-arms without paying tax	21	5.1%
4	18 U.S.C. § 922	Importing, manufacturing, or dealing in fire-arms or ammunition in interstate commerce without a license	18	4.4%
5	18 U.S.C. § 871	Threats against President and successors to the Presidency	17	4.1%
6	18 U.S.C. § 115	Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member	16	3.9%
7	18 U.S.C. § 371	Conspiracy to defraud the United States	13	3.2%
8	18 U.S.C. § 876	Mailing threatening communications	11	2.7%
9	18 U.S.C. § 1038	False information and hoaxes	10	2.4%
10	18 U.S.C. § 111	Assaulting, resisting, or impeding certain officers or employees	7	1.7%
11	18 U.S.C. § 1521	Retaliating against a Federal judge or Federal law enforcement officer by false claim or slander of title	7	1.7%
12	18 U.S.C. § 1001	Falsifying, concealing, making material false statement within the jurisdiction of the executive, legislative, or judicial branch of government	4	1.0%
13	18 U.S.C. § 1343	Fraud by wire, radio, or television	4	1.0%
14	18 U.S.C. § 1951	Interference with commerce by threats or violence	4	1.0%
15	18 U.S.C. § 43	Force, violence, and threats involving animal enterprises	4	1.0%
16	18 U.S.C. § 514	False or fictitious instrument, document, obligations	4	1.0%
17	21 U.S.C. § 841	Manufacturing, distributing or dispensing a controlled substance	4	1.0%

Five federal laws are designed to combat hate crimes.¹ According to the Justice Department's Executive Office for U.S. Attorneys (EOUSA) data analyzed by the Transactional Records Access Clearinghouse (TRAC), the Justice Department filed 78 prosecutions from FY 2013 to FY 2017 under the two hate crime categories in the EOUSA's Legal Information Office Network System (LIONS).² Of these 78 prosecutions, 56 involved defendants whose lead charges were violations of one of the five federal hate crimes statutes, outlined in Figure 3.

FIGURE 3: Federal Hate Crimes Laws

No.	U.S. Code	Title of Statute	Summary of Statute	No. of Times was Lead Charge in LIONS Hate Crimes Program Areas from FY 2013 to FY 2017
1	18 U.S.C. § 249	The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009	Criminalizes willful case of bodily injury using a dangerous weapon because of the victim's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability	36
2	42 U.S.C. § 3631	Criminal Interference with Right to Fair Housing	Criminalizes the use or threat to use force to interfere with housing rights because of the victim's race, color, religion, sex, disability, familial status, or national origin	0
3	18 U.S.C. § 247	Damage to Religious Property, Church Arson Prevention Act	Criminalizes the intentional defacement, damage, or destruction of religious real property because of the religion or because of the race, color, or ethnic characteristics of the people associated with the property. Also criminalizes obstruction of any person in their free exercise of religious beliefs	3
4	18 U.S.C. § 245	Violent Interference with Federally Protected Rights	Criminalizes the use of force or willful interference in a person's participation in a federally protected activity like public education, employment, jury service, among others, because of their race, color, religion, or national origin	5
5	18 U.S.C. § 241	Conspiracy Against Rights	Criminalizes conspiracy to injure, threaten, or intimidate a person in the free exercise or enjoyment of any right or privilege secured under the Constitution or laws of the United States	12

¹ *Hate Crimes Laws*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/crt/hate-crime-laws>.

² According to TRAC, the DOJ filed prosecutions in 90 total cases from 2013 to 2017. Following a review, seven cases were excluded because it seems DOJ had classified them under the wrong LIONS program area. Five additional cases were excluded because they were listed as being prosecuted under "other U.S. Code Section," without providing information about the particular statute under which the defendants were charged. See TRAC Data, FY 2013 to FY 2017 for Program Areas "05F Civil Rights – Racial Violence, including Hate Crimes" and "05H – Civil Rights – Hate Crimes Arising out of Terrorist Attacks on US," available at <http://trac.syr.edu>.

In addition to the five federal hate crime statutes listed in Figure 3, the Department of Justice often charges offenses under other statutes to prosecute hate crimes. Nine other federal statutes were the lead charges in the remaining 22 prosecutions filed from FY 2013 to FY 2017 under the two Legal Information Office Network System (LIONS) hate crimes categories.¹ These statutes are listed in Figure 4, which also includes the number of times that the particular statute was a lead charge during that five-year period.

FIGURE 4: Federal statutes not included in the five federal hate crimes laws identified by the Justice Department that were used to prosecute hate crime incidents from FY 2013 to FY 2017

No.	U.S. Code	Summary of Statute	No. of Times Was Lead Charge in LIONS Hate Crimes Program Areas from FY 2013 to FY 2017
1	18 U.S.C. § 371	Conspiracy to defraud the United States	4
2	22 U.S.C. § 2778	Control of arms exports and imports	4
3	18 U.S.C. § 1951	Interference with commerce by threats or violence	3
4	18 U.S.C. § 875	Transmittance of interstate communication containing demand for ransom for kidnapped person, extortion, threat to kidnap, threat to injure property or reputation	3
5	8 U.S.C. § 1325	Improper entry by alien	2
6	18 U.S.C. § 844	Importing, manufacturing, dealing, transporting, distributing explosive materials or withholding information or making fictitious statements regarding explosive materials	2
7	18 U.S.C. § 922	Importing, manufacturing, or dealing in firearms or ammunition in interstate commerce without a license	2
8	18 U.S.C. § 2261A	Stalking	1
9	18 U.S.C. § 876	Mailing threatening communications	1

¹ TRAC Data, FY 2013 to FY 2017 for Program Areas "05F Civil Rights – Racial Violence, including Hate Crimes" and "05H – Civil Rights – Hate Crimes Arising out of Terrorist Attacks on US," available at <http://trac.syr.edu>.

Conspiracy statutes provide substantial recourse to charge individuals before they successfully complete a hate crime or terrorist attack. Conspiracy liability attaches when a person agrees to accomplish unlawful ends and takes any overt act in furtherance of the scheme. This gives investigators and prosecutors the ability to charge these individuals long before a plot reaches fruition.¹ According to Executive Office for U.S. Attorneys (EOUSA) data collected by the Transactional Records Access Clearinghouse (TRAC), the Justice Department used three conspiracy statutes as lead charges to prosecute dozens of hate crimes and domestic terrorism cases between FY 2013 and FY 2017.²

FIGURE 5: Conspiracy statutes listed as the lead charge in domestic terrorism and hate crimes cases from FY 2013 to FY 2017

No.	U.S. Code	Summary of Statute	No. of Prosecutions Listing Statute as Lead Charge
1	18 U.S.C. § 241	Conspiracy to injure, threaten, or intimidate a person in free exercise or enjoyment of any right or privilege secured under Constitution or U.S. laws	12
2	18 U.S.C. § 371	Conspiracy to defraud the United States	17
3	18 U.S.C. § 372	Conspiracy to impede or injure person holding public office	57

¹ See *Williamson v. United States*, 207 U.S. 425 (1908); *Frohwerk v. United States*, 249 U.S. 204 (1919); *Blumenthal v. United States*, 332 U.S. 539 (1947); *United States v. Gallishaw*, 428 F.2d 760 (2d Cir. 1970); *United States v. Rosenblatt*, 554 F.2d 36 (2d Cir. 1977); see also Robert M. Chesney, *Beyond Conspiracy? Anticipatory Prosecution and the Challenge of Unaffiliated Terrorism*, 80 S. Cal. L. Rev. 425, 428, 448–49, 451 (2007).

² See TRAC Data, FY 2013 to FY 2017 for Program Areas “072 Domestic Terrorism,” “05F Civil Rights – Racial Violence, including Hate Crimes,” and “05H Civil Rights – Hate Crimes Arising out of Terrorist Attacks on US,” by lead charge, available at <http://trac.syr.edu>.

Ms. JACKSON LEE. The gentleman's time has expired.

Let me thank all the witnesses for their testimony at this time.

Members, I will now call for a recess of this Committee hearing. I ask that Members pay attention to either staff notifications or their own electronic device. We will try to participate in all the votes on the floor, unless there are some irregularities that will occur. Then we will notify, I know that we will notify that we are returning while the irregularities are played out and the next series of votes that we have to participate in.

The hearing is now recessed. Thank you.

[Recess.]

Ms. JACKSON LEE. I will call back to order the "Rise of Domestic Terrorism in America," the Subcommittee on Crime, Terrorism, and Homeland Security.

We will now begin to start the questioning, which will allow each member to have 5 minutes for their questioning. We will proceed under the 5-minute rule, and I will begin by recognizing myself for 5 minutes.

I would like to take this opportunity to address the suggestion that the domestic terrorism extremism during the 1970s that has been recounted in this hearing was more deadly than the current surge of attacks. According to the Anti-Defamation League's Center for Extremism, while the 1995 and the Oklahoma City bombing remains the deadliest year on record since 1970 for domestic extremism, 4 of those other 5 years—deadliest years since 2015. I think that we have a roll call of those particular incidences.

Again, let me indicate that this hearing is interwoven with White racism and White nationalism, the fomenting of White Nazism, which has generated into violence. It includes, of course, the obvious fact of January 6.

Mr. German, I am going to come to you for the first question. Let me just, again, show a picture that has a police officer down and surrounded by the terrorists on January 6. The police officer is down.

Let me also show to you one of the many symbols that was utilized on that day. I think all of America knows what this symbol is supposed to suggest. These, of course, were individuals allegedly protesting an election.

In the words of Harry Dunn, who recalled the sickening events of January 6, he indicated that "The Trumpist rioters called me the n-word dozens of times." He said the level of racial views that he suffered caused him to break down in tears, but I am glad that he also said, "Y'all failed."

My question to you, Mr. German, is that it was reported that there was sufficient intelligence that the FBI had, and maybe other federal intelligence agencies, that said January 6 was going to be a bad day. As testimony evidenced in a Senate hearing yesterday, individuals responsible relayed that they never got this kind of intelligence that individuals, insurgents, insurrectionists, people who were intending to do harm, violent harm, were coming to the Capitol to perpetrate a war.

My question to you is two-fold. Why did that not happen? As well, why did the racial overtones seem to dumb down the interests of intelligence entities to give that information to the Metro Police,

the Capitol Police, and anyone else that needed that to protect this citadel of democracy? If you would provide an answer, please.

Mr. GERMAN. Thank you, Chair Jackson Lee. White supremacist violence, as you acknowledge, is a persistent problem that has been with us for decades. This isn't something new. The problem is the FBI and Department of Homeland Security and the network of law enforcement intelligence centers that we have built have been focusing on less lethal threats, and they set up a system that is constantly warning.

So, it is warning about any potential that might happen somewhere in the future rather than focusing on events that actually occur. That is where I think it needs to change. They need to focus where there is actual violence, because much of the discussion yesterday was about one particular memo that was talking about something on social media where they didn't need that.

Far-right militants attacked the Oregon State legislature just 2 weeks prior; two previous events in Washington, DC, that included Proud Boys engaging in violence at those rallies. So, even just following the public reporting about these groups, they should have been much better prepared for what was ultimately an event that was planned in plain sight.

Ms. JACKSON LEE. Thank you very much.

Mr. Nance, given your experience as a leading expert on counterterrorism, how would you describe American law enforcement's response to domestic terrorism as opposed to Islamic terrorism and certainly, again, woven in with racial epithets and philosophy? Mr. Nance?

Mr. NANCE. This has gone on longer than decades. It goes back to the very founding of this country where people have used extremism for their own goals. I mean, we had the Shay's Rebellion up to the Civil War, and then the Ku Klux Klan was often a good place for ambitious young men to go into.

Leading into the era that we are in now, law enforcement has always dragged its feet because the resources were never given to them. In the heyday period of the 1980s when the FBI was breaking up internal White supremacist groups within the United States, they still missed the Timothy McVeigh bomb plot.

It wasn't just because they didn't have all the resources. It was also, as Mr. German said quite accurately, a lack of focus. They need to understand where the threat comes from, identify that threat, and then focus the resources to ensure that everyone in the Nation is safe, no matter what the ideology of the terrorist.

Ms. JACKSON LEE. Thank you very much, Mr. Nance.

My time has expired. For the Ranking Member, I went over 50 seconds. You have that opportunity. I yield back to the Ranking Member, Mr. Biggs.

Mr. BIGGS. Thank you, Madam Chair.

Mr. Ngo, two of the witnesses testifying today did not even mention Antifa in their written testimony, which is shocking actually, given the amount of violence that Antifa has wrought over the past several years. Mr. Ngo, if we don't talk about Antifa, is Antifa going away?

Mr. NGO. No, they are not going away. Since the election night, for example, in Portland, Oregon where I am from, the National

Guard was activated by the governor because dozens or actually more than 100 masked militants marauded through downtown destroying property. They vandalized a church that provides charity services on inauguration day in Portland to protest the inauguration of Biden and to destroy the headquarters of the Democrat Party.

So, this perception that they only attack things on the right is wrong. They attack anything that they view as American, so that includes Democratic institutions, buildings that represent the Rule of law. Go ahead.

Mr. BIGGS. So, Mr. Ngo, one of your co-panelists has said of Antifa that, quote, "Though often violent, they do not yet use terrorist tactics or acts." Based on what you have seen first-hand, do you agree with that statement?

Mr. NGO. So, I think the issue with the lack of understanding of Antifa's violence comes from the fact that there is not a lot of mainstream media coverage of it. A lot of people, lawmakers in DC, will get their media coverage from The New York Times or Washington Post. Sometimes those publications will send parachute journalists into the Pacific Northwest, but by and large, they don't have somebody on the ground every day as the riots were breaking out, let's say in Portland, or when CHAZ—the autonomous zone in Seattle.

This is areas where people were bringing with them homemade explosives in their backpacks and distributing them to others to throw at the federal courthouse, bringing in electric tools to cut into the fence so that they could set the building on fire. They did set the exterior on fire multiple times.

It is not just law enforcement that is inside. There are also civilian people who are working as staff who have had to flee for their lives as they did at the Justice Center. So, I think these acts, because they are targeted on facilities that have civilians inside, I think based on my understanding of the law that these do count as terrorist acts, that they are not being reported as such or perceived as such for political reasons.

Mr. BIGGS. One of your co-panelists has also said that Antifa's organizing principle is to confront the alt-right. Do you agree with that statement? Can you please explain?

Mr. NGO. That statement, in itself, is true. Antifa is label who they call alt-right or fascists applies very broadly. So, yes, it would include people who are actually on the far right, but it will also include people who are patriotic, who are holding an American flag. They will also assault and beat any and all law enforcement. Anybody who defends the institutions of this country they view as people who are fascistic in one way or another.

If you dive into the ideology, look at the literature that they disseminate at their protests and riots and when the establish autonomous zones, you will see that they are calling for the overthrow of the American government. So, this whole label of antifascists that they are using is just essentially marketing and branding to mask what is a very extremist, radical agenda to destabilize the republic.

Mr. BIGGS. Another comment that was Tweeted out by one of your co-panelists said, quote, "There are no laws defining domestic terrorism in the U.S.A." Is that correct, Mr. Ngo? Are there no laws defining domestic terrorism in the U.S.?

Mr. NGO. There are laws on the books. I think the problem right now is that the investigators are being pressured one way or another to pursue things for political reasons. I am not here to say that is no threat coming from the far right. That is not my area of expertise. I defer to those who have been giving testimony today.

At the beginning, we heard that 75 percent of the deaths from domestic terrorist attacks have come from the far right. Well, does that mean that the other 25 percent doesn't deserve attention? I don't think so. It is about keeping all Americans safe, and that includes investigating all extremist ideologies.

Mr. BIGGS. Thank you, Mr. Ngo.

I will yield back, Madam Chair.

Ms. JACKSON LEE. The gentleman yields back.

I will recognize Ms. Bass for 5 minutes. We will come back to Ms. Bass.

I will recognize Ms. Demings for 5 minutes.

Ms. DEMINGS. Thank you so much, Madam Chair. Madam Chair, the United States has experienced White supremacy and right-wing extremist since its founding. From the rise of the Ku Klux Klan after the end of the Civil War through the insurrection on January 6, America has consistently experienced acts of domestic terror.

I want to thank you, Madam Chair, for recognizing the brave police officers who were fighting to defend our democracy on that day and fighting for us and for our staff, and also, recognizing the Black officer who said he was called the n-word so many times that he burst out in tears and asked the question, is this America?

Yes, we saw the attempted overthrow of the government on January 6, but those were former President Trump's supporters. Aren't we tired? Aren't we as a Nation exhausted? Haven't we had enough? Doesn't this issue deserve more than a political debate, a lackluster and half-hearted response?

If my colleagues on the other side of the aisle want to keep score, you will lose. This history is young and this country is young, but its history is ugly and long. The FBI has been collecting statistics on hate crimes since 1930, and Director Wray testified before the Committee on Homeland Security that domestic violent extremists radicalized online are the greatest threat to our homeland.

Mr. German, understanding this history and not being in denial and not asking the American people to not believe their lying eyes and lying ears, understanding this history, has the federal response to right-wing extremism and domestic terrorism—how has it evolved over the years? If you would please talk about the DOJ's policy of deferring to State and local authorities for the prosecution and prevention.

Mr. GERMAN. Thank you very much. I appreciate that question. The FBI and the Justice Department have long de-prioritized the investigation and prosecution of White supremacists and far-right violence, and they do this in a number of ways.

One of the ways they do it is by breaking it into different program categories. So, if a White supremacist murdered somebody, that might be considered a domestic Act of terrorism, but it might also be considered a hate crime if the victim was part of a protected group.

Most often the FBI, actually, I don't know most. Very often the FBI or the Justice Department, not the FBI, prosecutes White supremacists as gang Members in their Violent Crimes Program rather than as terrorists. The problem is, if they go down into these other categories with hate crimes, the Justice Department has a policy, a written policy, of deferring the hate crime investigations to State and local law enforcement, even though State and local law enforcement—at times there are poor states that don't have hate crime laws, and only 14 percent of police agencies report that hate crimes occur within their jurisdiction.

So that deferral goes into a Black hole where we are not actually tracking what violence is actually occurring or who is committing it.

Ms. DEMINGS. Mr. German, thank you so much for that. How convenient. It goes into a Black hole for the many people who have been victims of it.

Mr. Henderson, we know the role that social media has played in the rise and reach of hate for ideologies, conspiracy theories, and White supremacy. You have called for civil rights audits. Could you please, Mr. Henderson, talk a little bit about those for us?

Mr. HENDERSON. Thank you, Congresswoman. A civil rights audit is essentially a collection of data and an analysis of how a particular agency or institution has responded to the great challenge of ensuring that laws are equally enforced, particularly with regard to curbing violence.

I don't think there is any question that White nationalist violence has been treated with less urgency and more benign than violence that is allegedly attributed to the left. Our country has a great history, which you have cited, which documents the acceptance of White nationalist violence as an ordinary part of our history.

The Klan motivated, in 1870, the birth of the Department of Justice and a commitment by the Attorney General to respond to Klan-related violence interrupting the implementation of the 13th, 14th, 15th Amendments to the Constitution. One hundred and fifty years—

Ms. DEMINGS. Mr. Henderson, I am sorry, but thank you so much. I am, unfortunately, out of time. Thank you very much.

Mr. HENDERSON. No worries. Thank you.

Ms. JACKSON LEE. I thank the gentlelady.

I now recognize Mr. Chabot for 5 minutes.

Mr. CHABOT. Thank you, Madam Chair.

Mr. Ngo, I will begin with you. First, I wanted to express my condemnation and rejection of the unlawful attack on the Capitol building that we saw back on the 6th of January. There is no excuse for it. Those who participated in that disgraceful display should and will be prosecuted to the fullest extent of the law. That is in the process of occurring right now.

I think everybody on my side and on the other side of the aisle agrees with that. However, there are some on the other side who continue to not see that the violence that occurred in our cities across the country over the last summer in particular, and is still going on in some cities is outrageous and it is domestic violence and needs to be stopped just as well.

We saw property damage. We saw targeting of police, looting, targeting of public officials, targeting of public buildings, just like the Capitol building is a public building. It goes on both sides and needs to be rejected, and all the resources we have available to us, we need to stop that. We ought to be doing it in a bipartisan manner, but unfortunately too often that just doesn't happen around here.

Mr. Ngo, will you agree that during the left-wing extremist violence last summer there were some prominent elected officials, Democrats for the most part—and much of the mainstream media that not only downplayed what was going on, but in many cases were apologists for that violence that we saw in America's cities and on America's streets last summer? Could you tell us what you observed with your own two eyes with respect to that?

Mr. NGO. Thank you for the question. Yes. So, the violence that occurred in Portland, which I know best, resulted in hundreds of injuries to federal and local law enforcement. I was shocked to see that the response from the local city council to the mayor and the senators and the governor were to describe those officers as an occupying force, as Trump's gestapo, as secret police.

That type of rhetoric extremely inflamed the situation and brought in and encouraged other well-meaning protesters to come in, which unfortunately those people were then exploited and used as human shields. So, at the riots, particularly in July when rioters and Antifa and other extremist groups were trying to burn down the federal courthouse, they actually had the peaceful protesters up at the front, so a wall of moms, wall of vets, and wall of dads.

They put these people at the very front so that law enforcement would be slow or hesitant to use tear gas or crowd control. Then, from the back, the rioters had a whole brigade of people using really powerful lasers, lasers that can cause permanent eye damage. They would center it on their target and then throw glass, rocks, concrete, and other projectiles to injure these officers.

The response over and over from the media was to call these protests mostly peaceful, to the point it became a meme. It seemed like they were living in an alternate reality and not witnessing what was happening and not seeing the actual injuries that were occurring.

I think the most egregious acts that were done in the later months as the riots went on in Portland was the targeting of police stations by rioters who set fires to these facilities when police officers were inside doing work and when civilian staff were doing work inside.

Again, this did not get the condemnation that it needed, and, in fact, people frequently in positions of power were calling these racial justice protests, which was obfuscating what I view as—and it was Antifa themselves—an agenda for terroristic actions to intimidate the public into falling in line for their political agenda.

Mr. CHABOT. Thank you very much.

Madam Chair, my time is about to expire. So, rather than going to somebody else, I will yield back at this time.

Ms. JACKSON LEE. The gentleman has yielded back.

It is my pleasure to yield 5 minutes to the gentlelady from Georgia, Ms. McBath, for 5 minutes.

Ms. MCBATH. Thank you, Madam Chair.

I want to thank all of you that are here today to discuss this really important issue. As your testimony has all noted, there is a relationship between hate crimes and domestic terrorism. There are many definitions for each of these, and they often overlap.

At their core, hate crimes and domestic terrorism are attacks on who we are, where we come from, what we believe, and the democratic values that unite us as Americans. Like many of my colleagues, I come to this discussion with the attack of January 6 which is definitely very fresh on my mind.

As we have this hearing today, I am also thinking of the lives lost at Charleston's Mother Emanuel AME Church and at the Tree of Life synagogue in Pittsburgh. I am thinking of the people we lost to the misogynist violence in Isla Vista and Tallahassee, the yoga studio there. Actually, one of my constituents was the person that was murdered.

I am thinking of Ahmaud Arbery, who was chased and killed and called the n-word 1 year and actually one day ago. I am thinking about my own son, Jordan, and the world that I couldn't protect him from. Each of these incidents was motivated by hate. Each of these incidents involved taking a life, or many lives for that matter, and we can never get those lives back.

What if someone had seen the signs of hate before the tragedy struck and been able to simply do something about it? I will soon be introducing the Federal Extremist Protection Order Act, a bill that actually gives families, neighbors, and law enforcement an additional tool to make sure that people who are a danger to themselves or to others do not have access to firearms.

I think it is an important tool in responding to the imminent threats of violence that people are facing every day, but I also want to discuss how we can Act much earlier to combat hate and racial ideologies.

The Washington Post recently reported on groups that work to de-radicalize people caught up in hateful movements, often with the help of those who were previously de-radicalized themselves, people like Chris Buckley, a Georgia veteran who turned to the Ku Klux Klan while experiencing drug addiction after his tour in Afghanistan. He was helped by of the Klan by another reformed extremist and now works with Parents for Peace to reach those that he describes as coming out of the military with hatred in their heart.

Mr. Nance, the Post reported that groups like Parents for Peace and Life After Hate have been overwhelmed by requests from concerned family and friends following the January 6 attack here at the Capitol. What do we know about how people can be de-radicalized and about the programs that we find like these that are helping people?

Mr. NANCE. That is an excellent question, and there are many groups and individuals who were brought into hate and who have found their way out by educating themselves and then by being around groups that have managed to show the way, that violence is certainly not the way.

We need to expand these groups because oftentimes when you are dealing with ideologically-driven groups you find that the buy-

in is so deep, and the social networks around them are so steep in creating—how do you put it? A culture of fear and shame if they leave these groups, principally fear that they are going to be not just left out but that they might be hurt, that they might be viewed as a snitch, and, in some instances, killed.

The American neo-Nazis were famous for that threatening death to Members who went out. We need to show our Nation as patriotic Americans. We are greater as a collective than any one individual or groups. It is critical that law enforcement buy into this also. Do you want to have to really spend money doing surveillance on people or using your Joint Terrorism Task Force resources when we can start pulling individuals out of these networks and groups and using them as mouthpieces as well to de-radicalize individuals?

It worked in the Islamic model in the Middle East. It can work in the United States.

Ms. MCBATH. Well, thank you for that answer.

Then also, very quickly, Mr. German, your testimony calls on the DOJ to create a national strategy to prevent White supremacists and far-right violence. What would you like that plan to include with respect to de-radicalization and preventing people from getting involved with hate groups in the first place?

Ms. JACKSON LEE. The gentlelady's time has expired.

Mr. GERMAN. I think we must be very careful to follow the science on this issue, and there isn't a clear connection between ideology and violence. The Justice Department should be focusing on violence and criminality, and there is enough there for them to focus on. It is for the rest of society to work on programs of socialization.

Ms. JACKSON LEE. The gentlelady's time has expired.

Thank you very much.

The gentleman from Texas is recognized for 5 minutes.

Mr. GOHMERT. Thank you, Madam Chair. We know on January 6 there were an estimated, early on, tens of thousands, then 100,000, some say hundreds of thousands. This week I was told there were an estimated 200 that got into the Capitol.

Now, as a former prosecutor and law and order judge, I don't care what your party affiliation is or any other matter, if you commit violence, you are unlawfully committing violence, it needs to be punished. That was uncalled-for violence at our Capitol. It was outrageous, and the people should be punished. No question about it.

One thing that has not been discussed—and we know that most of the people that were there that day were Trump supporters, and we know that most of the people that went into the Capitol were Trump supporters, and they should be punished. They had no business going into the Capitol.

We don't need to completely ignore others that were in the Capitol, as my friends across the aisle seem to be wanting to do. It was reported and I am quoting, "The Feds allege in a criminal complaint that Sullivan, John Sullivan, was actively participating in encouraging the siege around the Capitol." He helped one of the rioters scale a wall leading up to an entrance of the Capitol, an affidavit alleges.

It says in another New York Post, "John Sullivan founded Insurgence USA, a protest group for racial justice and police reform,"

and referred to himself as Activist John, filling his Twitter feeds with anti-President Trump rhetoric and posts supporting Black Lives Matter. I would like to—there is a picture of Mr. Sullivan’s website, Insurgence USA, and you see he identifies with Antifa, it is hard to see those, but certainly not a Trump supporter.

In fact, we have got two videos I would like to play very quickly. It might eat up my time trying to get it played. Well, there goes my time.

[Video played.]

Mr. GOHMERT. Not sounding like a Trump supporter as this was before his violence and entry to the Capitol. I believe we have got one more, if it can be played quickly enough. This is him recording this.

[Video played.]

Mr. GOHMERT. She is saying, “You were right,” because he had obviously planned on getting into the Capitol. He had told her they could get into the Capitol. This was planned in advance, and here they go through the Capitol.

So, it is kind of hard to sit and listen that all of the problems were White supremacists when we know that last summer estimated \$2 billion, many deaths, many injuries, deaths including David Dorn. They were just simply trying to protect a business and stop the looting and the violence there and he lost his life because of it.

Our hearts go out to Officer Sicknick. Let me tell you, Democrats have never come to understand that one of the more inciteful things that they do is not only to misrepresent things as they did the Russia hoax, but then turn around and try to silence Republicans for opposing views; get them off the internet. When you seal up a pressure cooker and continue to taunt it, test it, heat it, it is not going to work out well.

I deplore all violence. I condemn all violence. Let’s work together toward a peaceful resolution instead of only seeing one side as the other side does. We on this side see there is problems on both sides.

I yield back.

Ms. JACKSON LEE. The gentleman yields back. Mr. Gohmert, I think all of us collaborate on our opposition to violence. I think we cannot ignore the penetrating White supremacy and White nationalism that has generated violence. Thank you for your remarks.

Let me yield now 5 minutes to the gentlelady from Pennsylvania, Ms. Dean, recognized for 5 minutes.

Ms. DEAN. Thank you, Madam Chair. Can you hear me?

Ms. JACKSON LEE. We can hear you very well.

Ms. DEAN. Thank you so much. I thank you for convening this important hearing, timely hearing, on the rise of domestic terrorism here in America. It is something we simply cannot ignore; we cannot turn a blind eye to. We have to save lives.

I would go right to some questions. I thank all our testifiers today. Mr. German, may I start with you, if you don’t mind. In 2018—and some of you have referred to this—my home State of Pennsylvania was rocked by an Act of right-wing terrorism when 11 people were murdered at the Tree of Life synagogue in Pittsburgh.

The perpetrator of that attack espoused antisemitic, anti-immigrant beliefs. It was a shock to that community, to our society, to the whole Commonwealth. We should not have been surprised. Nearly a third of right-wing attacks since 2007 have targeted religious institutions, most of them Jewish or Muslim.

Mr. German, in your testimony, you highlighted the threat that right-wing extremism poses to religious, ethnic, and other minority groups. In fact, you pointed out that our Nation's domestic terrorism policy was founded to address the White supremacist Ku Klux Klan. With that context in mind, can you tell us, what role does antisemitism play in domestic terrorist ideology, recruiting, and violence?

Mr. GERMAN. Thank you very much for the question. In my experience working undercover in these groups, antisemitism is a primary driver. Often, they use bias against other groups as a way to grow their organization, particularly post-9/11, and using the bias against Muslim Americans was a way that they could grow their organization as even our military and law enforcement were being trained with Islamophobic training materials, counterterrorism training materials, and the nativism that also comes out of it.

So, we saw many groups, militia groups, pivot to this idea of being a border militia and somehow working in tandem with law enforcement at the border rather than antagonistic to law enforcement, as they obviously are.

Ms. DEAN. Thank you for that answer. We know that antisemitism, for example, or anti-Islam is not native just to our country. We know that other countries, in Europe for example, struggle with this as well, historically have struggled with it. Do American right-wing extremists draw from antisemitic groups in Europe? Are they in any kind of coordination or borrowing or learning worst practices or worst notions?

Mr. GERMAN. Absolutely. The FBI sometimes even just using the language "domestic terrorism" when they talk about White supremacy is a way of de-prioritizing it. White supremacy has always been an international ideology, an ideology that respects national borders. So, there has always been collaboration with groups in Europe and across Canada, other foreign countries. It has always been part of what these groups have been doing.

Ms. DEAN. Thank you for your work and your testimony.

Mr. Nance, if I could pivot to you. Again, thank you for your input and your work. From the racist attack at Mother Emanuel Church in Charleston to the storming of the Capitol by an insurrectionist mob, a theme has persisted in right-wing terrorism in America and that theme is guns as the weapon of choice.

There is no surprise, given the language emanating from the NRA, quote, "Our founding fathers understood that the guys with the guns make the rules." Or even from former President Trump, quote, "If you don't fight like hell, you are not going to have a country anymore."

Can you tell us, what is the relationship between gun rights extremism—not normal gun rights under the 2nd Amendment, but gun rights extremism and right-wing anti-government extremists in the United States?

Mr. NANCE. The entire myth of the 2nd amendment being a tool to overthrow a government that is violent, a government that is oppressive, that is a relatively new thing that was created by the NRA in the 1970s. I know, I was a member of the NRA. I am a gun collector, and I remember quite clearly when they went crazy with every mailing showing that you needed more guns to protect yourself from the government. It was Black helicopter stuff.

That is pervasive, and it is dangerous because, as ISIS and Al-Qaeda have admitted, the easiest thing you can do in the United States to carry out a terrorist Act is get a gun. That does not prohibit Americans who are carrying them legally, lawfully, and using them professionally, but it is a notional point that we need to understand. That is the preferred weapon system of these terrorists and extremists.

Ms. DEAN. Thank you. I see my time has expired. Thank you so much, Chair, and to all our testifiers.

Ms. JACKSON LEE. I thank the gentlelady for yielding back and acknowledging her time.

I would now like to yield to the gentleman from Wisconsin, Mr. Tiffany for 5 minutes.

Mr. TIFFANY. Thank you, Madam Chair. First, I denounce all extremism, and I started doing that years ago, but in particular when it happened in Wisconsin with the State Street riots in Madison and then went on to Kenosha. I denounced that all the way back in June as well as the January 6 riots.

I would just ask, Madam Chair, last summer did you the extremism that was going on in our cities across America?

Ms. JACKSON LEE. Is the gentleman posing a question? I would be happy to use up his time to respond.

Mr. TIFFANY. So—

Ms. JACKSON LEE. I thank the gentleman.

Mr. TIFFANY. You mentioned Milwaukee in your statement. As far as I know, a Black man who was shot in cold blood, execution style, they have still not found out who the killer is. That Black man, Bernell Trammell, was a Trump supporter, wore a Trump shirt every day out on the streets, gunned down execution style. That is the kind of extremism that is going on in our country.

I am so glad the Chair brings up President Lincoln, because President Lincoln was the first Republican president. What he believed in was equal justice for all, and that is exactly what we stand for. That is what we stand for is for equal justice for all, regardless of your race, creed, or color. If you are going to engage in political violence to harm our country, you should be held to account.

Mr. Nance, why did more minorities vote for President Trump in this election?

Mr. NANCE. I am sorry. Is that a legitimate question?

Mr. TIFFANY. You don't have to answer it if you don't want to. There were more minorities that—

Mr. NANCE. No. I am just—

Mr. TIFFANY. —voted for President Trump in this election.

Mr. NANCE. Are we stipulating that is a fact? Because I am not quite sure that is a fact.

Mr. TIFFANY. We will stipulate that.

Mr. German, the man in that video, John Sullivan, he was paid \$35,000 by both CNN and NBC for his footage of the Capitol riots. Do you think that is a good thing for the peace of our Nation? When someone—you saw his words. You saw his actions in the Capitol. Two major networks paid him \$35,000 each. Is that a wise thing for them to be doing?

Mr. GERMAN. Thank you for the question. I don't know the factual circumstance you are talking about, so it is difficult for me to reply in any thoughtful way. Sorry.

Mr. TIFFANY. No, no. Thank you, Mr. German. So, CNN and NBC paid him \$35,000. Do you think the money is being funneled to Insurgence USA? Two major networks, supposed to be respectable in our country, paying a rioter \$35,000.

So, I really appreciate that Mr. Nance and Mr. German, and including the gentlelady from Florida, brought up the FBI. You said they lack focus. They have the tools. The gentlelady from Florida said it is a Black hole. Maybe if the FBI spent their time and money on these things that you are all talking about and I have great respect for what you are all saying—that these dollars that are precious of the taxpayers of the United States of America that are going to the FBI should be spent in an appropriate manner. Instead, they followed the myth of the Russia collusion.

Shouldn't James Comey, Andrew McCabe, and others be held accountable for all the time and effort that they spent chasing the Russia collusion, which by the way Mr. Mueller showed that there was nothing chargeable there, or anything like that. Maybe if they spent the money in an appropriate fashion, we would be able to get to the bottom of more of these extremist activities.

The final thing that I would mention, Madam Chair, is that it is unfortunate I am not able to get to environmental radicalism and terrorism that is going on across this country also. I hope those of you that have organizations that are on the call today that you will take a look at that also, bombings at our major universities, hassling our hunters when they are legitimately exercising their right to hunt, fish, and trap. Hopefully, sometime, we will be able to dig into that also.

Thank you, Madam Chair. I yield back.

Ms. JACKSON LEE. I thank the gentleman. The gentleman's time has expired.

Let me stipulate for the record that every person in this room, but at least all the Democrats, abhor violence, hope that everyone who perpetrates violence, such as those domestic terrorists who attacked the democratic citadel, the House of Representatives, will be held accountable. Certainly, I want to recognize Kyle Rittenhouse, who walked through the streets of Wisconsin without impunity, without being arrested, and killed two individuals in the street under the auspices of being a supporter of right-wing ideology.

With that, I want to yield to the gentlelady from California, Ms. Bass, for 5 minutes. Unmute.

Ms. BASS. I am so sorry. Thank you, Madam Chair. Thank you for holding this really important hearing, and for your leadership on this issue.

When domestic terrorists stormed the U.S. Capitol on January 6, they were not just protecting to take back the people's house, but

rather to overthrow our elected government, they were incited by wild conspiracy theories championed time and again by the former President and several of his followers.

The origins of these groups are well-known, and I wasn't surprised at all, sadly, that some were police officers and some were in the military, involved in White supremacist organizations that have terrorized this country and terrorized African Americans for a couple hundred years.

Capitol Police officers, as you know, were called the n-word, and I think you said that in your opening statement. What we have found over the years is that many times when there were White supremacists in the south and in other parts of our country that terrorized African Americans, sometimes they covered themselves in hoods, but oftentimes they were law enforcement. This is nothing new.

I very much want to see laws against domestic terrorism, but I will tell you that I am concerned about, if we pass laws against domestic terrorism, that those laws will be turned against the very communities that have been terrorized.

The COINTELPRO has been discussed, initiated by J. Edgar Hoover. Under this program, while the KKK was terrorizing people in the south, COINTELPRO and FBI targeted civil rights leaders, like Martin Luther King, and it was commonly understood that the FBI abused its surveillance power in a manner to suppress a peaceful movement. Given this history, it is not a leap to recognize the need for scrutiny of FBI activities in Black and African American communities.

Just recently—if anybody is confused about this, watch a new movie that just came out called “Judas and the Black Messiah,” that talks about the assassination of a leader of the Black Panther Party. Regardless of what you think of the Panthers, I don't know that anyone deserves to be executed while they are asleep.

There is a police officer that on his deathbed just the other day had a death-bed confession that as an African American member of the New York Police Department that he was involved—and the NYPD was involved—in the assassination of Malcolm X.

So, my concern is that if we entertain legislation on domestic terrorism, how can we be sure that it will be targeted and not be used to groups that are not involved in terrorism? In August of 2017, the FBI intelligence assessment entitled “Black Identity Extremists Likely Motivated to Target Law Enforcement Officers”—and I asked over and over again, give me an example of a Black extremist organization; tell me about one.

I know earlier in this hearing an organization was mentioned that I think is ludicrous to be considered a terrorist organization, and that is the Black Hebrew Israelites.

Madam Chair, I want to ask the Committee for something. I would like to have a classified briefing, so that the FBI can come in and tell us about Black terrorists, Black extremist organizations, because I am not aware of one. Now, if you want to talk about 30 years ago, we can talk about 30 years ago. I want to talk about 2021. Tell me about Black terrorist organizations.

Our Vice President was referenced earlier in terms of supporting riots. I want to associate myself with the Chair of this Committee

who said that none of us support violence. What the Vice President was saying—at the time she wasn’t vice president; she was Senator and she was saying, and I have said as well, that I support the protests, peaceful protests.

I have been very clear about that from day one, because frankly, if hundreds of thousands of people weren’t out protesting police abuse and the murder of George Floyd, we would have never been able to pass the Justice in Policing Act, because the murder of George Floyd was nothing new in this country. The only thing that was new was that he was killed and tortured on video, and everybody watched his execution.

I also want to mention that I am concerned that White supremacists and other violent far-right extremist groups are using human trafficking disinformation to recruit their new Members.

So, in February of 2021, by Polaris, an organization well-known to address trafficking, they found that 41 percent of people believe that politicians and celebrities are involved in a global pedophile ring, a narrative that is at the core of the conspiracies driven by QAnon. So, the point is that the people promoting QAnon use a real issue, like human trafficking, as a way to get people involved.

So, from the panelists, I would like to know, can you tell me how we can do—

Ms. JACKSON LEE. The gentlelady’s time has expired.

Ms. BASS. Oh. I don’t have time for it. Okay.

Ms. JACKSON LEE. I am sorry.

Ms. BASS. Okay. Thank you.

Ms. JACKSON LEE. I will be happy to have you on a second round if we are able. Let me, first, thank you for that very astute recommendation, and I can assure you that is something that I think is very important and should be done.

The gentlelady’s time has expired.

Mr. BIGGS. Madam Chair? May I have a Point of Order? She referenced something I said in my opening statement. I want to clarify because I can read exactly what I said.

Ms. JACKSON LEE. What is the Point of Order, sir?

Mr. BIGGS. I think my words have been mischaracterized. I would like to clear them up.

Ms. JACKSON LEE. Can you just give us a moment?

Mr. BIGGS. Yes.

Participant. That is not a Point of Order.

[Pause.]

Ms. JACKSON LEE. Out of the outright fairness of this Chair, I am going to give the gentleman 30 seconds to clarify his point.

Mr. BIGGS. Thank you, Madam Chair. I just want to make sure that the gentlelady didn’t mishear me. When I was referring to the Jersey City, New Jersey, case of Anderson and Graham, and I referenced the Black Hebrew Israelites, and I didn’t say—I thought I said the Southern Poverty Law Center found that, I said quote “the extremist fringe of the Hebrew Israelite Movement,” closed quote, is Black supremacist. That is what I said.

Thank you, Madam Chair.

Ms. JACKSON LEE. I thank the—

Ms. BASS. I think you need to see an updated version of the Southern Poverty Law Center, because I am not sure that characterization is up-to-date.

Ms. JACKSON LEE. Our Committee will seek to find that document. Thank you, Ms. Bass. Thank you to Mr. Biggs.

Let me now recognize the gentleman from Utah, and that is Mr. Owens, for 5 minutes.

Mr. OWENS. Thank you, Madam Chair, and Ranking Member and Witnesses. Let's first get a little history taken care of because we are hearing a lot about the KKK, now.

For those who don't know our history, the KKK began in the Democratic Party. It was actually eliminated in 1880 by President Grant, who went down and had those guys running to the hills. It was brought back again in 1915 by President Woodrow Wilson. Within 5 years, 20,000 KKK Members were marching in DC, Democrats. Forty-seven hundred people were lynched by the Democrat KKK. Thirteen hundred of them were White Republicans, Italian, and Catholics.

If we look at where—I just want to make sure—you are talking the KKK. Just remember what party that they began with, and they made sure the Republicans had no part in the south.

Ms. BASS. Will the gentleman yield? Will the gentleman yield?

Mr. OWENS. No. I am sorry. Let me just finish up. I am sorry. Not now. Okay?

I will also, for our witness—I am kind of a little surprised you are not aware of the \$35,000 paid by CNN, or whoever it was, media. There was a Utah BLM insurgent who was in the Capitol encouraging everybody to tear it down. He came from Utah. I am surprised you didn't know about that.

So, I just wanted to make those quick points. By the way, 18 percent of Black men voted for Republicans, an all-time high, twice the percentage of women, highest percentage of Hispanic, Asians, and gay. So, no, there is something happening where people and Americans are waking up and they are moving toward the light. I am just very happy to make that note.

Over the last 2 years, Congress has held over seven Committee hearings on domestic terrorism. The topics they covered were important, but the vast majority were topics such as confronting White supremacy. However, what has been lacking to me is a specific hearing on the violence from the left-wing extremists that destroyed so many Black lives and businesses over the summer of 2020.

Twenty-five people were killed, murdered, last summer as a result of left-wing violence that was called many times peaceful protests. The estimate is over \$2 billion of damage that caused by looting and other criminal behavior.

The horrible riots occurred in inner cities—Minneapolis, Milwaukee, Philadelphia, Chicago, and earlier, a couple years ago, Ferguson, and Baltimore. Some of the greatest casualties of these violent rights have always been minority businesses, inner cities, that most is historic forever.

By the way, we do condemn all violence, and that has been the message we have been giving across the board. It doesn't matter which side it is, left, hard left, or hard right. When people are put

into misery, they are being bullied, we should all stand against it immediately, not months later.

Mr. Ngo, in light of the damage done by the violent protests last summer, where is the damage to inner city and minority businesses, communities trying to find the American way, trying to make a living, where has this damage been mostly done? Mr. Ngo?

Mr. NGO. So, in Portland, there is one example that stands out a lot. There was a black-owned café, Heroes Café, in southwest Portland. The business has photographs of first responders and law enforcement and some of the proceeds they have donated to some pro-law enforcement organizations.

That business got put on a list by one of the Antifa groups in Portland. Then after the statue of Abraham Lincoln was toppled last autumn, that same night somebody shot through this business several times and someone using a melee weapon smashed up some windows.

So, this is like the real on-the-ground damage of what the campaign of terrorism does. They do it in an organized manner under groups, on Twitter, on social media, and we have been naming anecdotes left and right of mass shootings and killings that have happened in the U.S. perpetrated by the far right.

I just want to State for the record that in August of 2019, after the shooting in El Paso, Texas, in Dayton, Ohio, there was a far-left extremist who killed nine people and injured 27 others. His social media, before it was taken down, he showed his affiliation for Antifa. Somebody had recognized something when he had gone to Antifa protests previously.

In January, the FBI recently arrested a suspect in Florida who had gone to Syria, and on his social media has a long history of posts in support of espousing support for Antifa.

So, I hope that, you will allow me because we can entrust you to move beyond the which side is worse than the other and start talking about how do we come up with laws to keep all Americans safe.

Ms. JACKSON LEE. The gentleman's time has expired. Thank you.

Mr. OWENS. I yield back. Thank you.

Ms. JACKSON LEE. I am now pleased to yield 5 minutes to the gentlelady from Pennsylvania, Ms. Scanlon.

Ms. SCANLON. Thank you, Chair Jackson Lee, for calling this important and obviously timely hearing. The threat of domestic terrorism and White supremacist extremism has been a growing concern for decades, but of course we have an immediate and tangible example of this threat in the attack on our Capitol just on January 6.

As we investigate the failures of systems and leadership that contributed to the January 6 tragedy, it is important that we also work to prevent future tragedies, because many of the forces that were weaponized to cause the violence on January 6 are obviously still with us.

Some basic steps are obvious. Political leaders should not promote conspiracy theories and false equivalencies and must unequivocally reject extremist views just as we would expect international leaders in other countries fighting the spread of extremism. It does appear to be past time that our federal agencies need

to take a more global view of the threat of domestic terrorism and understand the ways to stop it.

I am very aware of the challenges inherent in protecting individual civil liberties, such as free speech, while ensuring our security. Right now, I am really interested in what we can do to stop the next domestic terrorism action.

Mr. German, you have talked about the need for a federal approach to domestic terrorism. In particular, you spoke about the fact that the Department of Justice has focused on international terrorism while deferring to State and local authorities to address hate crimes, White supremacy, and other forms of domestic terrorism.

In this minute, it feels like the rise of social media is fueling extremism and allowing domestic terrorists to organize across jurisdictions. So, in the weeks between the November election and the January 6 attack on the Capitol, I saw social media posts from people in my region of Pennsylvania recruiting and organizing travel to Washington, DC, for the January 6 rally, and saw comments from people in other states recommending that they bring guns and other military equipment.

How can our federal agencies approach this radicalization and coordination across State lines?

Mr. GERMAN. Thank you very much for the question. I think it is very important for law enforcement to focus on the violence and the crime. There are far more people who say things online that sound scary or who join groups that we might find abhorrent who don't actually engage in crime, and it is a wasted effort to be investigating them when there actually is violence that is being perpetrated that law enforcement needs to focus their resources on.

The homicide clearance rate is historically low. We need to make sure that we are focusing law enforcement resources on law enforcement issues. When we talk about the debate about ideas, we need to have that outside the law enforcement sphere. There is enough for law enforcement to do focusing on the violence.

Ms. SCANLON. So, do you have any specific recommendations on how we can coordinate across jurisdictions when so much of this activity, which actually has resulted in attacks on people, whether it is synagogues or mosques or whatever, has crossed State lines now?

Mr. GERMAN. Oh, it always has, and that is the problem. Congress has made it very explicitly clear that it has an interest in addressing White supremacists and far-right violence. They passed 52 domestic terrorism laws. They passed five federal hate crime statutes, organized crime statutes, and conspiracy statutes. So, the laws are all there. It is just that law enforcement is not—and the FBI and Justice Department, in particular, are not documenting acts of violence committed by these organized groups and treating it as organized criminal behavior.

That is the big part of the problem is they are looking at every single instance as if that is standalone when they actually bother to look for it. So, the problem is the lack of collection of this data, and the lack of accountability for their programmatic use of their authorities.

Ms. SCANLON. Thank you.

Mr. Henderson, I understand that the collection of a lot of data can impact, as Mr. German suggested, folks who are just spouting off or just talking. So, what can we learn about previous efforts to ensure that civil liberties are protected as we fight against these violent threats?

Mr. HENDERSON. Ms. Scanlon, thank you for your question. Certainly, the Leadership Conference on Civil Rights believes in the importance of protecting civil liberties of all persons in the United States. I think Mr. German is underscoring a point that I attempted to make earlier, which is that White nationalist violence is often viewed as less urgent and more benign than other forms of hate crime activity here in the States.

The fact that the crowd that we saw on January 6 engaging in insurrection here at the Nation's capital was not met with the kind of police response that we have seen, for example, at Lafayette Square here in Washington in June last year with teargas and other high-impact forms of intervention by law enforcement.

It really is a testament to that. I think no one questions the fact that had that mob largely been African American or of color the results would have been far more individuals who had been maimed, shot, or killed, during that insurrection.

So, I do think certain concrete steps are needed. First, I am pleased to see that Lloyd Austin, Secretary of Defense, and hopefully soon-to-be-confirmed Merrick Garland as Attorney General, have each made a commitment to root out violence, White supremacist activity, in the military and in law enforcement at the federal level.

Secondly, I believe that an investment in public education is certainly needed as a way of helping to address what we know are problems with a number of groups, and recognizing—

Ms. JACKSON LEE. Mr. Henderson, your time has expired. Thank you so very much.

Mr. HENDERSON. Thank you.

Ms. SCANLON. If you wouldn't mind submitting the rest of that, I would appreciate it.

Chair—

Mr. HENDERSON. Of course.

Ms. SCANLON. Could I just seek unanimous consent to introduce the February 8, 2021, article from the Los Angeles Times entitled "Andy Ngo's New Book Still Pretends That Antifa is the Real Enemy." With that, I yield back.

Ms. JACKSON LEE. Without objection, so ordered.

[The information follows:]

MS. SCANLON FOR THE RECORD

Review: Andy Ngo's new book still pretends antifa's the real enemy

Andy Ngo, after being attacked with weapons including (almost definitely) a vegan milkshake in Portland, Ore., in June 2019.
(Moriah Ratner / Getty Images)

BY ALEXANDER NAZARYAN

FEB. 8, 2021 7 AM PT

ON THE SHELF

Unmasked: Inside Antifa's Radical Plan to Destroy Democracy

By Andy Ngo
Center Street: 320 pages, \$25

There is an alternate universe out there in which we never have to ponder, let alone read, “Unmasked,” provocateur Andy Ngo’s supremely dishonest new book on the left-wing anti-fascist movement known as antifa. In that other world far, far away, [Marjorie Taylor Greene](#) remains a nutty CrossFit enthusiast from Georgia, not a member of Congress, and we know nothing of her musings on [Jewish space lasers](#), the execution of Democrats or “[false flag](#)” school shootings.

If you find that universe, please send directions.

Coming as it does in this weary universe of ours, a month after pro-Trump insurrectionists [stormed the U.S. Capitol](#) in search of elected officials to kidnap or kill, “Unmasked” has to be taken seriously. Not because it is a serious book — it is nothing of the sort — but because Ngo’s prominence is evidence that false flags will continue to be planted, sometimes on the very same soil where violent reactionaries have spilled American blood.

A mainstay of conservative media, Ngo is a disciple of Project Veritas founder [James O’Keefe](#), who rose to fame with videos in which [members of liberal organizations](#) were duped into making outrageous statements that were then deceptively edited. But whereas O’Keefe, whom Ngo thanks in his acknowledgments,

goes after a diverse range of subjects, Ngo is singularly focused on inflating antifa's importance. It is his black-clad white whale, his Marx-spouting Moby Dick.

Ngo's fame, such as it is, stems from a [June 2019](#) donnybrook in Portland, in the course of which antifa activists assailed him with a thrown milkshake. Ngo claimed the milkshake [contained concrete](#); far more likely, it was a vegan blend heavy on cashew butter.

Ngo was punched and kicked as well; he claims to have suffered a cerebral hemorrhage. The violence was obviously criminal. What goes unmentioned is that Ngo had a history of "embedding" with right-wing groups — including, according to [persuasive allegations](#) he has denied, the white supremacist outfit Patriot Prayer — that provoke antifa into the very fights Ngo then films. In "Unmasked," he eagerly dons the martyr's vestments, describing the attack with such self-serving detail, you'd think he'd been liberating Rome.

"Unmasked" is a culmination of Ngo's single-minded quest to depict an assortment of leftists as a unified vanguard whose mission is to "destroy the nation-state, America in particular." Only in its final pages does he explain the roots of that fixation, his parents' immigration from wartorn Vietnam. He calls this book "a letter of gratitude to the nation that welcomed" them. As an immigrant from a communist country, I understand the sentiment. As a journalist, however, I must point out that he is churning out the very kind propaganda that keeps authoritarians in power.

Distortions and untruths hover like flies around every shred of confirmable fact. The same section of "Unmasked" that ends with Ngo's paean to the United States portrays a mid-November "Stop the Steal" rally in Washington as a "peaceful and celebratory" affair, with no mention of the Proud Boys amassed there. The counter-protesters, meanwhile, are a "marauding gang."

The truth about antifa has been chronicled elsewhere, and it is a lot more quotidian than Ngo and his abettors at Fox News would like you to believe. The nation's top mainstream antifa scholar, Mark Bray, [wrote in The Washington Post](#) that antifa is "not an organization. Rather, it is a politics of revolutionary opposition to the far right."

Ngo's false-equivalence manifesto comes while fencing remains in place on Capitol Hill, all because the Proud Boys of the aforementioned November lovefest decided to return on January 6. Coming in the wake of that ugly insurrection, "Unmasked" has

the ridiculous feel of a warning about the dangers of German communism issued in 1939.

Incredibly, Ngo makes that very comparison himself, arguing that antifa's predecessors in Weimar Germany deserve as much scrutiny as their Nazi counterparts.

"While the Brownshirts are well remembered in contemporary Western society, the history of far-left paramilitaries in the German interwar years has faded to memory," Ngo writes, in the tendentious, pedantic tone of a Wikipedia enthusiast. I guess he didn't get around to clicking on the entry for Auschwitz-Birkenau.

Ngo crosses the line into truly despicable when he downplays the murders of Heather Heyer by white nationalists in Charlottesville and Black teenager Trayvon Martin by vigilante George Zimmerman. Every act of violence by antifa, meanwhile, is described so meticulously and ominously that Herr Goebbels would have been proud.

In no way do I [make that allusion flippantly](#). Maligning the opposition was central to the Nazi strategy, and it is critical to today's far-right extremists. Ngo's intention here seems not just to discredit antifa, but to run a diversionary tactic for [Patriot Prayer](#) and other groups that are far more dangerous than their leftist counterparts. He calls the Proud Boys a "pro-Trump fraternity," as if they were just J. Crew-clad beer pong aficionados instead of racist thugs.

The right is always reminding us that "[facts don't care about your feelings](#)," so let us set out some facts. Ngo writes that the "numbers and influence" of right-wing extremists "are grossly exaggerated by biased media," while antifa poses "just as much, if not more, of a threat to the future of American liberal democracy." He frequently references last summer's anti-racism protests, conveniently eliding the point that 93% were peaceful, [according to a study from Princeton](#). A brief published by the [Center for Strategic and International Studies](#), hardly a lefty outfit, found that antifa had a "minor" role in what violence did occur, most of which was driven by local, autonomous actors, and that the organization's threat was "relatively small."

January 6th administered the coup de grâce to Ngo's already teetering thesis. It should not have taken this long, however. Trump's own Department of Homeland

Security [warned last October](#) that “white supremacist extremists” would remain the “[most persistent and lethal threat](#)” to the American homeland.

[A recent report in the New York Times](#) noted that Trump was so obsessed with the imaginary threat of antifa, he effectively prevented his own administration from countering the looming threat from the right. Before he was banned from Twitter, Trump retweeted Ngo’s scurrilous dispatches 11 times between August and October 2020 to his nearly 90 million followers.

If trolling, not reportage, is Ngo’s purpose, then “Unmasked” is a tour de force. The left helped his cause (as it tends to), protesting in front of the famed Powell’s bookstore in Portland, Ore., for agreeing to carry the book. Powell’s [backed down](#), giving Ngo the kind of publicity not even a Trump tweet would have brought. The book became an Amazon bestseller.

Yet no amount of commercial success can obscure Ngo’s fundamentally flimsy argument. Most of his reporting is focused on Portland and Seattle, where radicalism is not exactly new. His efforts to depict a national network are unconvincing, as are attendant efforts to show the Democratic establishment’s support for antifa (for example, an Instagram post from Rep. Alexandria Ocasio-Cortez supporting [Unicorn Riot](#), an alternative news outlet that backs peaceful protests).

Seeking proof of antifa’s military cohesion, he quotes from a training manual he managed to obtain: “Childcare will be provided. Please just let us know the number and ages of the children ahead of time.” The road to Stalinism, I have long maintained, will be paved with BPA-free playmats.

Before the fine folks at Gateway Pundit rush to screenshot any of the above as evidence of my left-wing affinities, let me just say that I have as much fondness for antifa as I do for orthodontic surgery. I watched them destroy a Starbucks in Berkeley during a protest over a scheduled appearance by Milo Yiannopoulos. This, shortly after the company’s chief executive, Howard Schultz, committed to [hiring thousands of Syrian refugees](#). The destruction was not just pointless, but also detrimental to the cause. The same can and should be said about the violence that sometimes followed the summer’s protests.

Excuses for left-wing violence — I am thinking of Vicky Osterweil’s [offensively clueless](#) “In Defense of Looting” — deserve the same level of condemnation now directed at Ngo. The only difference, and it is a *yuge* one, is that Trump openly

courted the Proud Boys and other right-wing groups, which essentially turned their violent acts into state-sanctioned terror. Say what you will about President Biden, he is unlikely to invite antifa for tea and crumpets on the South Lawn.

Less honest segments of the right will nevertheless argue the opposite, using Ngo's book to pad their case. Greg Kelly, the Hannity wannabe anchor on [Newsmax TV](#), gave the game away on Jan. 15, when he complained that he was "sick of hearing" about the Capitol riot. He then quickly pivoted to antifa, deploying exactly the same argument Ngo makes in this collection of words that I am legally required to call a book.

"Unmasked" will do no more to help Americans understand antifa than Borat helped us understand Kazakhstan. It is simply a cudgel for Trumpists to swing whenever they need to obscure their own complicity in events like the Capitol riot, which even Ngo was [forced to admit](#) had not been conducted by antifa.

On Jan. 4, some protesters showed up in front of the Virginia residence of Sen. Josh Hawley. The protesters were loud and plainly unwelcome. Hawley treated them as terrorists, denouncing "antifa scumbags" whom he [falsely depicted](#) as vandalizing his property. It made for some good Fox News segments, which seems to be both the origin and endpoint of so much conservative thought these days.

Not 48 hours later, there was Hawley in front of the Capitol, fist raised **in** support of what few would call anything but treason. Followers of Trump fervently searched footage of the riot, desperately trying to find evidence of antifa agitators. But those rioters did not wear masks, so it was clear who they were — and were not.

Ms. JACKSON LEE. The gentleman from Ohio, the Ranking Member, Mr. Jordan, is recognized for 5 minutes.

Mr. JORDAN. Thank you, Madam Chair.

Mr. Ngo, I want to go right to your testimony. In the middle of your testimony, you said, "Actions that occurred at the Capitol on January 6, 2021, were repeated every night"—and you emphasized "every night months on end in the Pacific Northwest."

Then you define those actions. Antifa carried out nightly riots targeting federal, county, and private property. They developed a riot apparatus that included streams of funding for accommodation, travel, riot gear, and weapons. This all resulted in murder, hundreds of arson attacks, mass injuries, and mass property destruction.

How many days in a row did all of that take place in your hometown of Portland?

Mr. NGO. Consecutively, approximately 120 days.

Mr. JORDAN. One hundred and 20 days. So, what people on Capitol Hill lived through one day you, your neighbors, and people in Portland, Oregon, lived through for 120 days straight. Is that accurate?

Mr. NGO. That is correct, sir.

Mr. JORDAN. One hundred and 20 days straight, and yet I don't recall, don't remember the Democrats condemning what was going on in Portland. That is the part that—a little earlier we had the Chair of the Committee say that she abhors violence. Last summer when the Attorney General of the United States, the chief law enforcement officer of this country, was in front of this Committee and asked the Democrats, why wouldn't you condemn the violence going on in Portland and other big cities, complete silence from the Democrats.

So, Mr. Ngo, I don't know if you are Republican or Democrat. I don't know what your party affiliation is, if any. What I do know is you are consistent. You are condemning all political violence; is that right?

Mr. NGO. That is right, sir.

Mr. JORDAN. Whether it happened on January 6 or whether it happened in the summer of 2020, right?

Mr. NGO. That is right.

Mr. JORDAN. Whether it happened at the Capitol of the United States or whether it happens in your hometown, it is wrong; is that right?

Mr. NGO. That is correct.

Mr. JORDAN. You know first-hand what it is like, right? You have lived it. I think you said in—

Mr. NGO. That is right.

Mr. JORDAN. —opening paragraph you said, "I know domestic terrorism well." Can you tell us what happened to you back in 2019?

Mr. NGO. Yes. I was hesitant to share this again. In 2019, while working as a journalist covering one of the many protest-turned-riots involving Antifa and their other far-left allies, they taunted me and beat me severely. Masked militants punched me repeatedly on the head, in the face, and I ended up in the hospital with a brain bleed, and I nearly died from that.

Mr. JORDAN. They targeted you because—

Mr. NGO. Ever since—

Mr. JORDAN. Excuse me. I am sorry. They targeted you because—

Mr. NGO. Ever since then, it continues to escalate death threats against me.

Mr. JORDAN. Yeah.

Mr. NGO. I had to leave my home.

Mr. JORDAN. They targeted you because you had the courage, as a journalist, to accurately portray what they were doing and what kind of tactics they engage in and the harm and violence that they cause; is that right?

Mr. NGO. That is what I believe, yes.

Mr. JORDAN. Well, I appreciate it. I mean, look, we need consistency. We need to condemn all violence. Republicans condemn the violence that took place on the 6th. We condemn the violence that took place for 120 straight days in Portland when Antifa was laying siege to the federal building.

While that was happening, we had our colleagues talk about that they needed more unrest in the streets at the very time unrest was happening in the streets. We had our colleagues say that the organization that tried to end your life, and that for 120 days had violence happening every single day in Portland, that that organization was a myth.

Look, this is so important. I appreciate Mr. Ngo's willingness to talk about the consistency that is needed from everyone, from both sides of the aisle, to address this problem and get violence out of our political process.

Madam Chair, with that, I would yield back.

Mr. BIGGS. Mr. Jordan?

Mr. JORDAN. Oh, no, excuse me. I have got to yield—I wanted to save time for the Ranking Member. I yield to the Ranking Member.

Mr. BIGGS. Thank you. Madam Chair, without objection, I would like to introduce into the record an article from August 29, 2008. It is a report from the Southern Poverty Law Center about the Black Hebrew Israelites entitled "Racist Black Hebrew Israelites Becoming More Militant," and also a 2019 SPLC article describing the New Jersey attack and the militancy of the Black Hebrew Israelites.

Ms. JACKSON LEE. Without objection, so ordered.

[The information follows:]

MR. BIGGS FOR THE RECORD

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RACIST BLACK HEBREW ISRAELITES BECOMING MORE MILITANT



2008 Fall Issue
August 29, 2008



The black supremacist wing of the Hebrew Israelite movement is spreading and its leaders are growing increasingly militant

BALTIMORE — Despite the hellish heat on this spring Saturday morning in gritty West Baltimore, the five [Hebrew Israelite](#) priests loitering near a West Franklin Street storefront are draped in heavy robes, and their heads are wrapped in matching white, red and black cloths. Star of David emblems

swing from their necklaces and are embroidered into their fabrics. One priest holds a staff.

Around them, security guards wear black headscarves, black T-shirts and black military-style pants tucked into combat boots. They grip cell phones and billy clubs. On their belts are sheaths and holsters, some empty, others holding blades and guns. The guards flit back and forth across the street, between the parking lot of an apartment complex that police say is notorious for drug-related crimes and a building with covered windows and a bolted front door.

Behind that locked door is the Baltimore branch of the Israelite Church of God in Jesus Christ, a black supremacist sect headquartered in New York City. Obsessed with hatred for whites and Jews, the leaders of the Israelite Church have managed to build up 29 church branches in recent years.

They are not alone.

Around the country, thousands of men and women have joined black supremacist groups on the extremist fringe of the Hebrew Israelite movement, a black nationalist theology that dates back to the 19th century. Its doctrine asserts that African Americans are God's true chosen people because they, not the people known to the world today as Jews, are the real descendants of the Hebrews of the Bible. Although most Hebrew Israelites are neither explicitly

racist nor anti-Semitic and do not advocate violence, there is a rising extremist sector within the Hebrew Israelite movement whose adherents believe that Jews are devilish impostors and who openly condemn whites as evil personified, deserving only death or slavery.



□ Black-clad security guards and Hebrew Israelite priests stand outside the Baltimore chapter of the Israelite Church of God in Jesus Christ. The black supremacist group is obsessed with security and the evils of white people.

The notorious white supremacist leader [Tom Metzger](#) once remarked of extremist Hebrew Israelites, "They're the black counterparts of us." The belief system of extremist Hebrew Israelites is basically the reversed-color mirror image of the [Christian Identity](#) theology embraced by many white supremacists, which holds that mainstream Jews are the descendants of Satan and that white people are the chosen ones, divinely endowed by God with superior status over "mud people," believers' term for non-white individuals.

Since 2000, when the prophecy of a key leader failed to materialize (he predicted Christ would return to Earth at the dawn of the new millennium to wreak bloody vengeance on white people), the rhetoric of extremist Hebrew Israelites sects has been steadily heating up, with increasing talk of an impending apocalypse and God-ordained race war. At the same time, a magnetic young leader, who counts among his disciples the lead singer of a top-selling R&B group, emerged and rapidly expanded a movement that was previously concentrated in black inner-city neighborhoods on the East Coast. There are now extremist Hebrew Israelite churches in cities throughout Florida, Maryland, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, Pennsylvania, Oklahoma and Oregon.

Confrontations between Hebrew Israelite street preachers and their perceived enemies are growing uglier and gaining increasing attention through video clips circulated to legions of viewers on websites like YouTube. The Israelite School of Universal Practical Knowledge, a sect that is the Israelite Church's main rival, has its own YouTube "channel," or video sharing distribution networks, with over 500 subscribers. One recently circulated Israelite School video, which has been viewed more than 26,000 times, shows a group of robed street preachers harassing a white woman until she bursts into tears. Another shows the preachers applauding as a white man kneels down to kiss the boots of "the prophets of God" while begging forgiveness for the sins of his race.

In yet another video, a preacher of the Israelite School, a man who identifies himself as General Mayakaahla Ka, offers this stark prediction for the future of the white race: "Every white person who doesn't get killed by Christ when he returns is going into slavery!"



□ "General Mayakaahla Ka," an Israelite School of Universal Practical Knowledge preacher, regularly shouts down whites, Jews and other enemies in street confrontations.

Baltimore: The Grilling

The streets of the West Baltimore neighborhood where the Israelite Church sanctuary is located are just as tough as they look on HBO's "The Wire," a cops-and-reporters crime series acclaimed for its realistic insights into urban

life. In the middle of this scene, passersby on Franklin Street respectfully acknowledge the Israelite Church priests and their black-clad security men. These local residents would have no problem getting into the nightly classes that Israelite Church teachers offer in public libraries throughout Baltimore.

But the mysterious church here is different. Entry to its Saturday "Sabbath" sessions requires a vigorous and often intimidating screening.

First, there's the question of skin tone; those with European ancestry need not apply. Others — and, lately, Hebrew Israelites have come to include West Indians, Latin Americans, and American Indians as brother "Hebrews" — may approach security for entry. Any stranger must meet certain strict conditions.

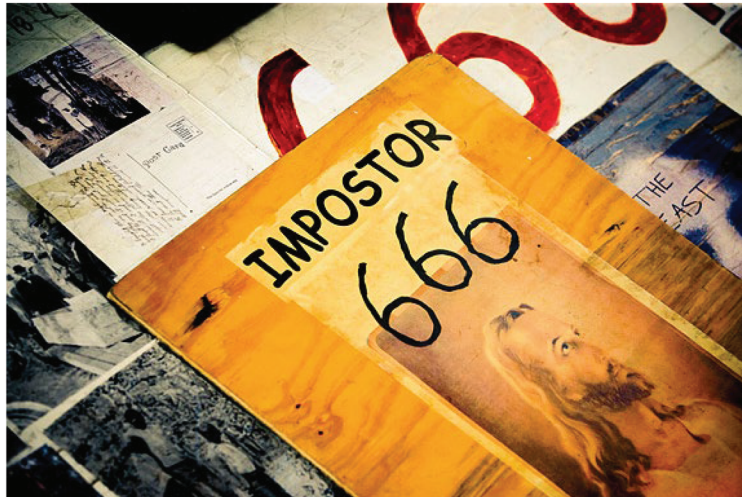
You must promise the guards that you are "clean" — that you haven't eaten pork or had sex in the prior 24 hours. You must explain how you learned about the church and why you've chosen to attend. You must assure guards that you're not a law enforcement officer or a spy from a rival Hebrew Israelite group, and then you have to give up your photo identification. Any recording device will be confiscated during an aggressive pat down search carried out by the guards.

When the door is unbolted briefly to allow you into the building, you walk into a tiny vestibule where you're required to enter your name, address and

Racist Black Hebrew Israelites Becoming More Militant | Southern Poverty Law Center

telephone number into a ledger. If you have a cell phone, it will be confiscated and stored in a file cabinet until you leave. You will be issued a King James Version of the Bible — and any other version that you may carry will be taken away.

Finally, a disciple approaches. He pours olive oil on your head as a final cleansing measure. Now, at last, you are prepared to enter the inner sanctum.



□ Posters used by Israelite School preachers in Washington, D.C., give a sense of what racist Hebrew Israelites think of Mainstream Christianity.

Lynching Santa

"I'm talking about 99 million n-----! You talking about 6 million crackers?"

General Mayakaahla Ka is shouting at a college-aged Jewish kid outside the

<https://www.splcenter.org/fighting-hate/intelligence-report/2008/racist-black-hebrew-israelites-becoming-more-militant>[2/24/2021 5:03:51 PM]

Market East Station in downtown Philadelphia. He and three other extremist Hebrew Israelite preachers, all wearing the Israelite School insignia of two swords crossed through a Star of David, berate their victim until he begins to weep. The altercation is part of an Israelite School recruiting video that began circulating this spring and has since been viewed more than 73,000 times.

"Are you saying the Holocaust is a joke?" the Jewish man asks.

"It's a joke!" the "general" responds. "The Holocaust is a damn joke! Heil Hitler!"

Mobile clusters of up to a dozen extremist Hebrew Israelite street preachers, known in the movement as "camps," have become a common presence at busy intersections, plazas and public transportation centers in large American cities, especially in Philadelphia, New York, Baltimore and Washington, D.C., as well as Venice, Calif. The camps are often remarkably aggressive and intimidating, railing against "white devils" and calling for death for Jews and gay men and lesbians.

Zacharyah ben Ya'aqov, a former racist Hebrew Israelite who was active in the movement in the 1990s, calls the activities of camps "evangelical terrorizing." Ya'aqov, who now heads the Israelite group, The Truth After Knowledge, denounces his former community's racist doctrines. He describes on his group's website his experiences as a rank-and-file member, explaining

that his superiors brainwashed new recruits, using "fear tactics to break you down," and instructed followers to join camps and verbally assault pedestrians. "They [camp preachers] told them [targeted passersby] they had hell to pay and would be going into slavery," Ya'akov says on his Web forum. "Especially the white man, who they had special hatred for."

The Israelite School caused a major stir recently when it positioned a camp at the bustling intersection of H and 8th streets in the Capitol Hill neighborhood of northeast Washington, D.C.. The noise produced through its preachers' megaphones and amplifiers sparked conflicts with those who live in the area. "It's frightening when a person or group can force noise — whatever the speech content — inside another's home," said Capitol Hill resident David Klavitter, who monitors the Israelite School camps for his Quest for Quiet blog. "This allows amplifiers to be used as weapons to harass, intimidate and threaten people."

Last December, the Israelite School observed the holidays by "lynching" effigies of the Virgin Mary and Santa Claus in Klavitter's neighborhood.

Extremist Hebrew Israelites have a long, strange list of enemies. At the top of the list are white people, who they preach are descended from a race of red, hairy beings, known as Edomites, who were spawned by Esau, the twin brother of Jacob (later known as Israel) in the Old Testament. Equally hated are "fraudulent" Jews, "the synagogue of Satan." They're closely followed in

no particular order by Asians, promiscuous black women, abortionists, continental Africans (who, according to the extremist Israelites, sold the lost tribes of Israel, who were black, to European slave traders), and gay people, who according to extremist Israelites should all be put to death. (In December 2006, three gay men who were assaulted inside an Atlanta nightclub identified their attackers as Hebrew Israelites; no arrests were made).

Recruiting literature describing the extremist Israelite doctrine is just as harsh as the street preachers' angry rhetoric. "Does the Bible teach unity of races? NO!" reads one of the Israelite Church's widely distributed flyers. "Will the different nations who believe in Jesus be saved from the Lord's wrath? NO! Was Jesus Christ a Caucasian man? NO! Does his color matter? YES!"



□ Many racist Hebrew Israelite preachers work the streets in "camps" of up to a dozen men. Here, members of the Israelite School gather at the corner of H and 8th streets in Washington, D.C.

Baltimore: The Sanctuary

Paintings of a black "Yahawah," or Jesus, adorn the walls of the sanctuary inside the Baltimore storefront Israelite Church, along with images of dark-skinned angels. The room is long, narrow and windowless. There are metal and wood folding chairs set up in 12 rows of six each. The first six rows are reserved for men, while women are relegated to the back. The walls are lined with posters bearing the names and images of the 12 tribes of Israel and the nations who are believed to represent each of those tribes today. The biblical tribe of Judah, for instance, is said to be the forbear of today's African Americans, while those of Levi and Benjamin are believed to have become the Haitians and West Indians of the present.

At the head of the sanctuary is an altar adorned with coiled horns made of wood and metal candelabras. Just behind the altar, atop a slightly raised stage, is a table covered in cloth. Behind that are two royal-blue curtains, each embroidered with Hebrew characters. (Israelite Church members, like members of other Hebrew Israelite groups, routinely use "Hebrew" names rather than their legal names.)

A member of the audience announces the three priests who will preside today, and the men, clad in extravagant robes and staffs, rise from the front seats. They take their seats at the table behind the altar, and one of them sounds the coiled horn.

This Sabbath's teaching, from the Book of Chronicles, is read out by one of the high priests. Then another, whose real name is Carlos Santiago, interprets the words for his audience. As usual, the sermon focuses on the perfidy of white people — or, in the language that Santiago appropriates from the Bible, how God restores power to Judah (read: black Israelites) and punishes Edom (white people) with death.

"The army of Judah also captured 10,000 men alive, took them to the top of a cliff and threw them down so that all were dashed to pieces," one priest reads. Then Santiago steps up to explain how this is a reference to black Israelite power. "See how powerful Judah is?" he says. "This is the kind of power we

have over them."



□ *Priests of the Israelite Church of God in Jesus Christ preach a particularly virulent form of Hebrew Israelism.*

Aching for Armageddon

The man with the most power over the extremist Hebrew Israelite movement is Jermaine Grant, 30, the head of the Israelite Church of God in Jesus Christ. Grant rose from the lower levels of the organization to become its top leader in 2000. This was after Christ failed to return to earth to slay or enslave all Edomites, as had been long prophesied by Grant's predecessor, Ahrayah, the movement's founding "godfather."

It was a period of great tumult within the extremist Israelite world. Many of Ahrayah's high-ranking followers split off to form their own new factions,

while inside the Israelite Church organization, Grant's star ascended just as rapidly as Ahrayah's fell. A former rap music label owner and restaurateur, Grant is a highly charismatic figure. Although his "Hebrew" name is Tazadaqyah, his title is "Chief High Priest"; he is also sometimes referred to by followers as the Holy Spirit made flesh. Today, he can be seen in numerous YouTube videos preaching to gatherings of hundreds and typically dressed in shiny silk robes and headwraps rendered in blues and purples. He's often pictured in stretch limos or tour buses emblazoned with his portrait and his nickname — "The Comforter."

Since 2001, Grant has produced the Arch Angel Awards, a version of the Grammys for musical artists who are avowed loyalists of the Israelite Church. The most famous of them is Wanya Morris, the lead singer of Boys II Men, a popular R&B group that's won four real Grammys and sold over 60 million records.

According to former members of the church, Grant has instituted mandatory tithes and general offerings from his followers. Also, during his 2006 "I Will Not Leave You Comfortless Tour," in which he toured six East Coast states in eight weeks, Grant reportedly demanded an additional \$25 per attendee in the form of an additional "High Priest offering." (Another "world tour" is planned later this year.)

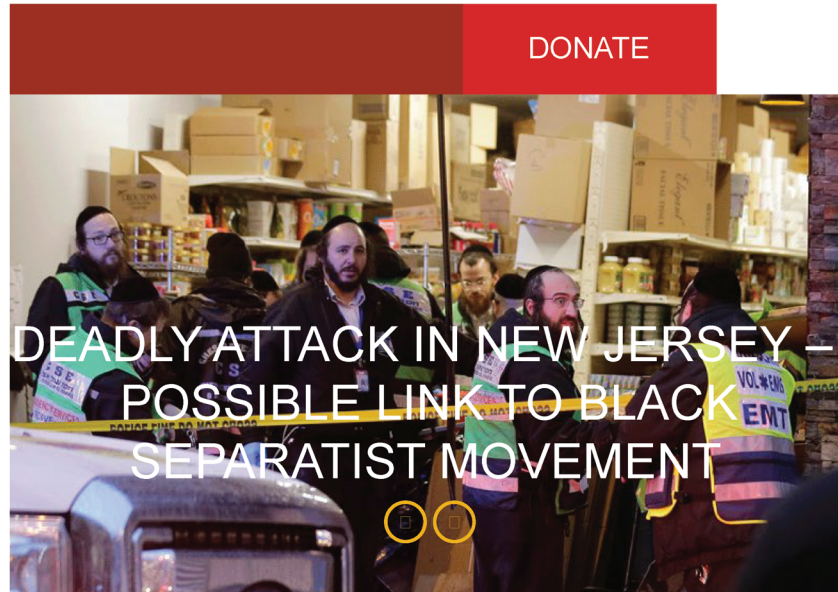
Grant, who did not reply to a request for an interview for this article, is an

energetic man. Under his leadership, the Israelite Church has expanded rapidly, and its "Hidden Truth" television programming can be seen on public access channels around the country. Meanwhile, the tone of the extremist Hebrew Israelite grows ever more apocalyptic, with its followers feverishly searching for signs of a bloodthirsty black Yahawah's impending return.

This summer, Grant boldly predicted that a hellish earthquake would soon herald the return of Christ and the beginning of Hebrew Israelite rule. He didn't set a date, but his prophecy still heightened the mood of eager anticipation for the coming doom of all enemies of the true Israelites. That, coupled with the increasing militance and numbers of his movement, is what is so worrying.

The vision of Grant and his fellow Hebrew Israelite hard-liners — an imminent and bloody demise for whites and other enemies at the hands of a vengeful returning Christ — is well captured in a scene from a 2007 documentary. In one scene from "The Gods of Times Square," an extremist Hebrew Israelite preacher delivers a sermon with his foot planted on the back of a white man laying flat on the sidewalk, arms splayed at his sides. A second preacher approaches the camera.

"White boy, you're next," he warns. "All you white people get ready for war. We're coming for you, white boys. Negroes are the real Jews. Get ready for war!"



One of the two people who attacked a kosher supermarket in Jersey City, New Jersey, this week and fought a prolonged gun battle with police reportedly published antisemitic and anti-police posts online and may have ties to a Black separatist movement known for harboring anti-white and antisemitic beliefs.

Five people, including both assailants, were killed at the market. A police officer was shot to death earlier that day at a nearby cemetery.

Authorities identified the attackers as David N. Anderson, 47, and Francine Graham, 50. Several media outlets reported that law enforcement officials said they were looking into Anderson's possible links to the Black Hebrew Israelite movement.

Who are Black Hebrew Israelites?

The SPLC lists 144 Black Hebrew Israelite (BHI) groups as Black separatist [hate groups](#) because of their anti-white and antisemitic beliefs.

Although many Hebrew Israelites are neither explicitly anti-white nor antisemitic and do not advocate violence, there is a rising extremist sector within the movement.

Deadly Attack in New Jersey – Possible Link to Black Separatist Movement | Southern Poverty Law Center

The BHI hate groups listed by the SPLC believe in ideas of Black supremacy and bigotry against Caucasians, Jews and members of the LGBTQ community. The movement is based on a [Black separatist](#) theology dating to the 19th century that preaches people of color are the true children of God. They believe that, as members of the 12 Tribes of Israel – consisting only of African Americans, Hispanics and Native Americans – they are God’s “chosen people.” Jews are considered “imposters.” Caucasians and members of the LGBTQ community are deemed “devils.” Extreme Black Hebrew Israelites believe that individuals outside the movement are deserving of slavery or death.

The most numerous of the BHI groups in the United States are under the banners of Israel United in Christ, the Israelite School of Universal Practical Knowledge, and Great Millstone.

The most recent significant act of violence perpetrated by a Black separatist occurred in Dallas on July 6, 2016, when Micah Xavier Johnson ambushed Dallas police officers during a peaceful protest against police brutality, killing five and wounding nine. According to news reports, Johnson’s social media accounts contained anti-white rhetoric and photos demonstrating his belief in Black separatist ideas. It was later learned that Johnson had attempted to join a Black separatist group, the New Black Panther Party, but was ousted by the group’s leader because of his radical views and perceived mental instability.


More from the SPLC

[A message from Interim President Karen Baynes-Dunning on Tuesday’s shooting at a kosher market in Jersey City, New Jersey.](#)

[Explore our Hate Map—In 2018, we tracked 1,020 hate groups across the U.S.](#)

[Hatewatch: Suspects in Jersey City Attack 'Expressed Interest' in Black Hebrew Israelites, Authorities Say](#)

Photo by Seth Wenig/Associated Press



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<https://www.splcenter.org/deadly-attack-new-jersey-possible-link-black-separatist-movement>[2/24/2021 5:05:58 PM]

Ms. JACKSON LEE. I am going to introduce into the record, without objection, Daily Beast article "Capitol Police Officer: Trumpist Rioters Called Me the N-Word Dozens of Times," and Exhibit Number B, physically showing the visible surrounding of an officer on January 6 who is down, and a noose, Exhibit C, placed by the domestic terrorists on January 6.

[The information follows:]

MS. JACKSON LEE FOR THE RECORD

Capitol Police Officer: Trumpist Rioters Call Me the N-Word
a Dozen Times – Daily Beast

A [Capitol Police officer](#) who was on the front line against the pro-Trump rioters that stormed the Capitol has revealed that he was subjected to relentless racist abuse while trying to defend the building.

In an interview [broadcast Monday on ABC News’ Good Morning America](#), Harry Dunn recalled being surrounded by rioters, his lungs burning from pepper spray and bear mace, and bursting into tears. When one of his colleagues approached him to ask what was wrong, Dunn said that he felt devastated by the unashamedly racist vitriol of the Trumpist rioters.

“I got called a [N-word] a couple dozen times today protecting this building,” Dunn recalled telling his colleague through tears. “Is this America? They beat police officers with Blue Lives Matter flags. They fought us, they had Confederate flags in the U.S. Capitol.”

[Democrats Will Pay for Letting Trump Off the Hook Again](#)

In the six weeks that he’s kept his silence, Officer Dunn has seen some people try to dismiss the riot as being purely motivated by politics. From his experience, that is completely wrong. The officer told ABC News: “Everybody wants to say that it was about politics and everything—but there was a large number of people in that crowd that were racist.”

Dunn’s account of the day is terrifying. He described one particular moment when he was looking over the MAGA hordes and realized that any one of them could have a gun and that he was an obvious target.

The officer said, “If I can imagine what war is like, I would imagine it was like that. We had our guns out, we had our rifles, our long-guns, and I was on this stage and I’m thinking: ‘All these people out there, they’re armed too, they have guns on them.’ A sea of people and you can’t know who you’re looking at, which one is looking at you, and they see me out there with this rifle and I’m like: ‘I’m gonna get shot.’”

Dunn [spoke to BuzzFeed News](#) in the days after the riot—though his account of the events was kept anonymous. During former President Donald Trump’s second impeachment hearing, Rep. Jamie Raskin (D-MD) used one of Dunn’s anonymous quotes from that article: “Is this America?” However, Dunn wishes the quote hadn’t been used.

[‘I Can Bring My Gun?’: Retired Couple Among Six Oath Keepers Charged With Conspiracy in Capitol Riots](#)

“It took me back to a dark place because I didn’t say it for a catchphrase,” the Capitol police officer told ABC News. “I wasn’t trying to create a slogan... I struggle... should I be proud? No, not at all... Those were my feelings and that was my truth—it wasn’t a proud moment.”

He praised his fellow officers who were there that day, including officer [Brian Sicknick](#), who lost his life after being attacked by rioters, and who Dunn described as a “brave” and “dedicated” officer. Dunn also offered high praise for Officer [Eugene Goodman](#), whose run-ins with rioters were caught on camera and have raised him to the status of a national hero.

“Eugene got caught on camera and I’m not surprised that he did the right thing, the brave thing, the heroic thing,” said Dunn, adding, “There were so many Eugene Goodmans that weren’t caught on camera that day... I’m proud to work with all of them.”

As for the rioters, it’s clear what Dunn thinks of them. “They were terrorists,” he told ABC News. “They tried to disrupt this country’s democracy—that was their goal... And you know what? Y’all failed because later that night, they went on and they certified the election.”

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Prosecutors: Capitol Rioters Intended to 'Capture and Assassinate' Elected Officials

A stunning filing from federal prosecutors against the man known as 'QAnon Shaman' comes as security officials grapple with the historic security breach.

By Paul D. Shinkman

|
Jan. 15, 2021, at 2:23 p.m.

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Capitol Mob Sought to Assassinate Lawmakers



A noose is seen on makeshift gallows as supporters of President Donald Trump gather on the West side of the U.S. Capitol, Jan. 6, 2021, Washington, D.C.

Supporters of President [Donald Trump](#) who violently stormed the U.S. Capitol last week intended to "capture and assassinate elected officials in the United States government," federal prosecutors asserted in documents released Friday.

The stunning disclosure was included in a court filing late Thursday regarding Jacob Anthony Chansley, also known as "QAnon Shaman," whose likeness has been widely shared after he participated in the violent mob bearing stars-and-stripes facepaint and a headdress that included animal horns.

And it follows increasingly troubling reports about the gruesome intentions of members of the mob that left a rally Trump held near the White House and laid siege to the Capitol on Jan. 6 as Congress was certifying President-elect [Joe Biden's](#) electoral victory. The assault delayed the vote and resulted in shocking images of protesters vandalizing legislative chambers and lawmakers' private offices while some armed with weapons and zip-tie handcuffs, as others erected makeshift gallows outside.

Trump Supporters Storm Capitol Building



"Chansley left a note on the Senate Chamber dais, where Vice President [Mike Pence](#) had been presiding over the secession just minutes before, warning, 'it's only a matter of time, justice is coming,'" according to prosecutors.

The filing describes Chansley's "lengthy diatribe" of conspiracy theories, including Pence, former President [Barack Obama](#), Trump's former presidential opponent Hillary Clinton and Biden, including that he believes the current vice president is a "child-trafficking traitor."

Chansley claimed his note was not a threat, though the U.S. attorney asserted, "the government strongly disagrees."

[National Guard Can Use Lethal Force](#)

"Chansley acted on conspiracy theories he has repeatedly espoused in becoming one of the highest-profile members of a group that attacked a congressional proceeding," the filing states.

Trump has faced criticism throughout his campaigns and administration for not denouncing conspiracy theories involving his political opponents, including the movement known as QAnon that baselessly purports to involve members of a "deep state." Close advisers of Trump's, including former national security adviser Mike Flynn, whom Trump pardoned for federal crimes, have also touted these conspiracy theories.

Thursday's filing argues against releasing Chansley while his court case proceeds.

At least five people died as a result of the protests, including a woman fatally shot by police and Capitol Police Officer Brian Sicknick, who was assaulted by protesters and later collapsed. Another officer, Howard Liebengood, who contributed to the response, subsequently died while off duty. The Associated Press later reported that two sources indicated his death was an apparent suicide.

Roughly 20,000 National Guard troops have been staged at or near the Capitol grounds to assist local law enforcement officials for persistent threats in the days leading up to next week's inauguration.

D.C. Mayor Muriel Bowser said at a press conference Friday afternoon that the scope of the attack on Jan. 6 will set a "new normal" for security in and around the capital to address "a very real and present threat to our nation."

"White extremists stormed the Capitol Building who were trained and organized," Bowser said. "We all have to think about a new posture. We certainly have to think about a new posture in the city."

"So while we are focused on Jan. 20, we are also focused on Jan. 21 and every day thereafter in the nation's capital."

Ms. JACKSON LEE. We have the ability now to recess very briefly for the last two votes. So, I am going to recess the Committee and ask Members for their patience to come back; and to the witnesses, if you would continue to be available for us, we will conclude our hearing once we complete quickly these two votes.

Thank you very much. The Committee will stand in recess.

[Recess.]

Ms. JACKSON LEE. I call the Crime, Terrorism, and Homeland Security Subcommittee to order on the topic of the rise of terrorism, domestic terrorism in America. I am very pleased to yield to the distinguished Chair of the Full Committee, Mr. Nadler of New York, for five minutes.

Chair NADLER. Well, thank you very much.

Mr. Henderson, the Biden Administration will soon have a new attorney general. What advice would you give him to deal with domestic terrorists more effectively and, in particular, white-supremacist violence?

Mr. HENDERSON. Well, thank you, Chair Nadler, for the question. We have asked the attorney general to pursue making the attention to extremism one of the top issues of his tenure as attorney general. He has announced his intent to do that.

Secondly, we have asked him to explore processes to address the problem of extremism in law enforcement. As you know, there were a number of law enforcement officials who were identified as part of the group of insurrectionists that struck the Capitol on January 6. We hope that the attorney general will pursue that suggestion in a vigorous way, similar to what Lloyd Austin has announced for the Department of Defense.

Thirdly, we have asked that resources to address hate-crime violence and appropriations be requested by the Department, that they make more of an issue of this than has been done, and we think the attorney general will do that. I am quite confident from the announcement the Attorney General-Elect Garland has made, he intends to make addressing White nationalism and extremism, hate crime violence, a major provision of his Administration, and I think that will be a very good step to take.

Chair NADLER. Well, thank you.

Now, Mr. German, even if you believe a new domestic terrorism statute isn't necessary, and that the Justice Department has other legal authorities to address White supremacists and far-right militant violence, can you explain the harms in providing the FBI and federal prosecutors with one more tool to address domestic terrorism?

Mr. GERMAN. Thank you for the question. I think there are two harms. First, that these new authorities would be used as their current authorities are used, abusively to target groups that are not engaged in criminal violence to the nature that the White supremacists groups are. Second, that it misdiagnoses the problem.

The problem is not a lack of authority, it is a longstanding problem of policy and practice within the FBI and within the Justice Department to deprioritize these crimes. Until we change that the way that these institutions look at this issue, we won't actually, even if more laws are passed won't actually be attacking the problem.

Chair NADLER. Thank you.

Now, Mr. Nance, what role do international White supremacy and extremism organizations play in influencing American domestic terrorism?

Mr. NANCE. There are many groups. We saw in the run-up to the Charlottesville protest, there was a lot of international coordination between the disparate groups that created the Unite the Right movement and some that were operating, principally the Germany, Pegida, which is an anti-immigrant, fascist base group which actually has very deep ties to United Russia; the Nashi. The New Dawn organization, another right-wing fascist group from Greece—they have all of these networks that operate throughout Europe and they were using an actual game communication platform to help coordinate.

One of the things that we mistook about the Charlottesville protest or that led to the riots there and the fighting there, is that this was not sort of an end State of the American alt-right or as they call themselves the neo-Nazis, these neo-Confederates; it was a coming-out party. It was where they were actually coming together to show themselves as a unified source under a White supremacist banner bringing together all these disparate groups, they do have international support.

Some of the people you wouldn't imagine. David Duke had an apartment in Moscow. Richard Spencer, the head of the neo-Nazis, his wife was the chief translator for Aleksandr Dugin, Vladimir Putin's ideological philosopher. She is an ethnic pro-Moscow Ukrainian. They have ties. These are things that we are going to have to see because their message even today is being amplified by foreign powers.

Chair NADLER. Thank you. Do you agree with what Mr. Henderson and Mr. German said?

Mr. NANCE. Oh, absolutely. I absolutely agree with everything they said, and particularly Mr. German's comments. One of the problems that we have with designating domestic violent extremists as terrorists isn't so much a question of the laws, it is how the laws can be focused so that it really goes after terrorists and not people who are carrying out civil unrest or civil disobedience.

In some definitions, based on what Mr. Ngo said today, we would have to have arrested just about everyone who violently protested or violently rioted at a Super Bowl party or a State championship. The definition needs to meet the tactics. Do the tactics involve explosive bombings? Timothy McVeigh was not charged with domestic terrorism. He was charged with use of a weapon of mass destruction and 186 counts of murder. We may need to focus that a bit more.

Chair NADLER. Thank you. I yield back.

Ms. JACKSON LEE. The gentleman yields back. I now yield to the gentleman from Florida, Mr. Steube, for five minutes.

Mr. STEUBE. Thank you, Madam Chair, and I thank you for the opportunity today.

Today, in a hearing entitled, The Rise of Domestic Terrorism in America, all I have heard from the Democrats on this Committee and from their witnesses is White supremacy and far-right extre-

mism, while completely ignoring the riots, destruction, and violence of Antifa and BLM we saw all last year, and it continues.

All forms of domestic terrorism are criminal, but to properly address the threats we need to talk about all types of domestic terrorism, including Antifa and BLM. The Democrats have chosen to either ignore, condone, or even embrace this violence from Antifa and Black Lives Matter. The Democratic majority and Democratic Members of this Committee have downplayed Antifa's violence and status as domestic terrorist organizations. They have claimed that Antifa keeps, quote, "protestors safe when a lot of other folks won't," and stated that Antifa is, quote, "false issue," and quote, "a myth."

The term domestic terrorism is defined in federal law as, quote, "involving acts dangerous to human life that are in violation of the criminal laws of the United States or of any State and appear to be intended to intimidate, coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnapping."

At this time, I would like to play a video.

[Video played.]

Mr. STEUBE. Thank you. Mr. Henderson, after watching that video and listening to the reading of my definition under federal law of what domestic terrorism is, I ask you, do you believe that what you saw on that video meets the elements of domestic terrorism, yes or no?

Mr. HENDERSON. I will respond simply by saying we can all condemn violence, sir.

Mr. STEUBE. I am asking you to answer the question yes or no.

Mr. HENDERSON. I will not. No, I will not answer it yes or no because I don't think—

Mr. STEUBE. Okay, I will take that as a no.

Mr. HENDERSON. —it states the definition appropriately.

Mr. STEUBE. Mr. German. This is my time.

Mr. HENDERSON. I don't think it states the definition appropriately.

Mr. STEUBE. Mr. German, the video that you just watched, do you define that—would you call that domestic terrorism, yes or no?

Mr. GERMAN. Again, unless it involves—

Mr. STEUBE. It is very easy. You just watched the video of what occurred. Yes or no? Do you determine that under the federal law of domestic terrorism, yes or no?

Mr. GERMAN. Are you calling that video violent act?

Mr. STEUBE. Yes or no?

Mr. GERMAN. That is your problem. You are showing a piece of video—

Mr. STEUBE. I will give Mr. Nance—

Ms. JACKSON LEE. The gentleman is not allowing the witness to answer the question.

Mr. STEUBE. No, I gave a question which is yes or no. That is how they can answer.

Mr. Nance, yes or no? You are on mute.

Mr. NANCE. No. It is civil disobedience. We have codes for that.

Mr. STEUBE. Oh, so that is civil disobedience.

Mr. NANCE. —never, ever, ever have—

Mr. STEUBE. Burning down, creating 80 billion dollars' worth of damage across our country that is civil disobedience, but what occurred here on January 6th was domestic terrorism. I yield back.

Mr. NANCE. That was expression.

Ms. JACKSON LEE. The gentleman's time has expired.

The gentlelady from Missouri is recognized, Ms. Bush, for five minutes.

Ms. BUSH. I thank you, Madam Chair, for convening this timely hearing. I first want to start by addressing some of what has been said. It is easy for us to talk about protests from the lofty halls of Congress, but I want to talk about these realities from my own experience as an activist on the front lines.

I spent more than 400 days in the streets of Ferguson and during that time, while a lot of you all speaking were nestled sweetly in your beds looking and reading articles and looking at pictures and videos and you have actually no clue what really was happening on the ground, what actually happens in protests. I am just trying to think if I ever saw any of your faces show up for Black lives on the streets of Ferguson. I don't remember seeing your faces and we were out there for more than 400 days fighting for Black lives.

So, while you are putting your mouth on people, where were you? I am one of those Black Lives Matter activists you are talking about. I saw Oath Keepers into our neighborhood that heavily armed. They came equipped with military-grade weaponry. These militias were on buildings in sniper gear. Their presence was a threat. I am also aware of defenders for Black life, for people of all walks of life uniting for justice.

We cannot equate White nationalist violence with what my colleagues on the right stated is left-wing extremist violence. Equating a righteous movement for justice with hateful and racist White nationalism is outright ignorant and disingenuous on your part. For White supremacy, in which you benefit, we would not be in the streets demanding to be heard. We are demanding to be heard to save lives. Let me say this, had you fixed it before now, we wouldn't be here. There are not fine people on both sides. There is simply no comparison. White supremacy is deeply entrenched in our nation's DNA, so much so that we have a wealth of history to rely on as we respond to this latest iteration of violence.

Here are the facts as I see them. White nationalist groups have infiltrated federal and local law enforcement agencies, and I can say that because I know, because the protestors that I rocked with, the protestors I am with, we have gone out and pulled those undercover officers, those folks that were infiltrating the protest movement causing destruction, we pulled them out and we gave them back to their police. As a matter of fact, you can look up an officer who just won five million dollars because he was beaten because they thought that he was actually a protestor. He was really an undercover cop.

So, but don't take my word for it. You can read the leaked FBI counterterrorism division memo if you need some more information. By expanding the legal authority of law enforcement agencies without addressing the infiltration of White supremacy within law enforcement, we are expanding the capacity of White supremacy

itself. It is no wonder then that domestic terrorism laws have historically targeted Black freedom fighters, indigenous environmentalists, and immigration activists.

Just last week, on the anniversary of his assassination, we mourned the loss of Malcolm X, a human rights activist who was surveilled and criminalized while fighting for justice and Black liberation. Had we had our liberation, he wouldn't have had to fight. It is because of this treatment that I am committed to holding White supremacists accountable and forcing my colleagues and our country to reckon with our violent history.

So, Mr. German, you have argued that the Justice Department and FBI's failure to properly address White supremacist militant violence is not from a lack of legal authority but a matter of policy and practice. Why are those policies and practices as they exist not targeting White supremacy?

Mr. GERMAN. I think that there is a multifaceted answer to that, but part of the problem is that the FBI remains a mostly White organization and that structural racism is still a problem within the FBI. So, when those agents go home at night, they don't look out on the horizon and see a threat to their families from White supremacy.

Ms. BUSH. Yes, exactly. Thank you, Mr. German.

Our reliance on the police State is entirely misplaced. Federal law enforcement officers already have the legal authority to go after White supremacy. So, Mr. Henderson, how can we hold White supremacy accountable without expanding the legal authority?

Mr. HENDERSON. We have—thank you for your question. We have many statutes on the books, over 50 terrorism-related statutes that can be used to prosecute individuals who are engaged in violent activity. We do not need another statute to simply be used as justification for moving against those who do harm to our country. So, I will stop there. Thank you for your question.

Ms. BUSH. Thank you, and I yield my time.

Ms. JACKSON LEE. The FBI document that you held up regarding BLM, do you want to enter it into the record?

Ms. BUSH. Yes.

Ms. JACKSON LEE. Without objection, so ordered. Thank you.

[The information follows:]

MS. BUSH FOR THE RECORD

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Intelligence Assessment

Federal Bureau of Investigation
**INTELLIGENCE
ASSESSMENT**

(U//FOUO) Black Identity Extremists Likely Motivated to Target Law Enforcement Officers

3 August 2017

Prepared by:

FBI

**Counterterrorism
Division**

(U) LAW ENFORCEMENT SENSITIVE: The information marked (U//LES) in this document is the property of FBI and may be distributed within the Federal Government (and its contractors), US intelligence, law enforcement, public safety or protection officials and individuals with a need to know. Distribution beyond these entities without FBI authorization is prohibited. Precautions should be taken to ensure this information is stored and/or destroyed in a manner that precludes unauthorized access. Information bearing the LES caveat may not be used in legal proceedings without first receiving authorization from the originating agency. Recipients are prohibited from subsequently posting the information marked LES on a website or an unclassified network without first obtaining FBI approval.

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(U) Executive Summary

(U//FOUO) The FBI assesses it is very likely^a Black Identity Extremist^b (BIE) perceptions of police brutality against African Americans spurred an increase in premeditated, retaliatory lethal violence against law enforcement and will very likely serve as justification for such violence. The FBI assess it is very likely this increase began following the 9 August 2014 shooting of Michael Brown in Ferguson, Missouri, and the subsequent Grand Jury November 2014 declination to indict the police officers involved. The FBI assesses it is very likely incidents of alleged police abuse against African Americans since then have continued to feed the resurgence in ideologically motivated, violent criminal activity within the BIE movement. The FBI assesses it is very likely some BIEs are influenced by a mix of anti-authoritarian, Moorish sovereign citizen^c ideology, and BIE ideology. The FBI has high confidence^d in these assessments, based on a history of violent incidents attributed to individuals who acted on behalf of their ideological beliefs, documented in FBI investigations and other law enforcement and open source reporting. The FBI makes this judgment with the key assumption the recent incidents are ideologically motivated.

^a (U) See Appendix A: Expressions of Likelihood (or Probability).

^b (U//FOUO) The FBI defines black identity extremists as individuals who seek, wholly or in part, through unlawful acts of force or violence, in response to perceived racism and injustice in American society and some do so in furtherance of establishing a separate black homeland or autonomous black social institutions, communities, or governing organizations within the United States. This desire for physical or psychological separation is typically based on either a religious or political belief system, which is sometimes formed around or includes a belief in racial superiority or supremacy. The mere advocacy of political or social positions, political activism, use of strong rhetoric, or generalized philosophic embrace of violent tactics may not constitute extremism, and may be constitutionally protected.

^c (U//FOUO) The FBI defines sovereign citizen extremists as individuals who openly reject their US citizenship status, believe that most forms of established government, authority, and institutions are illegitimate, and seek, wholly or in part, through unlawful acts of force or violence, to further their claim to be immune from government authority. The mere advocacy of political or social positions, political activism, use of strong rhetoric, or generalized philosophic embrace of violent tactics may not constitute extremism, and may be constitutionally protected.

^d (U) See Appendix B: Confidence in Assessments and Judgments Based on a Body of Information.

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UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE**(U) Scope Note**

(U) This intelligence assessment focuses on individuals with BIE ideological motivations who have committed targeted, premeditated attacks against law enforcement officers since 2014. This assessment does not address BIEs who have attacked law enforcement officers during the course of officers' routine duties, such as responding to calls and traffic stops, in which violent actions were reactionary in nature.

(U//LES) This assessment addresses the following key intelligence questions:

- (U//LES) To what extent are BIEs' targeting interests retaliatory?
- (U//LES) What cross-programmatic relationships influence the BIE movement?

(U//LES) This assessment is the first FBI analytic intelligence product to assess influences between the sovereign citizen extremist movement and the black identity extremist movement. The FBI has previously reported on BIE retaliatory violence against law enforcement in two products, both of which had findings consistent with this assessment. The 23 March 2016 FBI intelligence bulletin, titled "(U//FOUO) Black Separatist Extremists' Call for Retaliation in Response to Police-Involved Incidents Could Incite Acts of Violence against Law Enforcement," assessed incidents involving allegations of law enforcement abuse and related legal proceedings would likely lead to BSE calls for violent retaliation and incite these domestic extremists to commit violent acts against law enforcement. The 14 November 2014 FBI intelligence bulletin, titled "(U//FOUO) Potential Criminal Reactions to Missouri Grand Jury Announcement," assessed the announcement of the grand jury's decision in the shooting death of Michael Brown in Ferguson would likely be exploited by some individuals to justify threats and attacks against law enforcement and critical infrastructure.

UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE**(U) Source Summary Statement**

(U//LES) Reporting in this intelligence assessment was derived primarily from FBI and law enforcement investigations and open source reporting—media interviews of subjects, subjects' posting on social media accounts, and online news articles—deemed credible and reliable. The review of FBI investigations occurred between September 2014 and December 2016. The open source reporting was current as of 17 January 2017. Statements made by the subjects to law enforcement during the course of investigations were particularly helpful to identify motivations behind BIE attacks against law enforcement because ideological motivations are infrequently identified or collected. Additional reporting on the ideological motivations behind BIE attacks would improve the confidence levels in this assessment.

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(U//FOUO) Suspects' Grievances Very Likely Lead to Violent Targeting of Law Enforcement

(U//FOUO) The FBI judges it is very likely BIE perceptions of police brutality against African Americans have become organizing drivers for the BIE movement since 2014, resulting in a spike of BIEs intentionally targeting law enforcement with violence. In all six targeted attacks since 2014, the FBI assesses it is very likely the BIE suspects acted in retaliation for perceived past police brutality incidents. Even though five of these attacks occurred following controversial police shootings of African Americans by white police officers, BIE targeting of officers was not, in every incident, based on their specific race.

- (U) On 7 July 2016, Micah Johnson ambushed and shot 11 law enforcement officers, killing five, in downtown Dallas, Texas, during a First Amendment protected protest, before being ultimately killed by police. The five deceased officers were white. The planned public event was protesting recent officer-involved shootings of African Americans in Louisiana and Minnesota. Based on Johnson's journal writings and statements to police, he appeared to have been influenced by BIE ideology.
 - (U//FOUO) During the standoff with police, Johnson told police negotiators he was upset about recent police shootings and white people, and expressed a desire to kill white people, especially white officers.¹ Johnson searched and liked social media pages of BIE and black separatist groups,² and had been ousted from a local BIE group for being too radical, according to an open source news article.^{3, 4}
- (U//FOUO) On 23 October 2014, Zale H. Thompson attacked four white New York Police Department (NYPD) officers in Queens with a hatchet. One officer received injuries to the arm and a second officer received an injury to the side of his head. The two remaining NYPD officers at the scene shot and killed Thompson according to open source reporting.
 - (U//FOUO) According to open source reporting, Thompson was angered after "a recent spate of deaths at the hands of the police."⁵ In his own writings, Thompson advocated for armed struggle against "the oppressors"⁶ and "mass revolt" against the US social, economic, and political systems, which he perceived to be "white dominated." He also described the United States as a "beast" and called for "chopping off" its head, hands, and feet.⁷ NYPD observed tattoos on Thompson's body that indicated he was affiliated with a black separatist extremist group and pocket litter indicating he may have been associated with another black separatist group according to law enforcement reporting.⁸

(U//FOUO) Convergence of BIE and Moorish Sovereign Citizen Ideology Very Likely Leads to Violence against Law Enforcement Officers

(U//FOUO) The FBI assesses it is very likely a few of the BIEs who have targeted law enforcement since 2014 were influenced by more than one ideological perspective. The FBI judges it is very likely in four of the six BIE attacks against law enforcement since 2014, the perpetrators were motivated by a mix of BIE ideology and Moorish sovereign citizen extremist

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(SCE)^o ideology, a category of SCE ideology. The FBI assesses it is very likely BIE adoption of a Moorish SCE identity reinforced a sense of disenfranchisement from society and a perception that the criminal justice system is unjust.

- (U) On 4 October and 13 October 2016, an individual allegedly shot at two different police stations in Indianapolis, Indiana. The subject left a hand-written note at the scene of one of the shootings, in which he identified himself as a Moor and made anti-white statements. The subject posted pictures on social media of African American men carrying assault rifles behind text calling for social injustice and retribution.⁹ The subject was later involved in a shootout with police during his arrest on related charges according to law enforcement reporting.^{10, 11}
- (U//LES) On 17 July 2016, Gavin Eugene Long ambushed and shot six law enforcement officers in Baton Rouge, Louisiana, before eventually being killed by police.¹² The deceased victims included one African American officer and one white officer from the Baton Rouge Police Department, and one white officer from the East Baton Rouge Parish Sheriff's Office. Long had expressed black separatist rhetoric both on social media and in his manifesto, including rants against "crackers" and reference to an African American male killed by police in Baton Rouge on 5 July 2016.^{13, 14} In his manifesto, Long expressed his frustrations with the police and criminal justice system in the United States and saw his actions "as a necessary evil... in order to create substantial change."¹⁵ A law enforcement search of Long's laptop contained biographical information and residential addresses of two officers involved in the Alton Sterling shooting, and Google searched directions to one of the officer's home address.¹⁶ Long had also declared himself to be a Moor, had changed his "slave" name to the Moorish name Cosmo Ausar Setepenra, and was carrying a Moorish identification card at the time of his death according to open source reporting.^{17, 18}
- (U//LES) On 13 September 2016, an individual reportedly intentionally drove his vehicle toward three white officers with the Police Department in Phoenix, Arizona, outside a gas station, striking two of them before he was arrested.¹⁹ The subject's social media accounts indicated that he was tied to a BIE group and a Moorish group,^{20, 21} and that he was angry over police shootings since at least the killing of Brown in 2014.²² Consistent with BIE statements on social media, the subject stated, "The Caucasian needs to be slaughtered like the pigs that they are right along with the niggas who serve and protect them" according to law enforcement reporting.^{23, 24}
- (U//FOUO) On 21 November 2014, a BIE was arrested and eventually convicted for purchasing explosives the subject intended to use in the Ferguson area upon release of the

^o (U//FOUO) Moorish sovereign citizens are a loose network of mostly African Americans who believe they are sovereign entities who do not recognize the authority of the US Government. Moorish sovereign citizen ideology derives from the Moorish Science Temple of America, a non-violent religious and cultural movement founded in 1913 by Noble Drew Ali, who taught his followers they were not "negroes" but Moors, people of North African Berber and Arab descent. Some Moorish adherents adopt sovereign citizen strategies to assert diplomatic immunity by claiming membership in fictitious Native American tribes, claiming descent from settlers who arrived in North America during the pre-Columbian era, or identifying as foreign nationals or ambassadors. (Source: FBI; Primer; January 2014; "(U) Black Separatist Extremists: An Introduction for Law Enforcement"; UNCLASSIFIED; UNCLASSIFIED; Multiple sources.)

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grand jury verdict for the police officer involved in the shooting death of Brown.²⁵ He previously discussed a desire to kill the white St. Louis County prosecutor and the white Ferguson police chief who were involved in Brown's case, according to FBI information. Additionally, the subject had ties to a BIE group²⁶ that had discussed ambushing police.²⁷ Furthermore, the subject had ties to the sovereign citizen movement^{28, 29} filed paperwork declaring himself an "aboriginal/indigenous free sovereign moor,"^{30, 31} and possessed a Moorish identification card according to open source reporting.³²

(U) Perspective

(U//FOUO) BIEs have historically justified and perpetrated violence against law enforcement, which they perceived as representative of the institutionalized oppression of African Americans, but had not targeted law enforcement with premeditated violence for the nearly two decades leading up to the lethal incidents observed beginning in 2014. BIE violence peaked in the 1960s and 1970s in response to changing socioeconomic attitudes and treatment of blacks during the Civil Rights Movement. BIE groups, such as the Black Liberation Army (BLA), which was created in the early 1970s to "take up arms for the liberation and self-determination of black people in the United States," engaged in murders, bank robberies, kidnappings, racketeering, possession of explosives, and weapons smuggling.

- (U) From 1970 to 1984, the BLA was involved in at least 38 criminal incidents, including 26 armed assaults, 3 assassinations, 4 bombings, and 4 hijackings and hostage takings. Almost half of these attacks took place in predominantly African American neighborhoods and targeted law enforcement officers without regard to their race according to an open source database.³³

(U//FOUO) BIE violence has been rare over the past 20 years and there is sparse evidence of any convergence with SCEs who adhere to Moorish beliefs, who have historically engaged in nonviolent fraudulent schemes—including production of fraudulent personal identification documents such as International Motorist Certifications, passports, vehicle titles and registrations, and birth certificates—in support of their claims of sovereignty. In addition, although non-Moorish SCEs have committed lethal violence against law enforcement in the past, this violence has typically occurred in response to encounters with law enforcement—for example, during traffic stops or the issuing of warrants—rather than through premeditated, targeted aggression. In addition, not all self-identified Moors are sovereign citizens, and not all sovereign citizen Moors engage in violence against law enforcement or other illegal activity.

(U//FOUO) The FBI has previously reported on BIE retaliatory violence against law enforcement in two products. This intelligence assessment addresses actual incidents of lethal retaliatory violence. The previous black identity extremism intelligence products discussed calls for potential retaliatory violence, not actual violent incidents. Recent lethal violent incidents may be indicative of a resurgence of targeted violence within the BIE movement.

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UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE**(U) Analysis of Alternatives**

(U//FOUO) The FBI considered the alternative hypothesis that retaliatory violence against law enforcement is not ideologically motivated, but rather a result that some individuals may simply harbor animosity toward police and exploit racial tensions as an excuse to commit acts of violence. The FBI, however, assesses this alternative is very unlikely in the cases analyzed in this assessment because strictly criminal subjects typically commit spontaneous, “defensive” acts of violence against police rather than proactive targeting, and use idiosyncratic reasons unrelated to ideology, such as financial gain and personal disputes, to justify their actions. The FBI further judges it is very likely BIEs proactively target police and openly identify and justify their actions with social-political agendas commensurate with their perceived injustices against African Americans, and in some cases, their identified affiliations with violent extremist groups.

(U) Outlook

(U//FOUO) The FBI assesses it is very likely that BIEs’ perceptions of unjust treatment of African Americans and the perceived unchallenged illegitimate actions of law enforcement will inspire premeditated attacks against law enforcement over the next year. This may also lead to an increase in BIE group memberships, collaboration among BIE groups, or the appearance of additional violent lone offenders motivated by BIE rhetoric. The FBI further assesses it is very likely additional controversial police shootings of African Americans and the associated legal proceedings will continue to serve as drivers for violence against law enforcement. The FBI assesses it is likely police officers of minority groups are also targeted by BIEs because they are also representative of a perceived oppressive law enforcement system.

(U//FOUO) Possible indicators for BIEs posing a violent threat to law enforcement include advocating for violence against law enforcement, violent anti-white rhetoric, attempts to acquire illegal weapons or explosives, and affiliations with others in both the BSE and sovereign citizen extremist movements.

(U) Intelligence Requirements

(U) FBI National Standing Collection Requirement

- (U//FOUO) USA-TERR-CTD-SR-0519-17.III.A.2.a

(U) This Intelligence Assessment was prepared by the FBI Domestic Terrorism Analysis Unit, Counterterrorism Analysis Section (CTAS), of the Counterterrorism Division. Comments and queries may be addressed to the CTAS Section Chief by calling [REDACTED]

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(U) Appendix A: Expressions of Likelihood (or Probability)

(U) Phrases such as “the FBI judges” and “the FBI assesses,” and terms such as “likely” and “probably” convey analytical judgments and assessments. The chart approximates how expressions of likelihood and probability correlate with percentages of chance. The FBI only uses likelihood expressions. Furthermore, the FBI does not derive judgments via statistical analysis and will not use expressions of probability to convey uncertainty in external FBI intelligence products.

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<i>Terms of Likelihood</i>	Almost No Chance	Very Unlikely	Unlikely	Roughly Even Chance	Likely	Very Likely	Almost Certain(ly)
<i>Terms of Probability</i>	Remote	Highly Improbable	Improbable (Improbably)	Roughly Even Odds	Probable (Probably)	Highly Probable	Nearly Certain
	1-5%	5-20%	20-45%	45-55%	55-80%	80-95%	95-99%

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(U) Appendix B: Confidence in Assessments and Judgments Based on a Body of Information

(U) Confidence levels reflect the quality and quantity of the source information supporting judgment. Consequently, the FBI ascribes high, medium, or low levels of confidence to assessments, as follows:

(U) **High confidence** generally indicates the FBI's judgments are based on high quality information from multiple sources. High confidence in a judgment does not imply the assessment is a fact or a certainty; such judgments might be wrong. While additional reporting and information sources may change analytical judgments, such changes are most likely to be refinements and not substantial in nature.

(U) **Medium confidence** generally means the information is credibly sourced and plausible but not of sufficient quality or corroborated sufficiently to warrant a higher level of confidence. Additional reporting or information sources have the potential to increase the FBI's confidence levels or substantively change analytical judgments.

(U) **Low confidence** generally means the information's credibility or plausibility is uncertain, the information is too fragmented or poorly corroborated to make solid analytic inferences, or the reliability of the sources is questionable. Absent additional reporting or information sources, analytical judgments should be considered preliminary in nature.

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(U) Endnotes

- ¹ (U) Online newspaper article; *The New York Times*; “(U) Five Dallas Officers Were Killed as Payback, Police Chief Says”; 9 July 2016; https://www.nytimes.com/2016/07/09/us/dallas-police-shooting.html?_r=0; accessed on 17 January 2017; Source is an open-source news article from a reputable news Web site.
- ² (U) FBI; Information; 14 July 2016; 20 March 2016; “[TITLE REDACTED]”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is open source reporting.
- ³ (U//FOUO) FBI; Information; 13 July 2016; 12 July 2016; “(U//FOUO) Set Lead to FBI Houston to Interview [Name withheld]”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is open source reporting.
- ⁴ (U) FBI; Electronic Communication; 10 November 2016; 9 November 2016; “[TITLE REDACTED]”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is law enforcement reporting.
- ⁵ (U) Online newspaper article; *The New York Times*; “(U) Attacker With Hatchet Is Said to Have Grown Radical on His Own”; 25 October 2014; https://www.nytimes.com/2014/10/25/nyregion/man-who-attacked-police-with-hatchet-ranted-about-us-officials-say.html?_r=1; accessed on 24 January 2017; Source is open source reporting.
- ⁶ (U) FBI; Electronic Communication; 6 November 2014; 23 October 2014; “(U) Lead requests to interview former female companions of subject [Name withheld]”; UNCLASSIFIED; UNCLASSIFIED; Source is law enforcement reporting.
- ⁷ (U//FOUO) FBI-DHS; Joint Intelligence Bulletin; 27 October 2014 “(U//FOUO) Lone Offender Hatchet Attack on New York Police Department Officers Has No Apparent Link to a Foreign Terrorist Organization”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is open source and law enforcement reporting.
- ⁸ (U) FBI; Electronic Communication; 24 October 2014; 23 October 2014; “(U) Opening EC”; UNCLASSIFIED; UNCLASSIFIED; Source is law enforcement reporting.
- ⁹ (U) Online news article; Fox 59 News; “(U) DNA ties Zionsville murder suspect to IMPD headquarters shootings”; 31 October 2016; <http://fox59.com/2016/10/31/court-docs-dna-ties-zionsville-murder-suspect-tied-to-impd-headquarters-shootings>; accessed on 15 December 2016; Source is open source reporting from a local news organization.
- ¹⁰ (U) FBI; Electronic Communication; 7 October 2016; 4 October 2016; “(U) Opening EC”; UNCLASSIFIED; UNCLASSIFIED; Source is law enforcement reporting.
- ¹¹ (U) FBI; Information; 8 November 2016; 31 October 2016; “(U) Arrest of [Name withheld]”; UNCLASSIFIED; UNCLASSIFIED; Source is law enforcement reporting.
- ¹² (U) FBI; Electronic Communication; 17 July 2016; 17 July 2016; “[TITLE REDACTED]”; UNCLASSIFIED; UNCLASSIFIED; Source is law enforcement reporting.
- ¹³ (U) Online news article; The Daily Caller; “(U) Baton Rouge Cop Killer [Name withheld] Was Nation Of Islam”; 17 July 2016; [URL REDACTED]; Source is open source reporting.
- ¹⁴ (U) FBI; Information; 1 August 2016; 29 July 2016; “(U) Kansascity.com Interview with [Name withheld]”; UNCLASSIFIED; UNCLASSIFIED; Source is open source reporting.
- ¹⁵ (U//LES) FBI; Information; 2 August 2016; 2 August 2016; “(U//LES) Baton Rouge and Dallas Shooters Alluded to [Name withheld]”; UNCLASSIFIED; UNCLASSIFIED; Source is open source reporting.
- ¹⁶ (U) FBI; Information; 21 July 2016; 1 July 2016; “(U) Potential Targeting of Law Enforcement Officers through Open Source Personally Identifiable Information (PII)”; UNCLASSIFIED; UNCLASSIFIED; Source is law enforcement reporting.
- ¹⁷ (U) Online news article; NBC News; “(U) What Is the Washitaw Nation, ‘Sovereign’ Group Baton Rouge Shooter Identified With?”; 19 July 2016; <http://www.nbcnews.com/storyline/baton-rouge-police-ambush/what-washitaw-nation-sovereign-group-baton-rouge-shooter-identified-n612101>; accessed on 8 September 2016; Source is open source reporting.
- ¹⁸ (U//LES) FBI; Information; 31 August 2016; 29 July 2016; “(U//LES) Baton Rouge and Dallas Shooters Alluded to [Name withheld]”; UNCLASSIFIED; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is subject’s manifesto.
- ¹⁹ (U) Online news article; ABC News; “(U) Man crashes into Phoenix officers: [Name withheld] fought with officers after intentional crash”; 14 September 2016; [URL REDACTED]; accessed on 14 September 2016; Source is open source reporting.

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²⁰ (U) FBI; Electronic Communication; 14 September 2016; 13 September 2016; “(U) Opening EC”; UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE; UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE; Source is law enforcement reporting.

²¹ (U) Blog post; Anti-Defamation League; “(U) Black Nationalist Charged With Attacking Phoenix Police Officers”; 15 September 2016; <http://blog.adl.org/?s=black+nationalist+charged+with+attacking+phoenix&x=0&y=0>; accessed on 15 September 2016; Source is open source reporting.

²² (U) *Ibid.*

²³ (U) *Ibid.*

²⁴ (U) FBI; Electronic Communication; 14 September 2016; 13 September 2016; “(U) Opening EC”; UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE; UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE; Source is law enforcement reporting.

²⁵ (U) FBI; Electronic Communication; 9 September 2014; 9 September 2014; “(U) Opening EC”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is law enforcement reporting.

²⁶ (U) FBI; Electronic Communication; 30 June 2016; 1 November 2014; “(U) Closing EC”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is law enforcement reporting.

²⁷ (U//FOUO) FBI; Information; 17 June 2015; 1 November 2014; “(U//FOUO) Interview of [Name withheld]”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED FOR OFFICIAL USE ONLY; Source is law enforcement reporting.

²⁸ (U//FOUO) FBI; Electronic Communication; 31 August 2015; 29 August 2015; “(U//FOUO) Kansas City Star article “(U) Sovereign Citizens Now Consist of All Colors and Creeds”; UNCLASSIFIED; UNCLASSIFIED; Source is open source reporting from a local news organization whose deemed reliable.

²⁹ (U) *Op. cit.*, endnote 26.

³⁰ (U) Online news article; Southern Poverty Law Center; “(U) Extremists Exploit Racial Tensions in Ferguson, MO”; 2015; <https://www.splcenter.org/fighting-hate/intelligence-report/2015/extremists-exploit-racial-tensions-ferguson-mo>; accessed on 11 August 2016; Source is open source reporting.

³¹ (U) Blog post; Anti-Defamation League; “(U) Arrested Black Panther Also Involved in Sovereign Citizen Movement”; 26 November 2014; <http://blog.adl.org/extremism/arrested-black-panther-also-involved-in-sovereign-citizen-movement>; accessed on 11 October 2016; Source is open source reporting.

³² (U) *Ibid.*

³³ (U) FBI; Primer; January 2014; “(U) Black Separatist Extremists: An Introduction for Law Enforcement”; UNCLASSIFIED; UNCLASSIFIED; Multiple sources.

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(U) Distribution

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Holding a Criminal Term

UNITED STATES OF AMERICA	:	Criminal No.: 12-182 (RWR)
	:	
	:	VIOLATIONS:
v.	:	
	:	18 U.S.C. § 924(b)
	:	(Interstate Transportation of a Firearm
	:	and Ammunition)
	:	
FLOYD LEE CORKINS, II	:	22 D.C. Code §§ 401, 4502
	:	(Assault with Intent to Kill while Armed)
Defendant.	:	
	:	22 D.C. Code § 4504(b)
	:	(Possession of a Firearm During the
	:	Commission of a Crime of Violence)
	:	
	:	22 D.C. Code §§ 3152, 3153, 4502
	:	(Act of Terrorism while Armed)
	:	
	:	22 D.C. Code §§ 1803, 4502
	:	(Attempted Murder while Armed)
	:	
	:	22 D.C. Code §§ 404.01, 4502
	:	(Aggravated Assault while Armed)
	:	
	:	22 D.C. Code §§ 801(b), 4502
	:	(Second Degree Burglary while Armed)

The Grand Jury charges that:

On or about August 15, 2012, in the District of Columbia and elsewhere, defendant FLOYD LEE CORKINS, II, did ship, transport, and receive a firearm and ammunition in interstate commerce from the Commonwealth of Virginia to the District of Columbia, with an intent to commit an offense

therewith punishable by imprisonment for a term exceeding one year, and with knowledge and reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year was to be committed therewith, that is, murder, in violation of 22 D.C. Code Section 2101, and Assault with a Dangerous Weapon, in violation of 22 D.C. Code. Section 402.

(Interstate Transportation of a Firearm and Ammunition,
in violation of Title 18, U.S. Code, Section 924(b))

COUNT TWO
(Assault with Intent to Kill while Armed)

On or about August 15, 2012, within the District of Columbia, defendant FLOYD LEE CORKINS, II, while armed with a firearm, that is, a pistol, assaulted Leonardo Reno Johnson with intent to kill him and other employees of the Family Research Council.

(Assault with Intent to Kill while Armed, in violation of Title 22,
D.C. Code, Sections 401, 4502 (2001 ed.))

COUNT THREE
(Possession of a Firearm During the Commission
of a Crime of Violence)

On or about August 15, 2012, within the District of Columbia, defendant FLOYD LEE CORKINS, II, did possess a firearm while committing the crime of assault with intent to kill while armed, as set forth in Count Two of this Indictment.

(Possession of a Firearm During the Commission of a Crime of Violence,
in violation of Title 22, D.C. Code, Section 4504(b) (2001 ed.))

COUNT FOUR
(Act of Terrorism while Armed)

On or about August 15, 2012, within the District of Columbia, FLOYD LEE CORKINS, II, while armed with a firearm, that is, a pistol, committed acts that constituted the offenses of assault with the intent to kill Leonardo Reno Johnson and attempted murder of other unnamed employees of the Family Research Council, with the intent to intimidate and coerce a significant portion of the civilian population of the District of Columbia and the United States.

((**Act of Terrorism while Armed**, in violation of 22 D.C. Code,
Sections 3152, 3153 and 4502 (2001 ed.))

COUNT FIVE
(Attempted Murder while Armed)

On or about August 15, 2012, within the District of Columbia, defendant FLOYD LEE CORKINS, II, while armed with a dangerous weapon, that is, a pistol, attempted to murder unnamed employees of the Family Research Council.

(**Attempted Murder while Armed**, in violation of Title 22, D.C. Code,
Sections 1803, 2101, and 4502 (2001 ed.))

COUNT SIX
**(Possession of a Firearm During the Commission
of a Crime of Violence)**

On or about August 15, 2012, within the District of Columbia, defendant FLOYD LEE CORKINS, II, did possess a firearm while committing the crime of attempted murder while armed, as set forth in Count Five of this Indictment.

(**Possession of a Firearm During the Commission of a Crime of Violence**,
in violation of Title 22, D.C. Code, Section 4504(b) (2001 ed.))

COUNT SEVEN
(Aggravated Assault While Armed)

On or about August 15, 2012, within the District of Columbia, defendant FLOYD LEE CORKINS, II, while armed with a firearm, that is, a pistol, knowingly and purposely caused serious bodily injury to Leonardo Reno Johnson, and under circumstances manifesting extreme indifference to human life, FLOYD LEE CORKINS, II, intentionally and knowingly engaged in conduct which created a grave risk of serious bodily injury to Leonardo Reno Johnson, and thereby caused serious bodily injury to Leonardo Reno Johnson.

(Aggravated Assault while Armed, in violation of Title 22, D.C. Code, Sections 404.01, 4502 (2001 ed.))

COUNT EIGHT
(Possession of a Firearm During the Commission of a Crime of Violence)

On or about August 15, 2012, within the District of Columbia, defendant FLOYD LEE CORKINS, II, did possess a firearm while committing the crime of aggravated assault while armed, as set forth in Count Seven of this Indictment.

(Possession of a Firearm During the Commission of a Crime of Violence, in violation of Title 22, D.C. Code, Section 4504(b) (2001 ed.))

COUNT NINE
(Second Degree Burglary while Armed)

On or about August 15, 2012, within the District of Columbia, Floyd Lee Corkins, II, while armed with a firearm, that is, a pistol, entered the building of the Family Research Council, with intent to commit assault and murder.

(Second Degree Burglary While Armed, in violation of 22 D.C. Code,
Section 801(b), 4502 (2001 ed.))

COUNT TEN
(Possession of a Firearm During the Commission
of a Crime of Violence)

On or about August 15, 2012, within the District of Columbia, defendant FLOYD LEE
CORKINS, II, did possess a firearm while committing the crime of second degree burglary while
armed, as set forth in Count Nine of this Indictment.

(Possession of a Firearm During the Commission of a Crime of Violence,
in violation of Title 22, D.C. Code, Section 4504(b) (2001 ed.))

A TRUE BILL

FOREPERSON

Attorney of the United States in
and for the District of Columbia

Ms. JACKSON LEE. Let me now yield to Mr. Cicilline of Rhode Island for five minutes.

Mr. CICILLINE. Thank you, Madam Chair, for holding this very important hearing, and thank you to our extraordinary witnesses.

What is viewed as White nationalists have existed since the founding of this country and only gotten worse in recent years. In fact, the assistant director for counterterrorism at the FBI stated, and I quote, "racially motivated violent extremists are responsible for the majority of lethal attacks and fatalities perpetrated by domestic terrorists since 2000," end quote. A sentiment echoed by the FBI director as well. So, this is a fact this is a serious problem facing our country.

My first question, Mr. German, is for you. In most states, people who have been convicted of a violent hate crime would still pass a background check to purchase a firearm because federal law currently prohibits only individuals convicted of felonies from possessing firearms. I am going to be reintroducing the Disarm Hate Act, which would close this loophole so that people convicted of a misdemeanor hate crime, including a misdemeanor assault hate crime, would be prohibited from purchasing and possessing firearms.

I just wondered if you would speak to the relationship between firearms and domestic violent extremists and how keeping guns out of the hands of violent White supremacists before they are able to engage in deadly violence is a key strategy to respond to this pandemic.

Mr. GERMAN. Thank you for the question. Yes, illegal firearms transactions are one of the primary ways that these militant groups obtain weapons, so enforcing the federal firearms laws is an effective way to address their crimes.

Mr. CICILLINE. Thank you.

Mr. Nance, I would like to ask you what role that social media has played in the resurgence of extremists and White nationalists and, particularly, in radicalizing violent extremists and in weaponizing them against or to target minorities. Kind of what has been the role of social media, and if you could tell social media companies to do three things to reduce the spread of domestic terrorism and White supremacist propaganda what would that be?

Mr. NANCE. Well, first, it has been an explosion since the rise of social media. Even as far back as ten years ago, people had to communicate through very hard methodologies. If some of you will recall back in the 1960s, there was a group called the John Birch Society. If you wanted to hear any of their crazy rantings, you literally had to receive a mimeographed copy mailed to your house or find it on a street corner. The same thing with the rise of militia groups in the 1980s and the 1990s. Now, any one individual can have the communications power of the New York Times to spread any method of violence.

The one thing that is happening right now is the deplatforming of many of these groups. I know it upsets our conservative Members of this Committee to understand that private companies do not need the legal liability of allowing people to advocate hate, death, and destruction. They can deplatform anyone, including left-

ist groups or whichever groups, so long as they remain within the terms of service.

What's going on, and I monitor it every day, I read their Telegram channels, Parler, Instagram, whatever, they actually plot terror on these channels. What we need to do—by deplatforming them, they still have their freedom of speech, they can say anything they want, they just don't have the right to go out and coordinate acts of domestic violence or threatening violence using private platforms.

They want to create their own, allow us to channel that streamline our intelligence collection against them, awesome, but they don't have the right to use civilian, private companies' platforms. Deplatforming is exactly what we did to ISIS and Al-Qaeda and that is precisely what needs to happen to these militia groups and terrorists.

Mr. CICILLINE. Thank you very much.

Mr. Henderson, it is great to see you. We know that White supremacists and far-right domestic extremists are the most significant domestic terrorist threat to our country. How does Congress best to ensure that resources are properly allocated to address the immediate and real danger these White supremacy groups pose to our domestic security, while also ensuring that the same authority is not later used to disproportionately target communities of color?

Mr. HENDERSON. It is a great question, Mr. Cicilline. I think we follow the data. I know that both the FBI and the Department of Homeland Security have designated White supremacy and extremism as the number one national security threat facing our country from internal sources. We need to provide resources to those agencies to address the problem as they have outlined it in their research and findings.

The fact that we oppose, that is the broad civil rights community, the creation of a new domestic terrorism statute is based on the fact that we know it will be used against the very communities that are most vulnerable now to that extremism and we are deeply concerned about it.

Mr. CICILLINE. Thank you, Mr. Henderson.

With that, Madam Chair, I yield back.

Ms. JACKSON LEE. The gentleman's time has expired.

It is Mr. Lieu? Mr. Lieu is recognized for five minutes, the gentleman from California.

Mr. LIEU. I thank you, Chair Jackson Lee, for holding this important hearing. I condemn all political violence. I am pleased that my Republican colleagues can say that same sentence, but their words ring hollow if they can't say this following simple, truthful statement, the election was not stolen. Because it is that big lie that fueled the rage that caused domestic terrorists to attack our Capitol on January 6th. It is that same big lie that results in National Guard troops still being deployed outside our Capitol in body armor. I hope my Republican colleagues will tell the truth and reduce the risk of further political violence.

I also note that at the beginning of this hearing, the Republicans played a video of the former President saying that there were very fine people on both sides in Charlottesville. I found that video deeply offensive. The reason is, because if you attended that rally of

White supremacists and participated, you are no longer a very fine person. I don't care if you love puppies or if you give to charities, if you go participate in a rally where people are holding Nazi flags, wearing swastikas, and waving Confederate flags, you are no longer a very fine person, and it is wrong for my Republican colleagues to somehow whitewash that statement. The former President was wrong then, he is wrong now.

It is that same false equivalence that we see again today in other aspects of this hearing. We know—and domestic terrorists, if we look at the data that White supremacist groups simply are far more lethal. You don't have to trust me. You can trust Ken Cuccinelli, the former acting deputy director of Department of Homeland Security who basically said, if you look at the data, per people incidents of violence, White supremacist groups are far more lethal.

Chad Wolf, the former acting secretary of Homeland Security basically said the same exact thing. Then Christopher Wray, the FBI director, also said that when you look at extremist-motivated domestic terrorist incidents, it is the White supremacist ideology that forms the largest portion of that.

So, stop with the false equivalences. There is one group, or groups, it is White supremacist ideology that is causing the major problems across America. Unfortunately, we have seen the former President use statements such as, there are very fine people on both sides. He told the Proud Boys to stand by. He uses racist phrases like kung-flu that has resulted in increased attacks against Asian Americans during this pandemic.

So, my question is to Mr. Nance. What happens when the leader of the free world uses racist phrases? Does that give these White supremacist groups more license to go do their violent acts?

Mr. NANCE. Well, absolutely. It is a very simple reason why, because a lot of people like to say that what we are seeing here is in the White supremacist movement is really an Act of patriotism or politics. No, this is tribalism at its rawest form. President Trump pretty much promised, in nebulous terms, of course, that he was their tribal leader and that he would not allow for the *e pluribus unum* component of our government, "from many, one," to take place.

He was really promising "unum tribus dominus," one tribe will dominate the rest. He led for only 45 percent of the country and almost ignored 65 percent of the country. They think he is their lord. Groups that support him, they actually refer to him as god-emperor of the United States. I wish I was making that up, but that is true. They view him as a person befitting of being the first dictator of the United States.

One of the reasons why we have a lot of heartburn with what happened with the insurrection on the Capitol and why it is not equivalent to the protests in Portland or Black Lives Matter, which was civil disturbance, was the fact that they came to overthrow the government and to install a President as a monarch, as a dictator. That is the difference here. It has never happened in American history. Even the South attempted to use the tenets of the Constitution for secession. Not here. So, they believe their tribal chieftain.

Mr. LIEU. Thank you. I also note that in the last four years, we have seen a disturbing rise in antisemitic attacks and attacks on the Jewish American community. So, I will just close on Mr. Henderson, if you can give your thoughts on how we can start mitigating those attacks.

Ms. JACKSON LEE. The gentleman's time has expired. I will let the gentleman answer just very briefly, please. The gentleman's time has expired.

Mr. HENDERSON. Thank you, Mr. Lieu.

Antisemitism is a huge problem in this country and globally and we need to address it as we address other serious hate crime activity. I hope the Department of Justice will explore expanding its hate crime-related education programs and enforcement. I think that is the best way to address antisemitism.

Ms. JACKSON LEE. I thank the gentleman very much. The time has expired on Mr. Lieu, and I am delighted to recognize Ms. Spartz, the gentlelady from Indiana, for five minutes.

Ms. SPARTZ. Thank you, Madam Chair. Just I have a quick couple questions. I first wanted to make a quick comment. It is important discussion what we have, but I also wanted to make sure that we also have a freedom of people to exercise their First amendment rights and the rights of protest, of peaceful protest. We have to be careful when we create rules where some people might be just afraid to go to a peaceful protest, to say something there, because it could be some violent people out there. I think it is important as part of a free society that our freedom for peaceful protest is not infringed.

I know several of my constituents called me and they were very surprised when they had FBI calling their houses. They were not even here on January 6th. Some people showed up in their houses and people are literally afraid. So, I grew up in a very bad country with strong communist government and people were afraid to protest, so we can never forget that. We want to make sure that we have a right framework, legal framework, if people truly create crimes, cause crimes, and they will be properly punished.

So, my question is for Mr. German. We are discussing about domestic terrorism, and a lot of this, a lot of things people just really are criminals and such that create harm, so we have a criminal code. I am not an attorney so I am a common person, right, but our laws should be written in the ways that common individuals should understand.

So, my first question, is there anything in the code, any type of crimes that are not addressed by already crimes existing in the code? We have hate crimes, we have murders, we have people creating a different type of violence and assaults. So, are there any type of crimes that are not there, or if the crimes are there but we want to have some enhanced penalties, potentially, if there is some domestic terrorism, then it goes to the question, is our definition of domestic terrorism should be revisited or you believe it truly reflects what it needs to be?

So, I have three questions. Are there any crimes, about the penalties, and the third question about the definition?

Mr. GERMAN. Thank you very much for that question and I will try to keep them in order. Yes, there are plenty of crimes on the

books that the domestic terrorism prosecutors at the Justice Department actually use. What our report looked at were the instances where these multitude of statutes were actually used in domestic terrorism prosecutions.

So, there are plenty of federal laws, plus the way the Justice Department has established its counterterrorism program is through joint terrorism task forces where they also take advantage of State and local laws, so if there was any gap because of the circumstances of a particular crime, State and local law enforcement prosecution could follow through. So, there are more than enough laws on the books.

You are right, I want to make sure that law enforcement is focused on the violent acts and not on speech or attendance at a protest or association. With the White supremacists and far-right militant groups, there is a lot of violence that these groups commit that falls through the cracks because of the Justice Department's policy of deferring hate crimes to State and local investigators who may not have hate crime laws that can be effectively applied, or just treating it as violent crime, which is a local law enforcement problem rather than a federal problem and therefore the data about those crimes isn't collected.

So, it is a matter of holding these agencies accountable and we want to make sure that we have enough public accountability over the way the FBI uses these authorities to hold it responsible when it does use them to target people who are just expressing themselves or associating with people we might find odious.

Ms. SPARTZ. So, just to follow-up, so what about it—because a lot of enforcement tools are really in the local jurisdictions that exist. So, what other things you can have and ideas, because it is really a matter not of us really doing something with the code but enforcement issues. Do you have some ideas to make sure people do enforce the law? Because it is important for us for public safety, and we had that discussion the same this summer.

A lot of mayors were not, and a lot of businesses were destroyed and nothing was done and mayors, a lot of mayors, they hire the police. It is a local jurisdiction issue and where does a State even look? What can we do as a state, or is the State able, and what ideas do you have?

Mr. GERMAN. So, number one, in many of those protests, there were literally hundreds of people arrested so it is not as if there wasn't enforcement action being taken. It is just that what those prosecutions showed was that there was no organized effort to engage in those acts, so—according to what the charges that were actually prosecuted.

To your question, again these agencies work hand in glove with the joint terrorism task forces. There are law enforcement intelligence fusion centers that are supposed to be sharing this information, but too often they are focused on issues that don't have to do with actual acts of violence. That is the problem, is there is so much false information and misinformation going through these networks that when a real warning passes through, it is not paid attention to because—

Ms. JACKSON LEE. The gentlelady's time is up. The witness wrap-up his statement. Thank you very much.

Let me very clear, Ms. Spartz, that we are all committed to civil liberties and civil rights and to not have anyone's First amendment rights violated. So, thank you for your comments.

I am now pleased to yield to the gentleman from California, Mr. Correa, for five minutes.

Mr. CORREA. Thank you, Madam Chair. I want to thank you very much for holding this most important Committee hearing and the topic is very, very important.

I remember three years ago, after the Charlottesville, Virginia, incident, hate crime incident—Heather Heyer was killed, 34 people were injured—I called on the House Homeland Security Committee to hold hearings on this growing threat. My words, my request fell on deaf ears, and I am glad that Congress is finally figuring out these issues, the dangers of domestic terrorism and White nationalism.

I say this because I think back to my weekends at home on Main Street. I do a lot of work with our veterans. I go to the VFW/American Legion Halls. I look at our veterans, some that are dreamers that just came back from serving, our World War II veterans, and these World War II veterans are looking at me and saying, we fought against Nazi Germany, against the swastika, and now I see them on TV. They ask me, Lou, what are you doing? What is happening to our country?

I would propose to you this White supremacist, this hate, is a cancer on our nation. Why? Because our armed services today are so diverse, you have people from all over the world defending and serving our country. Just last year, we had a couple of Vietnamese Americans promoted to generals in our nation. Yesterday, I cosponsored, I co-authored a resolution speaking out against recent increase in hate crimes against Asian Americans. We are a country made up of people from all over the world. This is why White nationalism racism is a cancer in our society.

Mr. German, I want to ask you, 9/11, after 9/11 our focus of this country was against foreign terrorists. For almost 20 years, we looked the other way. We focused all our efforts on there, not here. Wake wake up today and we have lost more lives now to domestic terrorism than to foreign terrorism.

You said that the FBI has chosen not to prioritize domestic terrorism. January 6th, you said, a complete intelligence failure. Silos in our backyards, we have our county governments, our local police departments operating in silos; therefore, we don't have the data we need to paint a complete and accurate picture of domestic terrorism.

Sir, Mr. German, what do we do? Where do we go from here? You keep saying we have the laws that we need to prosecute to put a stop to White nationalism, to this kind of hate and hate crimes. Where do we go from here, sir?

Mr. GERMAN. Thank you very much for the question. First, we have to get the data. Congress had passed the National Defense Authorization Act. This data is well overdue, and without data about how the FBI and the Justice Department are actually using the—

Mr. CORREA. Does it take that long to get that data or is there a systematic denial that that situation exists and therefore the data is not presented to us?

Mr. GERMAN. It is a systematic denial. In the case of the Justice Department prosecutions, the docket numbers are public information, but they take them off their prosecuted reports so that you can't match up a case they are claiming as the terrorisms to an actual case.

With the FBI, yes, this is information that they have in their files that they could put out at any time, right? This is just basic data about how many investigations they open against these—in these categories, so it is data that is easily available.

Mr. CORREA. So, Mr. German, is it time that we police the FBI to be looking at independent research and data collection to get a solid picture of what is going on out there?

Mr. GERMAN. Absolutely. Whether it is through the Government Accountability Office or other means, if the FBI is refusing to provide data that Congress needs to serve its policymaking function, then Congress has robust tools to compel that information. I think we have to get tough with these agencies now because—

Mr. CORREA. Mr. German, thank you very much. I am running out of time, but I just wanted to say that I want to go back to Main Street, want to go meet with our veterans, both Democrats and Republicans, Independents, and when they ask me, Lou, can you bring back the country I fought for that I laid it all on the line for, I want to have a good answer for them. Thank you very much.

Madam Chair, I am out of time. I yield.

Ms. JACKSON LEE. I thank the gentleman from California, and we join him in wanting to tell those veterans that our America is back.

With that, I want to yield five minutes to the gentlelady from Texas, Ms. Escobar, five minutes. Thank you.

Ms. ESCOBAR. Thank you so much, Madam Chair. I want to express my gratitude to you for having this very important hearing. I would like to thank our panelists as well for being with us today. I also want to express my gratitude, Madam Chair, to you and to Chair Nadler for recognizing the attack on El Paso on August 3, 2019, in your opening remarks, and for understanding the pain and trauma that my community has gone through as a result of that horrific attack.

My interest is in preventing the kind of pain and trauma my community is still enduring and ensuring that no other American community has to live through what we lived through which was horrific violence at the hands of a domestic terrorist. I think to do that, to prevent this from happening, we have got to understand, number one, the root causes that fuel the violence; number two, the tools that are used by domestic terrorists to inflict that violence.

When it comes to El Paso, we know what the root causes were. The root causes were anti-immigrant, racist, xenophobic hatred that the domestic terrorist confessed fueled his ten-hour drive to El Paso. He drove to my community because he confessed to wanting to slaughter Mexicans and immigrants.

He published a screed online shortly before walking into that Walmart, and that screed used the same language, anti-immigrant,

hateful, dehumanizing language that Donald Trump had used from the loudest bully pulpit in the world, from the office of the presidency. I wish I could say that with the election we no longer have to deal with that kind of xenophobic awful hate, but, unfortunately, it is being invited back into Washington, DC.

My Republican colleagues have invited Stephen Miller, who is a White nationalist, to come brief them. They have also invited Mark Morgan, who is a member of a hate group, an anti-immigrant organization recognized as a hate group, he is being asked to brief them as well. This is because we on the House Democratic side would like to pass immigration reform. So, unfortunately, while I wish I could say that the attack on El Paso had provided a lesson, a profound lesson against the use of anti-immigrant hate, and a playbook rooted in xenophobia, I wish that a lesson had been learned; unfortunately, it has not.

I would call on my colleagues to repudiate that hate and to disinvite Stephen Miller, Mark Morgan, Tom Homan, and others who perpetuate that hate. I would ask them to please rescind their invitations, or to not show up. In addition to understanding root causes, we have got to understand the tools.

Mr. Henderson, Ms. Scanlon had asked you to talk about prevention, but she ran out of time and so you were in the middle of talking to us about what we in Congress or we in the Federal Government can do to prevent more of these attacks. I am going to ask you to finish your thoughts.

Mr. German, among the tools also are guns, frankly, and would love for you to comment quickly, after Mr. Henderson finishes his thoughts, on what background checks can do to help combat domestic terrorism.

Mr. Henderson?

Mr. HENDERSON. Ms. Escobar, thanks for the question. Our hearts go out to you and your constituents for their losses in August of 2019. I think one of the first things and one of the best things that can be done is for our country to really take an inward look at where we are and how we got there. There is a resolution under consideration in the House sponsored by Congresswoman Barbara Lee to establish a national convention on truth, racial healing, and transformation. I think that would be one of the most important steps that might be undertaken to look at the totality of circumstances that brought us to the point today. I will stop with that.

Ms. ESCOBAR. Thank you so much.

Mr. German, background checks.

Mr. GERMAN. So, as I stated earlier, illegal weapons trafficking is one of the routine crimes that these organized militant groups engage in. So, background checks are very helpful, both to identify people who are prohibited from owning weapons and prevent them from getting it, but also because it shows where these groups will go to obtain the weapons they want, but can't go through legitimate processes. So, it is very effective.

Ms. ESCOBAR. Thank you so much, Madam Chair. I yield back.

Ms. JACKSON LEE. I thank the gentlelady from Texas and her time has expired.

It is now my pleasure to yield to the gentleman from Tennessee, Mr. Cohen, for five minutes.

Mr. COHEN. Thank you very much, Madam Chair. It has been a very interesting hearing, and the sad part of it is some people still don't recognize that we went through the most horrific experience that the United States of America has ever been the victim of from within, an attempt to overturn our Constitution and our government. Yes, while a majority, 57 to 43, felt Donald Trump incited that, in public opinion that is pretty astonishing, including seven Republicans. He went out on the Ellipse and he said, if you don't fight hard, you are not strong, you won't have a country.

Mr. Henderson, you heard people in the '60s and '70s and whenever, Ku Klux Klan's people encouraged their people to go and do violence. Did you take Mr. Trump's words, you won't have a country, to be racial in nature and to be a dog whistle?

Mr. HENDERSON. I thought it was certainly a dog whistle, Mr. Cohen. I thought it was beyond a dog whistle. I thought it was a foghorn. I thought that the effort to inflame passions on January 6th that ultimately led to the insurrection at the Capitol, the failed *coup d'état* as I saw it, indeed, had been inflamed by those words. Yes, I agree completely with your observations.

Mr. COHEN. Mr. Nance, did that ever—I tell you, it didn't come to me until, really, I watched a couple of movies that were Chadwick Boseman, the Jackie Robinson and the Thurgood Marshall. While they were movies, they depicted the society of the '40s and the hate and the enmity that White racist Southerners had towards integration, and troublemakers like Thurgood Marshall, good troublemakers, but they weren't seen that way. It hit me that was racial when Trump said you won't have a country.

Mr. Nance, did you see that as well?

Mr. NANCE. Yes. It is disturbing mainly in the sense that the bully pulpit of the President of the United States was used as a cudgel and a cudgel which was essentially handed off to a mob with near-explicit instructions to go up and stop the constitutional process of certifying an election.

This is why I took issue with what Mr. Ngo said earlier. For whatever you want to say about what happened in Portland and Seattle and Kenosha, those were not acts of terrorism. They were not domestic terrorists. They were acts of civil disobedience and protests. We've seen equal vigor at Super Bowl protests. We have seen fire and fights, and I am from Philadelphia.

What we saw on the 6th of January was literally an organized attempt which was backed by 40,000 protestors and as many as 3 to 5,000, according to the Park Service's estimates, smashing in to destroy your building to stop the democratic process. To literally stop democracy in its tracks, they were willing to kill. As Officer Fanone said when he was being beaten and his pistol belt was being grabbed, someone said kill him with his own gun. It was only the fact that he begged them that he had children that the protestors got in between them.

They fully intended to commit this violence. They thought they were taking back a country from what it is. They don't believe in *e pluribus unum*. They really wanted to create their own imaginary State with Donald Trump as leader.

Mr. COHEN. It was a sad, sad day, the saddest day in the history of our country and some people aren't accepting it. Now, I want to say I didn't approve of some of the Antifa actions of coming to Washington and breaking windows and doing some of the things they did after Trump was inaugurated, and I said that.

Some of the thing—but that is not the issue. It doesn't compare. It is like comparing a forest fire to somebody with a match or setting the—it is just there is no comparison. The fact is, what we experienced was horrific and people need to accept it and not try to defend it.

Somebody here said there were only 200 people that went into the Capitol. That is absurd. There were way more than 200 policemen, and they were overrun. Two hundred people would not have overrun our Capitol police. That is just false. When we had hearings, I told the committee, try to say Boogaloo. Can you say Boogaloo? Nobody could say Boogaloo. I went on the floor, and I say, can anybody here say Boogaloo? They couldn't say it. Their lips were locked.

It was Boogaloo that killed the officer in Oakland who they tried to claim was part of the unrest and they even brought the—

Ms. JACKSON LEE. The gentleman's time is expired.

Mr. COHEN. —to Fort McHenry and make her look like it was somebody else. Get real. We have got to fight against the White extremists and make our country safe again. I yield back the balance of my time.

Ms. JACKSON LEE. The gentleman's time has expired.

Thank you very much to Members. We have a few points that we would like to clarify and so I am going to yield five minutes at this time to Mr. Biggs, the Ranking Member of the subcommittee, five minutes.

Mr. BIGGS. Thank you, Madam Chair.

Mr. German, you wrote a book called "Disrupt, Discredit, and Divide: How the New FBI Damages Democracy," right?

Mr. GERMAN. Yes.

Mr. BIGGS. If I can cite—I haven't read your book, just read some summaries of it. One of the things that it said, it chronicles how the FBI transformed itself after 9/11 from a law enforcement agency famous for prosecuting organized crime and corruption to, arguably, the most secretive domestic intelligence agency the country has ever seen.

Mr. GERMAN. Yes.

Mr. BIGGS. Is that a fair statement?

Mr. GERMAN. It's fair.

Mr. BIGGS. Yes, I don't disagree with that premise. I have actually—I don't know if I am going to buy your book, but I might check it out at the library to read it because I agree with that premise. That leads me to a couple things that I would like you and Mr. Ngo to each respond to, if you would, please.

Do you think the FBI has the necessary tools to investigate domestic terrorism while ensuring constitutional rights are protected, especially in light of the abuse of FISA authority which we have seen over the last couple years? So, I will go first to Mr. Ngo then to you too, Mr. German.

Mr. Ngo?

Mr. NGO. Thank you for the question. I am not an expert on FBI and federal capabilities to investigate, so I will have to defer to my co-panelists for the answer. I am sorry.

Mr. BIGGS. That is all right. Thank you.

Mr. German?

Mr. GERMAN. So, thank you very much for the question. Part of the problem after 9/11 was the reduction of criminal predicates. So, after the Church Committee investigation, the attorney general guidelines were issued to create a requirement that an agent have a reasonable indication based on articulable facts that the person they want to investigate is engaged in a federal crime or will engage in a federal crime.

This is a very low standard. Most FBI agents I knew woke up pretty suspicious. The problem is, removing those standards allowed the FBI to investigate people not based on any evidence of wrongdoing but, rather, based upon the agent's own bias or the agent's own belief that something that might happen in the future. That is a big part of the problem, both in the way the electronic surveillance authorities were changed with the Foreign Intelligence Surveillance Act and the PATRIOT Act, and with the way the attorney general guidelines were changed.

So, if we can restore those criminal predicates that will require the FBI agents to actually be working from articulable facts rather than bias.

Mr. BIGGS. Sure. So, with that, dozens of states from New York to Nevada have their own antiterrorism laws. Can you comment on whether these State laws have been effective to investigate and prosecute domestic terrorism?

Mr. GERMAN. I haven't done any kind of comprehensive study of those. I am concerned about the use of terrorism in the law, in federal law as well as State and local law. The way we worked when I was undercover in the early '90s was we were investigating the criminal activities some of the people within these groups were engaged in and that separated it from the ideology.

Terrorism is a politicized term, so it is not surprising that when we talk about it, there is a political element to how we interpret it. So, my advice is to focus on the violent crimes and the actual violations of the criminal statutes and not expand this use of terrorism. Learn the lessons from the inappropriate and harmful acts we took after 9/11 so we can actually work against people who are engaging in violence rather than focusing on what their ideologies may or may not be.

Mr. BIGGS. So, my last question, and it is for you, Mr. German, because you said earlier you were focusing on groups. For instance, 18 U.S.C. 2331(5), which defines domestic terrorism, it doesn't require that anybody have a conspiracy or any group. It just requires the elements of that crime to be met and there are three elements. I don't want to get into all of them, but you recognize that any individual in and of themselves can be a domestic terrorist without being part of a group.

Mr. GERMAN. Exactly. The reason I point to the organizations and the groups is because there are 17 to 18,000 homicides every year; 40 percent almost go unsolved, right. That is far more un-

solved homicides than the hundred or so crimes that might happen that are related to what we call terrorism.

So, if we are trying to focus on reducing the impact of terrorism, understanding how the organized groups operate to perpetuate this violence is the key to working these groups in a way that will reduce the violence. Trying to imagine every single individual out there who might do something harmful and prevent it is not an effective strategy, but unfortunately that is the one that we have been following with regard to a lot of these acts. Thank you.

Mr. BIGGS. Thank you. My time has expired and I thank the Chair. Thank you.

Ms. JACKSON LEE. I thank the Ranking Member. We made this agreement with Mr. Biggs and myself to clear up the record and for me to be able to have the opportunity to say what enormous appreciation this Committee has for the time that these very excellent witnesses have spent answering the questions and concerns of Members, because our challenge, of course, is to be legislators and to be able to speak the language that Congressman Correa said to those veterans, who wore the uniform for this great country that this Nation is back. So, let me say that if we had expanded the language of this title of this hearing, we might have said the rise of domestic terrorism in America that violently caused deaths of many people.

I want to acknowledge again, Officer Sicknick tragically lost his life out of the actions of January 6th, two other officers who we understand had committed suicide, and others who died on that day. They died, and so it is important to frame what we are doing here and the violence of the record of the Anti-Defamation League, 75 percent of all murders from domestic terrorism have been the result of right-wing extremists.

Mr. Ngo, would you give me the leaders of the Antifa movement? What are their names, please?

Mr. NGO. If you read any of my reports, you will know that there are no single leaders. They are organized into autonomous cells that are connected by network.

Ms. JACKSON LEE. Thank you very much, Mr. Ngo.

So, in fact, as the FBI says, this is an ideology. These are ideologues and you can evidence that in the actions that they promote across the nation. They show up and they do create havoc. As one of our Members indicated, though we all abhor violence, we recognize civil protests but in the midst of civil liberties and civil rights.

So, I want to pose these questions to you gentlemen as we try to clear up the facts. First, one member was here today, we appreciate him, and he is trying to label the history of America in the context of Republicans and Democrats. White racism, White Nazism does not come in party affiliation. Let us put on the record that the freed slaves were Republicans because Abraham Lincoln freed them.

As we went through, those who hung around to see Black people hung, I don't know their affiliation. They were White and they were filled with hatred. At the same time, he claims that they were Democrats. If they were, I find them abhorrent and will reject their behavior. So, we cannot put party labels, and I am glad Mr. Biggs

has extended his hand in friendship. Let's find a way to address this question because it is dastardly and ugly.

So, let me pose this question to you, Mr. German. Isn't it key that we understand Antifa's ideology, but that out of White racism and White extremists come death and violence in many instances? If you keep your answer short, I want to get to all the gentlemen on this Committee before I have to close. Mr. German?

Mr. GERMAN. Yes, exactly. What we need the FBI and the Justice Department to do is focus on the White supremacist, far right militant violence, actual violence that has happened, and recognize that the Capitol attack was not a standalone event. It was the culmination of many attacks before that.

Ms. JACKSON LEE. Thank you.

Mr. Henderson, thank you for acknowledging H.R. 40 as also a reparative and restorative legislation that we filed time after time after time. Would you admit to the fact that from the perspective of hatefulness and actions that African Americans, Black Americans have experienced violence throughout the 20th century, and that, in addition, to hangings that occurred in the early 1900s, we went into the civil rights movement, and we had the Mississippi Boys, the Birmingham Bombing.

Those individuals, as we understand it, were White Southerners motivated by hatred and White racism. That is terror. That is now the modern terminology of alt-right. Would you say that plays into why we have to address this question of domestic terrorism?

Mr. HENDERSON. There is absolutely no question, Madam Chair, that you have described circumstances as they exist. The history of the African American experience in this country and in the 20th century underscores your point quite effectively. In fact, later this year, we will celebrate the centennial, or acknowledge the centennial anniversary of the Tulsa Massacre, in which over 300 African Americans and the most prosperous business center of Black people in the country was destroyed; a century ago, this year.

Ms. JACKSON LEE. Thank you. Thank you very much for that.

Mr. Nance, African Americans, Hispanic Latinx, and now, of course, the community of Asian Americans, whether it is Sikh Indians or whether or not it is Asian Pacific or whether or not it is Southeast Asians, provoked by language but results in violent acts.

So, how should this Committee respond to finding a way, besides the cultural changes of attitude, harmonious coming together, recognizing the unity of this nation, but how can we get to that core which winds up with people dying? That is why we had this hearing about the rise in domestic terrorism, because it is about people dying. That has to stop. How do we work that through the present laws and going forward?

Mr. NANCE. Well, first off, as this hearing is very, very beneficial for the Nation is to understand that the very fact that there is a national threat which is not just congealing from all these small disparate groups, they are organizing themselves under a political ideology and that ideology is intended to Act as a political cudgel over the heads of all other peoples.

The very definition of terrorism is a threat or Act of violence, which is political in nature, which uses terrorist tactics to influence an audience beyond the immediate victims. Well, when you orga-

nize as military platoons and you are planning to intimidate a population by coming through with firearms you are not a terrorist until you use those firearms in a mass attack, as we saw with the representative from El Paso. That was a terrorist attack. Same thing with what we saw in Pittsburgh.

So, that being the case, we have to really go at this as Mr. German said, you can't really tie ideology directly to it, but the actions and acts and the conspiracies of the individuals to see whether they are just people who are carrying out typical crimes, or are they part of a larger conspiracy intending to intimidate an entire Nation or peoples.

Ms. JACKSON LEE. I thank you so very much, and I thank the witnesses again for their patience and their excellent testimony and for accepting our invitation to be part of this hearing. I thank the Members. We have had a very interesting hearing because we have mixed it with three hours of voting. So, I thank them for their indulgence and we look forward to being proactive in legislating around these issues.

Let me close the hearing in the names of Michael Fanone, Officer Michael Fanone of the Metro Police Department, Harry Dunn, Officer Glover, and many others including the officer who testified yesterday in front of the Senate Homeland Security Committee; and all others who have fallen victim and fallen through the violence of hatred, White supremacy, White nationalism, and overall hatred. Let us in this full Committee and Subcommittee find a way to bring a solution that will heal this nation.

This concludes today's hearing. Thank you to our distinguished witnesses for attending, as I said. Thank you again for your patience. Thank the Members again for their patience. Without objection, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record. This hearing is now adjourned.

[Whereupon, at 6:48 p.m., the Subcommittee was adjourned.]




APPENDIX

The False and Exaggerated Claims Still Being Spread About the Capitol Riot

Insisting on factual accuracy does not make one an apologist for the protesters. False reporting is never justified, especially to inflate threat and fear levels.



Glenn Greenwald

Feb 16  1,171  1,272 

Damage is seen inside the US Capitol building early on January 7, 2021 in Washington, DC (Photo by OLIVIER DOULIERY/AFP via Getty Images)

What took place at the Capitol on January 6 was undoubtedly a politically motivated riot. As such, it should not be controversial to regard it as a dangerous episode. Any time force or

violence is introduced into what ought to be the peaceful resolution of political conflicts, it should be lamented and condemned.

But none of that justifies lying about what happened that day, especially by the news media. Condemning that riot does not allow, let alone require, echoing false claims in order to render the event more menacing and serious than it actually was. There is no circumstance or motive that justifies the dissemination of false claims by journalists. The more consequential the event, the less justified, and more harmful, serial journalistic falsehoods are.

Yet this is exactly what has happened, and continues to happen, since that riot almost seven weeks ago. And anyone who tries to correct these falsehoods is instantly attacked with the cynical accusation that if you want only truthful reporting about what happened, then you're trying to "minimize" what happened and are likely an apologist for if not a full-fledged supporter of the protesters themselves.

One of the most significant of these falsehoods was the tale — endorsed over and over without any caveats by the media for more than a month — that Capitol Police officer Brian Sicknick was murdered by the pro-Trump mob when they beat him to death with a fire extinguisher. That claim was first published by *The New York Times* on January 8 in [an article](#) headlined "Capitol Police Officer Dies From Injuries in Pro-Trump Rampage." It cited "two [anonymous] law enforcement officials" to claim that Sicknick died "with the mob rampaging through the halls of Congress" and after he "was struck with a fire extinguisher."

A second *New York Times* [article](#) from later that day — bearing the more dramatic headline: "He Dreamed of Being a Police Officer, Then Was Killed by a Pro-Trump Mob" — [elaborated](#) on that story:

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Intelligence Assessment

Federal Bureau of Investigation
**INTELLIGENCE
ASSESSMENT**

(U//FOUO) Black Identity Extremists Likely Motivated to Target Law Enforcement Officers

3 August 2017

Prepared by:

FBI

**Counterterrorism
Division**

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(U) Executive Summary

(U//FOUO) The FBI assesses it is very likely^a Black Identity Extremist^b (BIE) perceptions of police brutality against African Americans spurred an increase in premeditated, retaliatory lethal violence against law enforcement and will very likely serve as justification for such violence. The FBI assess it is very likely this increase began following the 9 August 2014 shooting of Michael Brown in Ferguson, Missouri, and the subsequent Grand Jury November 2014 declination to indict the police officers involved. The FBI assesses it is very likely incidents of alleged police abuse against African Americans since then have continued to feed the resurgence in ideologically motivated, violent criminal activity within the BIE movement. The FBI assesses it is very likely some BIEs are influenced by a mix of anti-authoritarian, Moorish sovereign citizen^c ideology, and BIE ideology. The FBI has high confidence^d in these assessments, based on a history of violent incidents attributed to individuals who acted on behalf of their ideological beliefs, documented in FBI investigations and other law enforcement and open source reporting. The FBI makes this judgment with the key assumption the recent incidents are ideologically motivated.

^a (U) See Appendix A: Expressions of Likelihood (or Probability).

^b (U//FOUO) The FBI defines black identity extremists as individuals who seek, wholly or in part, through unlawful acts of force or violence, in response to perceived racism and injustice in American society and some do so in furtherance of establishing a separate black homeland or autonomous black social institutions, communities, or governing organizations within the United States. This desire for physical or psychological separation is typically based on either a religious or political belief system, which is sometimes formed around or includes a belief in racial superiority or supremacy. The mere advocacy of political or social positions, political activism, use of strong rhetoric, or generalized philosophic embrace of violent tactics may not constitute extremism, and may be constitutionally protected.

^c (U//FOUO) The FBI defines sovereign citizen extremists as individuals who openly reject their US citizenship status, believe that most forms of established government, authority, and institutions are illegitimate, and seek, wholly or in part, through unlawful acts of force or violence, to further their claim to be immune from government authority. The mere advocacy of political or social positions, political activism, use of strong rhetoric, or generalized philosophic embrace of violent tactics may not constitute extremism, and may be constitutionally protected.

^d (U) See Appendix B: Confidence in Assessments and Judgments Based on a Body of Information.

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UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE**(U) Scope Note**

(U) This intelligence assessment focuses on individuals with BIE ideological motivations who have committed targeted, premeditated attacks against law enforcement officers since 2014. This assessment does not address BIEs who have attacked law enforcement officers during the course of officers' routine duties, such as responding to calls and traffic stops, in which violent actions were reactionary in nature.

(U//LES) This assessment addresses the following key intelligence questions:

- (U//LES) To what extent are BIEs' targeting interests retaliatory?
- (U//LES) What cross-programmatic relationships influence the BIE movement?

(U//LES) This assessment is the first FBI analytic intelligence product to assess influences between the sovereign citizen extremist movement and the black identity extremist movement. The FBI has previously reported on BIE retaliatory violence against law enforcement in two products, both of which had findings consistent with this assessment. The 23 March 2016 FBI intelligence bulletin, titled "(U//FOUO) Black Separatist Extremists' Call for Retaliation in Response to Police-Involved Incidents Could Incite Acts of Violence against Law Enforcement," assessed incidents involving allegations of law enforcement abuse and related legal proceedings would likely lead to BSE calls for violent retaliation and incite these domestic extremists to commit violent acts against law enforcement. The 14 November 2014 FBI intelligence bulletin, titled "(U//FOUO) Potential Criminal Reactions to Missouri Grand Jury Announcement," assessed the announcement of the grand jury's decision in the shooting death of Michael Brown in Ferguson would likely be exploited by some individuals to justify threats and attacks against law enforcement and critical infrastructure.

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(U//LES) Reporting in this intelligence assessment was derived primarily from FBI and law enforcement investigations and open source reporting—media interviews of subjects, subjects' posting on social media accounts, and online news articles—deemed credible and reliable. The review of FBI investigations occurred between September 2014 and December 2016. The open source reporting was current as of 17 January 2017. Statements made by the subjects to law enforcement during the course of investigations were particularly helpful to identify motivations behind BIE attacks against law enforcement because ideological motivations are infrequently identified or collected. Additional reporting on the ideological motivations behind BIE attacks would improve the confidence levels in this assessment.

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(U//FOUO) Suspects' Grievances Very Likely Lead to Violent Targeting of Law Enforcement

(U//FOUO) The FBI judges it is very likely BIE perceptions of police brutality against African Americans have become organizing drivers for the BIE movement since 2014, resulting in a spike of BIEs intentionally targeting law enforcement with violence. In all six targeted attacks since 2014, the FBI assesses it is very likely the BIE suspects acted in retaliation for perceived past police brutality incidents. Even though five of these attacks occurred following controversial police shootings of African Americans by white police officers, BIE targeting of officers was not, in every incident, based on their specific race.

- (U) On 7 July 2016, Micah Johnson ambushed and shot 11 law enforcement officers, killing five, in downtown Dallas, Texas, during a First Amendment protected protest, before being ultimately killed by police. The five deceased officers were white. The planned public event was protesting recent officer-involved shootings of African Americans in Louisiana and Minnesota. Based on Johnson's journal writings and statements to police, he appeared to have been influenced by BIE ideology.
 - (U//FOUO) During the standoff with police, Johnson told police negotiators he was upset about recent police shootings and white people, and expressed a desire to kill white people, especially white officers.¹ Johnson searched and liked social media pages of BIE and black separatist groups,² and had been ousted from a local BIE group for being too radical, according to an open source news article.^{3, 4}
- (U//FOUO) On 23 October 2014, Zale H. Thompson attacked four white New York Police Department (NYPD) officers in Queens with a hatchet. One officer received injuries to the arm and a second officer received an injury to the side of his head. The two remaining NYPD officers at the scene shot and killed Thompson according to open source reporting.
 - (U//FOUO) According to open source reporting, Thompson was angered after "a recent spate of deaths at the hands of the police."⁵ In his own writings, Thompson advocated for armed struggle against "the oppressors"⁶ and "mass revolt" against the US social, economic, and political systems, which he perceived to be "white dominated." He also described the United States as a "beast" and called for "chopping off" its head, hands, and feet.⁷ NYPD observed tattoos on Thompson's body that indicated he was affiliated with a black separatist extremist group and pocket litter indicating he may have been associated with another black separatist group according to law enforcement reporting.⁸

(U//FOUO) Convergence of BIE and Moorish Sovereign Citizen Ideology Very Likely Leads to Violence against Law Enforcement Officers

(U//FOUO) The FBI assesses it is very likely a few of the BIEs who have targeted law enforcement since 2014 were influenced by more than one ideological perspective. The FBI judges it is very likely in four of the six BIE attacks against law enforcement since 2014, the perpetrators were motivated by a mix of BIE ideology and Moorish sovereign citizen extremist

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(SCE)^o ideology, a category of SCE ideology. The FBI assesses it is very likely BIE adoption of a Moorish SCE identity reinforced a sense of disenfranchisement from society and a perception that the criminal justice system is unjust.

- (U) On 4 October and 13 October 2016, an individual allegedly shot at two different police stations in Indianapolis, Indiana. The subject left a hand-written note at the scene of one of the shootings, in which he identified himself as a Moor and made anti-white statements. The subject posted pictures on social media of African American men carrying assault rifles behind text calling for social injustice and retribution.⁹ The subject was later involved in a shootout with police during his arrest on related charges according to law enforcement reporting.^{10, 11}
- (U//LES) On 17 July 2016, Gavin Eugene Long ambushed and shot six law enforcement officers in Baton Rouge, Louisiana, before eventually being killed by police.¹² The deceased victims included one African American officer and one white officer from the Baton Rouge Police Department, and one white officer from the East Baton Rouge Parish Sheriff's Office. Long had expressed black separatist rhetoric both on social media and in his manifesto, including rants against "crackers" and reference to an African American male killed by police in Baton Rouge on 5 July 2016.^{13, 14} In his manifesto, Long expressed his frustrations with the police and criminal justice system in the United States and saw his actions "as a necessary evil... in order to create substantial change."¹⁵ A law enforcement search of Long's laptop contained biographical information and residential addresses of two officers involved in the Alton Sterling shooting, and Google searched directions to one of the officer's home address.¹⁶ Long had also declared himself to be a Moor, had changed his "slave" name to the Moorish name Cosmo Ausar Setepenra, and was carrying a Moorish identification card at the time of his death according to open source reporting.^{17, 18}
- (U//LES) On 13 September 2016, an individual reportedly intentionally drove his vehicle toward three white officers with the Police Department in Phoenix, Arizona, outside a gas station, striking two of them before he was arrested.¹⁹ The subject's social media accounts indicated that he was tied to a BIE group and a Moorish group,^{20, 21} and that he was angry over police shootings since at least the killing of Brown in 2014.²² Consistent with BIE statements on social media, the subject stated, "The Caucasian needs to be slaughtered like the pigs that they are right along with the niggas who serve and protect them" according to law enforcement reporting.^{23, 24}
- (U//FOUO) On 21 November 2014, a BIE was arrested and eventually convicted for purchasing explosives the subject intended to use in the Ferguson area upon release of the

^o (U//FOUO) Moorish sovereign citizens are a loose network of mostly African Americans who believe they are sovereign entities who do not recognize the authority of the US Government. Moorish sovereign citizen ideology derives from the Moorish Science Temple of America, a non-violent religious and cultural movement founded in 1913 by Noble Drew Ali, who taught his followers they were not "negroes" but Moors, people of North African Berber and Arab descent. Some Moorish adherents adopt sovereign citizen strategies to assert diplomatic immunity by claiming membership in fictitious Native American tribes, claiming descent from settlers who arrived in North America during the pre-Columbian era, or identifying as foreign nationals or ambassadors. (Source: FBI; Primer; January 2014; "(U) Black Separatist Extremists: An Introduction for Law Enforcement"; UNCLASSIFIED; UNCLASSIFIED; Multiple sources.)

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grand jury verdict for the police officer involved in the shooting death of Brown.²⁵ He previously discussed a desire to kill the white St. Louis County prosecutor and the white Ferguson police chief who were involved in Brown's case, according to FBI information. Additionally, the subject had ties to a BIE group²⁶ that had discussed ambushing police.²⁷ Furthermore, the subject had ties to the sovereign citizen movement^{28, 29} filed paperwork declaring himself an "aboriginal/indigenous free sovereign moor,"^{30, 31} and possessed a Moorish identification card according to open source reporting.³²

(U) Perspective

(U//FOUO) BIEs have historically justified and perpetrated violence against law enforcement, which they perceived as representative of the institutionalized oppression of African Americans, but had not targeted law enforcement with premeditated violence for the nearly two decades leading up to the lethal incidents observed beginning in 2014. BIE violence peaked in the 1960s and 1970s in response to changing socioeconomic attitudes and treatment of blacks during the Civil Rights Movement. BIE groups, such as the Black Liberation Army (BLA), which was created in the early 1970s to "take up arms for the liberation and self-determination of black people in the United States," engaged in murders, bank robberies, kidnappings, racketeering, possession of explosives, and weapons smuggling.

- (U) From 1970 to 1984, the BLA was involved in at least 38 criminal incidents, including 26 armed assaults, 3 assassinations, 4 bombings, and 4 hijackings and hostage takings. Almost half of these attacks took place in predominantly African American neighborhoods and targeted law enforcement officers without regard to their race according to an open source database.³³

(U//FOUO) BIE violence has been rare over the past 20 years and there is sparse evidence of any convergence with SCEs who adhere to Moorish beliefs, who have historically engaged in nonviolent fraudulent schemes—including production of fraudulent personal identification documents such as International Motorist Certifications, passports, vehicle titles and registrations, and birth certificates—in support of their claims of sovereignty. In addition, although non-Moorish SCEs have committed lethal violence against law enforcement in the past, this violence has typically occurred in response to encounters with law enforcement—for example, during traffic stops or the issuing of warrants—rather than through premeditated, targeted aggression. In addition, not all self-identified Moors are sovereign citizens, and not all sovereign citizen Moors engage in violence against law enforcement or other illegal activity.

(U//FOUO) The FBI has previously reported on BIE retaliatory violence against law enforcement in two products. This intelligence assessment addresses actual incidents of lethal retaliatory violence. The previous black identity extremism intelligence products discussed calls for potential retaliatory violence, not actual violent incidents. Recent lethal violent incidents may be indicative of a resurgence of targeted violence within the BIE movement.

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(U//FOUO) The FBI considered the alternative hypothesis that retaliatory violence against law enforcement is not ideologically motivated, but rather a result that some individuals may simply harbor animosity toward police and exploit racial tensions as an excuse to commit acts of violence. The FBI, however, assesses this alternative is very unlikely in the cases analyzed in this assessment because strictly criminal subjects typically commit spontaneous, “defensive” acts of violence against police rather than proactive targeting, and use idiosyncratic reasons unrelated to ideology, such as financial gain and personal disputes, to justify their actions. The FBI further judges it is very likely BIEs proactively target police and openly identify and justify their actions with social-political agendas commensurate with their perceived injustices against African Americans, and in some cases, their identified affiliations with violent extremist groups.

(U) Outlook

(U//FOUO) The FBI assesses it is very likely that BIEs’ perceptions of unjust treatment of African Americans and the perceived unchallenged illegitimate actions of law enforcement will inspire premeditated attacks against law enforcement over the next year. This may also lead to an increase in BIE group memberships, collaboration among BIE groups, or the appearance of additional violent lone offenders motivated by BIE rhetoric. The FBI further assesses it is very likely additional controversial police shootings of African Americans and the associated legal proceedings will continue to serve as drivers for violence against law enforcement. The FBI assesses it is likely police officers of minority groups are also targeted by BIEs because they are also representative of a perceived oppressive law enforcement system.

(U//FOUO) Possible indicators for BIEs posing a violent threat to law enforcement include advocating for violence against law enforcement, violent anti-white rhetoric, attempts to acquire illegal weapons or explosives, and affiliations with others in both the BSE and sovereign citizen extremist movements.

(U) Intelligence Requirements

(U) FBI National Standing Collection Requirement

- (U//FOUO) USA-TERR-CTD-SR-0519-17.III.A.2.a

(U) This Intelligence Assessment was prepared by the FBI Domestic Terrorism Analysis Unit, Counterterrorism Analysis Section (CTAS), of the Counterterrorism Division. Comments and queries may be addressed to the CTAS Section Chief by calling [REDACTED]

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(U) Appendix A: Expressions of Likelihood (or Probability)

(U) Phrases such as “the FBI judges” and “the FBI assesses,” and terms such as “likely” and “probably” convey analytical judgments and assessments. The chart approximates how expressions of likelihood and probability correlate with percentages of chance. The FBI only uses likelihood expressions. Furthermore, the FBI does not derive judgments via statistical analysis and will not use expressions of probability to convey uncertainty in external FBI intelligence products.

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<i>Terms of Likelihood</i>	Almost No Chance	Very Unlikely	Unlikely	Roughly Even Chance	Likely	Very Likely	Almost Certain(ly)
<i>Terms of Probability</i>	Remote	Highly Improbable	Improbable (Improbably)	Roughly Even Odds	Probable (Probably)	Highly Probable	Nearly Certain
	1-5%	5-20%	20-45%	45-55%	55-80%	80-95%	95-99%

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(U) Appendix B: Confidence in Assessments and Judgments Based on a Body of Information

(U) Confidence levels reflect the quality and quantity of the source information supporting judgment. Consequently, the FBI ascribes high, medium, or low levels of confidence to assessments, as follows:

(U) **High confidence** generally indicates the FBI's judgments are based on high quality information from multiple sources. High confidence in a judgment does not imply the assessment is a fact or a certainty; such judgments might be wrong. While additional reporting and information sources may change analytical judgments, such changes are most likely to be refinements and not substantial in nature.

(U) **Medium confidence** generally means the information is credibly sourced and plausible but not of sufficient quality or corroborated sufficiently to warrant a higher level of confidence. Additional reporting or information sources have the potential to increase the FBI's confidence levels or substantively change analytical judgments.

(U) **Low confidence** generally means the information's credibility or plausibility is uncertain, the information is too fragmented or poorly corroborated to make solid analytic inferences, or the reliability of the sources is questionable. Absent additional reporting or information sources, analytical judgments should be considered preliminary in nature.

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(U) Endnotes

- ¹ (U) Online newspaper article; *The New York Times*; “(U) Five Dallas Officers Were Killed as Payback, Police Chief Says”; 9 July 2016; https://www.nytimes.com/2016/07/09/us/dallas-police-shooting.html?_r=0; accessed on 17 January 2017; Source is an open-source news article from a reputable news Web site.
- ² (U) FBI; Information; 14 July 2016; 20 March 2016; “[TITLE REDACTED]”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is open source reporting.
- ³ (U//FOUO) FBI; Information; 13 July 2016; 12 July 2016; “(U//FOUO) Set Lead to FBI Houston to Interview [Name withheld]”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is open source reporting.
- ⁴ (U) FBI; Electronic Communication; 10 November 2016; 9 November 2016; “[TITLE REDACTED]”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is law enforcement reporting.
- ⁵ (U) Online newspaper article; *The New York Times*; “(U) Attacker With Hatchet Is Said to Have Grown Radical on His Own”; 25 October 2014; https://www.nytimes.com/2014/10/25/nyregion/man-who-attacked-police-with-hatchet-ranted-about-us-officials-say.html?_r=1; accessed on 24 January 2017; Source is open source reporting.
- ⁶ (U) FBI; Electronic Communication; 6 November 2014; 23 October 2014; “(U) Lead requests to interview former female companions of subject [Name withheld]”; UNCLASSIFIED; UNCLASSIFIED; Source is law enforcement reporting.
- ⁷ (U//FOUO) FBI-DHS; Joint Intelligence Bulletin; 27 October 2014 “(U//FOUO) Lone Offender Hatchet Attack on New York Police Department Officers Has No Apparent Link to a Foreign Terrorist Organization”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is open source and law enforcement reporting.
- ⁸ (U) FBI; Electronic Communication; 24 October 2014; 23 October 2014; “(U) Opening EC”; UNCLASSIFIED; UNCLASSIFIED; Source is law enforcement reporting.
- ⁹ (U) Online news article; Fox 59 News; “(U) DNA ties Zionsville murder suspect to IMPD headquarters shootings”; 31 October 2016; <http://fox59.com/2016/10/31/court-docs-dna-ties-zionsville-murder-suspect-tied-to-impd-headquarters-shootings>; accessed on 15 December 2016; Source is open source reporting from a local news organization.
- ¹⁰ (U) FBI; Electronic Communication; 7 October 2016; 4 October 2016; “(U) Opening EC”; UNCLASSIFIED; UNCLASSIFIED; Source is law enforcement reporting.
- ¹¹ (U) FBI; Information; 8 November 2016; 31 October 2016; “(U) Arrest of [Name withheld]”; UNCLASSIFIED; UNCLASSIFIED; Source is law enforcement reporting.
- ¹² (U) FBI; Electronic Communication; 17 July 2016; 17 July 2016; “[TITLE REDACTED]”; UNCLASSIFIED; UNCLASSIFIED; Source is law enforcement reporting.
- ¹³ (U) Online news article; The Daily Caller; “(U) Baton Rouge Cop Killer [Name withheld] Was Nation Of Islam”; 17 July 2016; [URL REDACTED]; Source is open source reporting.
- ¹⁴ (U) FBI; Information; 1 August 2016; 29 July 2016; “(U) Kansascity.com Interview with [Name withheld]”; UNCLASSIFIED; UNCLASSIFIED; Source is open source reporting.
- ¹⁵ (U//LES) FBI; Information; 2 August 2016; 2 August 2016; “(U//LES) Baton Rouge and Dallas Shooters Alluded to [Name withheld]”; UNCLASSIFIED; UNCLASSIFIED; Source is open source reporting.
- ¹⁶ (U) FBI; Information; 21 July 2016; 1 July 2016; “(U) Potential Targeting of Law Enforcement Officers through Open Source Personally Identifiable Information (PII)”; UNCLASSIFIED; UNCLASSIFIED; Source is law enforcement reporting.
- ¹⁷ (U) Online news article; NBC News; “(U) What Is the Washitaw Nation, ‘Sovereign’ Group Baton Rouge Shooter Identified With?”; 19 July 2016; <http://www.nbcnews.com/storyline/baton-rouge-police-ambush/what-washitaw-nation-sovereign-group-baton-rouge-shooter-identified-n612101>; accessed on 8 September 2016; Source is open source reporting.
- ¹⁸ (U//LES) FBI; Information; 31 August 2016; 29 July 2016; “(U//LES) Baton Rouge and Dallas Shooters Alluded to [Name withheld]”; UNCLASSIFIED; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is subject’s manifesto.
- ¹⁹ (U) Online news article; ABC News; “(U) Man crashes into Phoenix officers: [Name withheld] fought with officers after intentional crash”; 14 September 2016; [URL REDACTED]; accessed on 14 September 2016; Source is open source reporting.

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²⁰ (U) FBI; Electronic Communication; 14 September 2016; 13 September 2016; “(U) Opening EC”; UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE; UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE; Source is law enforcement reporting.

²¹ (U) Blog post; Anti-Defamation League; “(U) Black Nationalist Charged With Attacking Phoenix Police Officers”; 15 September 2016; <http://blog.adl.org/?s=black+nationalist+charged+with+attacking+phoenix&x=0&y=0>; accessed on 15 September 2016; Source is open source reporting.

²² (U) *Ibid.*

²³ (U) *Ibid.*

²⁴ (U) FBI; Electronic Communication; 14 September 2016; 13 September 2016; “(U) Opening EC”; UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE; UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE; Source is law enforcement reporting.

²⁵ (U) FBI; Electronic Communication; 9 September 2014; 9 September 2014; “(U) Opening EC”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is law enforcement reporting.

²⁶ (U) FBI; Electronic Communication; 30 June 2016; 1 November 2014; “(U) Closing EC”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED//FOR OFFICIAL USE ONLY; Source is law enforcement reporting.

²⁷ (U//FOUO) FBI; Information; 17 June 2015; 1 November 2014; “(U//FOUO) Interview of [Name withheld]”; UNCLASSIFIED//FOR OFFICIAL USE ONLY; UNCLASSIFIED FOR OFFICIAL USE ONLY; Source is law enforcement reporting.

²⁸ (U//FOUO) FBI; Electronic Communication; 31 August 2015; 29 August 2015; “(U//FOUO) Kansas City Star article “(U) Sovereign Citizens Now Consist of All Colors and Creeds”; UNCLASSIFIED; UNCLASSIFIED; Source is open source reporting from a local news organization whose deemed reliable.

²⁹ (U) *Op. cit.*, endnote 26.

³⁰ (U) Online news article; Southern Poverty Law Center; “(U) Extremists Exploit Racial Tensions in Ferguson, MO”; 2015; <https://www.splcenter.org/fighting-hate/intelligence-report/2015/extremists-exploit-racial-tensions-ferguson-mo>; accessed on 11 August 2016; Source is open source reporting.

³¹ (U) Blog post; Anti-Defamation League; “(U) Arrested Black Panther Also Involved in Sovereign Citizen Movement”; 26 November 2014; <http://blog.adl.org/extremism/arrested-black-panther-also-involved-in-sovereign-citizen-movement>; accessed on 11 October 2016; Source is open source reporting.

³² (U) *Ibid.*

³³ (U) FBI; Primer; January 2014; “(U) Black Separatist Extremists: An Introduction for Law Enforcement”; UNCLASSIFIED; UNCLASSIFIED; Multiple sources.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 12-182(RWR)
	:	
v.	:	
	:	
FLOYD LEE CORKINS, II,	:	
	:	
Defendant.	:	

GOVERNMENT’S SENTENCING MEMORANDUM

FBI Agent: [W]hat was your intention . . . You’re . . . a political activist you said?

Corkins: **Yeah, I wanted to kill the people in the building and then smear a Chicken-fil-A sandwich on their face**

* * *

FBI Agent: And you, what was your intention when you went in there with the gun?

Corkins: **Uh, it was to kill as many people as I could.**

* * *

On August 15, 2012, a mass killing of innocent civilians at work in our nation’s capital was narrowly averted. The defendant, the lone gunman and perpetrator of this attempted massacre, had the malicious intent and engaged in the requisite planning and effort necessary to achieve his purpose. Fortunately, he was thwarted by the heroic intervening actions of Leonardo Johnson, a building manager/security guard who was seriously injured as a result. Although the defendant largely failed to bring about the violence he sought, he was still able to accomplish one of his objectives—that is, to use acts of violence to terrorize and intimidate those within the District of Columbia and the United States who did not share his political beliefs and views.

On February 6, 2013, faced with the overwhelming evidence of his crimes, the defendant

pled guilty to Act of Terrorism while Armed (Count IV), Assault with Intent to Kill while Armed as to Mr. Johnson (Count II), and Interstate Transportation of a Firearm and Ammunition (Count I). The defendant's crimes are serious and warrant severe sentences—not only to punish the defendant for his actions, but to keep the community safe from him and deter other would-be mass murderers and domestic terrorists from following suit. Accordingly, the Government respectfully requests that the Court sentence the defendant to a combined term of imprisonment of 45 years.

Facts Relevant to Sentencing – Statement of Offense

By virtue of the Statement of Offense in support of his guilty plea, the defendant acknowledged the following facts:

Introduction

On August 15, 2012, the defendant Floyd Lee Corkins, II (hereinafter “Corkins” or “the defendant”), armed with a loaded semi-automatic pistol he had purchased in Virginia, two additional loaded magazines, and a box of ammunition, traveled from Virginia to the office headquarters of the Family Research Council (“FRC”) in Washington, D.C., intending to shoot and kill as many employees of the organization that he could. The FRC is a nationally-recognized conservative lobbying group that, according to its own mission statement, “shapes the public debate and formulates public policy that values human life and upholds the institutions of marriage and the family.” Among other things, the FRC advocates against governmental recognition of gay marriage. When the defendant arrived at the FRC, Leonardo Johnson, a building manager and unarmed security guard seated at the receptionist desk in the first-floor lobby, asked to see the defendant's identification. Corkins reached into his backpack, pulled out the handgun, and pointed it at Johnson. Johnson charged Corkins and a struggle ensued, during which Corkins shot Johnson in the arm. Despite the serious gunshot injury he sustained, Johnson managed to wrestle

the gun away from Corkins and then subdued him at gunpoint until members of the D.C. Metropolitan Police Department (“MPD”) arrived. While on the scene, Corkins told Johnson in sum and substance that “it was not about you [Johnson],” but about the FRC and its policies.

The Shooting

On the morning of August 15, 2012, the defendant drove his family’s car from Herndon, Virginia, to the East Falls Church Metro Station and took Metro rail into the District of Columbia with the intent of committing the shooting. After getting off the train at the Gallery Place Metro stop, he loaded a Sig Sauer P229 semiautomatic pistol he had purchased in Virginia six days earlier and walked to the FRC’s headquarters, located at 801 G Street, NW, Washington, D.C.

At approximately 10:46 A.M., the defendant arrived in front of the FRC’s secured front door. To gain access to the building, he falsely told Johnson, who was manning the lobby’s receptionist desk at the time, that he was there for an interview as a prospective intern. Upon gaining entry, the defendant approached the receptionist desk and Johnson, and shortly thereafter attempted to shoot and kill him.

Three FRC security cameras captured the shooting incident, almost in its entirety. An exterior FRC security camera captured Corkins entering the front door of the FRC. A second camera positioned inside the lobby captured Corkins approaching the front reception desk, behind which Johnson was seated. The two men engaged in a brief verbal exchange while Corkins stood directly in front of the waist-high desk. After Johnson asked to see the defendant’s identification, Corkins unshouldered his backpack, set it down on the floor in front of the desk, and bent down to retrieve something from inside it. Meanwhile, Johnson stood up and moved to one side of the desk. Shortly thereafter, Corkins stood back up and leveled his pistol at Johnson’s head/upper body, prompting Johnson to duck and then lunge for Corkins and the gun. Before Corkins could

fire an initial shot, Johnson grabbed Corkins, and the two men struggled. During this struggle, Corkins fired his pistol three times, one shot of which struck Johnson in the left forearm area. Despite the gunshot wound and Corkins's subsequent discharges of the gun, Johnson succeeded over the course of the next 15-20 seconds in disarming Corkins and forcing him to the ground and onto his belly. Johnson then stood over Corkins, subduing him with the weapon. Around this same time, Corkins stated to Johnson in sum and substance, "It's not about you," it's about the FRC and its policies.

Moments later, another FRC employee in the lobby area at the time of the shooting used the front receptionist desk phone to call 911.¹ MPD officers in the vicinity responded to the FRC to find Johnson still holding Corkins at gunpoint. The MPD officers subsequently handcuffed and frisked Corkins on the scene. In a search of his person, the MPD officers discovered two fully loaded magazine clips (15 rounds each) in one of Corkins's front pants pockets, as well as a Metro card and a handwritten list. The handwritten list contained the names of four organizations, beginning with the FRC (and its D.C. street address), as well as the address for the Blue Ridge Arsenal in Virginia where Corkins had purchased the gun and other implements (described more fully below). Each of the four listed organizations are nationally recognized advocacy groups that openly identify themselves as having socially conservative agendas supporting, among other things, legislation defining "marriage" as a relationship between one man and one woman and generally against legislation that would promote gay marriage. While on the scene, various MPD officers also overheard Corkins make several statements, the sum and substance of which included, "I don't like the organization and what it stands for" and "I don't like these people, and I

¹ A third camera captured this employee's movements during the shooting incident. After hearing the first shot, the employee scrambled to the floor and remained there to escape physical harm until Johnson had effectively subdued Corkins.

don't like what they stand for."

After securing the scene, MPD officers transported Corkins to the Federal Bureau of Investigations' Washington Field Office ("FBI's WFO") to be processed for arrest and interviewed. Simultaneously, Johnson was taken by ambulance to Howard University Hospital's Emergency Room to treat his gunshot wound.² MPD officers also called for the MPD's Bomb Unit to inspect Corkins's backpack still on the scene. An MPD bomb technician physically examined the bag and its contents and found, among other items, a box of 50 rounds of 9mm ammunition that was compatible for use in the semi-automatic pistol and 15 individually-wrapped Chick-fil-A chicken sandwiches.³ MPD officers also recovered 3 spent 9mm cartridge casings from the crime scene.

The Defendant's Post-arrest Statements

At the FBI's WFO, two FBI agents booked Corkins and asked him a number of "public safety" questions. Afterwards, Corkins was advised of and waived his Miranda rights, and gave a videotaped statement to two other FBI agents. In his statement, Corkins provided a clear and detailed account of the facts and circumstances relevant to the shooting incident, including acknowledging that: (1) he intended to enter the FRC that day to kill as many people as possible

² Johnson suffered a serious gunshot wound. After being shot and subduing Corkins, Johnson experienced intense pain while waiting for emergency medical personnel to arrive on the scene. After being transported to the hospital, he underwent emergency surgery to treat multiple "comminuted fractures" of his left radius and ulna—the two main bones in Johnson's left forearm were effectively "splintered or crushed" in multiple places. To treat these injuries, a surgeon inserted two metal plates into Johnson's left forearm to allow the shattered bones to heal. The gunshot caused Johnson to suffer soft tissue injuries and numerous bullet fragments remain in Johnson's arms permanently, as it was impractical to remove each and every one of them during surgery. Johnson remained in the hospital for approximately a week. Johnson's arm remained in a cast for several months, and he was unable to work during this time. Depending on how his bones heal, Johnson may have to undergo a bone graft. He is currently undergoing physical therapy.

³ Although not included in the Statement of Offense, it should be noted that during this time, the fast-food chain Chick-fil-A was the focus of controversy regarding same-sex marriage in the wake of public comments by its president that marriage should be defined as between a man and a woman. Advocates of gay marriage called for a boycott, while those against gay marriage, like FRC, rallied in support of Chick-fil-A.

and smother Chick-fil-A sandwiches in their faces; (2) he intended to kill the “guard” who confronted him in the lobby (i.e., Johnson); and (3) he had taken substantial steps in the preceding week in furtherance of carrying out the crimes. Among other things, Corkins made the following statements in sum and substance:

- The night before the shooting, he loaded three magazines with the plan to go to the FRC the next day and “basically opening fire.”
- The night before the shooting, he received firearms training from Blue Ridge Arsenal in Chantilly, Virginia, where he had purchased the gun the week before.
- The day before the shooting, he went to a Chick-fil-A and purchased 15 chicken sandwiches with the intent of smearing them in the faces of his shooting victims “to make a statement against the people who work in that building . . . and with their stance against gay rights and Chick Fil-A. They endorse Chick-fil-A and also Chick-fil-A came out against gay marriage so I was going to use that as a statement.”
- Once inside the FRC on the day of the shooting, he pulled the gun on the “guard,” grappled with him, and in the course of doing so, he intentionally discharged the gun multiple times; the shooting was not an accident.
- He pointed the gun at the guard, and that he intended to shoot and kill the guard, and then go upstairs and shoot and kill “as many people as [he] could.”
- He was a political activist and considered the FRC a lobbying group. He committed the shooting for political reasons. He had identified the FRC as an anti-gay organization on the Southern Poverty Law Center website.
- He had been thinking about perpetrating similar violence for years but just never went through with it.
- He purchased the gun the Friday before the shooting from Blue Ridge Arsenal.
- He converted the pistol from a 20-caliber to a 9mm pistol to “be more effective.”
- If the police had not responded and caught him at the FRC, he planned to go directly to the second organization on his list and perpetrate a similar shooting there.
- He surveilled the FRC two days before the shooting.

- He initially wanted to make a bomb but did not have the patience to do it.

Consistent with Corkins's statement, the FBI's subsequent investigation confirmed that the defendant did not act impulsively in committing the shooting. Rather, in the week before the shooting, the defendant methodically planned it by: (1) purchasing the firearm, (2) researching and surveilling his intended targets, (3) receiving firearms training, and (4) purchasing and employing other implements of the crimes.

The Gun Purchase

On Thursday, August 9, 2012, Corkins went to the Blue Ridge Arsenal in Chantilly, Virginia, to purchase a firearm. He looked at different pistols and ultimately decided to purchase the Sig Sauer P229 semiautomatic pistol, which he had converted from a 22-caliber to a 9 mm firearm. While there, a French television correspondent and her camera crew doing a piece on the ease with which firearms can be purchased in the United States filmed Corkins holding and pointing the P229 pistol, as well as identifying it by make and model to the correspondent. Corkins left and returned the next day, Friday, August 10, to pick up the pistol.

The Selection and Surveillance of the FRC and Other Targets

Consistent with his statement to the FBI, a subsequent search of Corkins's family computer revealed that on the afternoon of Sunday, August 12, Corkins used the computer to visit the Southern Poverty Law Center's website, as well as the websites for the FRC and the second organization on his handwritten list. The FBI later recovered from Corkins's home several printed Mapquest and Google maps, dated August 12, 2012, for directions to the FRC and the second organization, as well as the pad of stationary paper used by Corkins to create his handwritten list of targets.

On the afternoon of Monday, August 13, Corkins rehearsed his planned trip to the FRC.

He drove his parents' car to the East Falls Church Metro stop, boarded the Metro train for downtown D.C., got off at the Gallery Place Metro stop, and walked to the FRC. Corkins went to the door of the FRC that afternoon, claiming to be there to meet someone, and giving the lobby receptionist, another FRC employee, a fictitious name. The FRC employee allowed Corkins access to the lobby area, but told him that there was no one in the building by that name after checking the employee directory. Corkins then left the building.

Obtaining Other Implements of the Planned Crimes at Chick-fil-A and K-mart

On the afternoon of Tuesday, August 14, Corkins went to a Chick-fil-A in Virginia to purchase the 15 chicken sandwiches. The FBI later recovered from Chick-fil-A a date-and time-stamped video and a store receipt of Corkins's purchase that afternoon.

Shortly after visiting the Chick-fil-A, Corkins went to a nearby K-mart in Virginia and purchased the black backpack he used in carrying out the offense. The FBI later recovered from K-mart a time-stamped video and a store receipt of Corkins's purchase that afternoon.

The Firearms Training

On Tuesday evening, August 14, Corkins received approximately two hours of firearms training with his newly-acquired pistol at Blue Ridge Arsenal. The FBI later recovered from Blue Ridge Arsenal a videotaped recording of Corkins engaged in shooting practice at the range that evening.

Other Evidence Relevant to the Defendant's Intent

Pursuant to 22 D.C. Code § 3151, et. seq., Assault with Intent to Kill and Attempted Murder are enumerated "Acts of Terrorism" if committed with the requisite intent. On August 15, 2012, the defendant assaulted Johnson and the FRC with the intent to intimidate or coerce a significant portion of the civilian population of the District of Columbia and/or the United States;

namely, any and all individuals associated with or supporting the FRC, like-minded organizations, or otherwise holding beliefs contrary to or advocating against gay marriage.

Limited Nature of Statement of Offense

As explicitly acknowledged by the defendant, the Statement of Offense proffered at his guilty plea proceeding was not intended to constitute a complete statement of all facts relevant to this case. Rather, the limited purpose of that proffer was to demonstrate that there existed a sufficient legal basis for the defendant's plea of guilty to the charges of Interstate Transportation of a Firearm and Ammunition, Assault with Intent to Kill while Armed (Leonardo Johnson), and Act of Terrorism while Armed.

Other Facts Relevant to Sentencing

In conjunction with the factual narrative set forth in the Statement of Offense, the government also asks that the Court consider the following evidence:

- | | |
|-----------|---|
| Exhibit A | FRC Video Footage (including "Clip #1," a compilation from three different FRC cameras, as well as "Clip #2 and Clip #3," extended footage of the two cameras within the lobby area of the FRC) |
| Exhibit B | Still Photographs from FRC Video Footage |
| Exhibit C | Leonardo Johnson's Injuries on August 15, 2012 |
| Exhibit D | Crime Scene Photographs (with annotations) |
| Exhibit E | Items in the Defendant's Wallet (including his "Target List") |
| Exhibit F | Diagram of Crime Scene (with annotations) |
| Exhibit G | X-ray of the Defendant's Backpack (taken by MPD Bomb Squad) |
| Exhibit H | The Defendant's Internet Searches for Blue Ridge Arsenal on August 7, 2012 |
| Exhibit I | French Film Crew's Video Footage of Blue Ridge Arsenal on August 9, |

- 2012 (showing the defendant shopping for and purchasing the semi-automatic pistol he used in the shooting)
- Exhibit J Still Photographs from French Film Crew's Video Footage of Blue Ridge Arsenal on August 9, 2012
- Exhibit K Gun Purchase Documents (showing that the Defendant purchased the firearm he used in the shooting from Blue Ridge Arsenal on August 9, 2012, and received it on August 10, 2012)
- Exhibit L The Defendant's Internet Searches on FRC and Another Entity on Target List on August 12, 2012
- Exhibit M Additional Evidence that the Defendant Surveilled FRC and Rehearsed His Plan on August 13, 2012
- Exhibit N Chick-fil-A Photographs from August 14, 2012 (showing the Defendant purchasing Chick-fil-A sandwiches brought to FRC)
- Exhibit O K-Mart Video Footage from August 14, 2012 (showing the Defendant purchasing backpack he used in the shooting)
- Exhibit P Still Photographs from K-Mart Video Footage and Receipt from August 14, 2012
- Exhibit Q Video Footage of Firearms Training at Blue Ridge Arsenal on August 14, 2012 (showing the defendant practicing with the firearm he used in the shooting)
- Exhibit R Still Photographs from Video Footage of and Documents from Firearms Training at Blue Ridge Arsenal on August 14, 2012
- Exhibit S East Falls Church Metro Stop Photographs and Record from morning of August 15, 2012 (showing the Defendant taking train to travel into D.C.)
- Exhibit T Photographs of the Defendant after his arrest on August 15, 2012
- Exhibit U Videotaped Statement by the Defendant to the FBI after his Arrest on August 15, 2012 (hereinafter, the "Def.'s Stat.")⁴

⁴ The government has muted the sound in limited portions of the defendant's videotaped statement that make reference to personal identifying information of the defendant, his family members, and certain third parties. Similar redactions appear in the transcript (see Exhibit V).

- Exhibit V Partial Transcript of Videotaped Statement by the Defendant to the FBI after his Arrest on August 15, 2012 (hereinafter, the “Tr. Def.’s Stat.”)
- Exhibit W Other Items Discovered in Search of the Defendant’s Home (including stationery listing two Internet sites providing information on the making of improvised bombs)

Argument

I. Introduction

Consistent with the enormity of his crimes and intended consequences, the defendant pled guilty to committing an Act of (Domestic) Terrorism while Armed, Assault with Intent to Kill while Armed as to Mr. Johnson, and Interstate Transportation of a Firearm and Ammunition. The domestic terrorism and assault charges each carry maximum terms of imprisonment of 30 years, while the related firearms charge carries a maximum term of imprisonment of 10 years. Based on the following, the Government asks the Court to sentence the defendant to 20 years imprisonment on the Act of Terrorism while Armed charge, 15 years imprisonment on the Assault with Intent to Kill while Armed charge, and 10 years imprisonment on the Interstate Transportation of a Firearm and Ammunition charge, all sentences to run consecutive to one another. An effective sentence of 45 years imprisonment is warranted because the defendant committed several distinct crimes that targeted multiple victims. Moreover, such a sentence would appropriately punish the defendant for his actions, keep the community safe from him for the foreseeable future, and deter other would-be domestic terrorists and mass murderers from doing the same.

II. Legal Standards

A. The D.C. Code Offenses – Act of Terrorism while Armed (Count IV) and Assault with the Intent to Kill while Armed (Count II)

The D.C. Code offenses of Act of Terrorism while Armed and Assault With the Intent to

Kill while Armed each carry a penalty of not less than 5 years or more than 30 years imprisonment. D.C. Code §§ 22-401, 22-3152, 3153, and 4502 (2001 ed.). Moreover, the D. C. Sentencing Guidelines are entirely voluntary. Cook v. United States, 932 A.2d 506, 507 (D. C. 2007); District of Columbia Voluntary Sentencing Guidelines (2012) (“D.C.V.S.G.”) §1.2.1 (“These guidelines are voluntary. This means that judges are not required to follow them. It also means that a lawful sentence cannot be appealed whether or not the judge complies with the guidelines or the procedures recommended in these instructions.”)

Although it need not, even if this Court were to consult the D.C.V.S.G. in fashioning the sentences it will impose for the D.C. Code Offenses, the Court should consider other factors particularly relating to the Act of Terrorism while Armed charge. Fortunately, the planned attempt to commit a mass murder of innocents simply to send a political message is not a common occurrence in the District of Columbia. As a result, the D.C. Sentencing Commission has not yet specifically considered or assigned an offense level to the Act of Terrorism while Armed charge. The Group Four Offense assigned in the Presentence Report, therefore, is not a product of the Commission’s careful deliberation and application of the sentencing factors to the specific offense. Rather, it is derived solely from application of a general residual clause in the D.C.V.S.G. See D.C.V.S.G., Appendix C and §2.2.8(b) (indicating that because the Commission has not yet ranked the Act of Terrorism while Armed offense, and it carries a statutory maximum penalty of 30 years, it should be treated as a Group Four Offense).

The resulting ranking of the Act of Terrorism while Armed offense as a Group Four Offense is nonsensical in light of the facts of this case and should be rejected. Namely, the offense of Act of Terrorism while Armed here involved the commission of the underlying offenses

of Attempted Murder and Assault With Intent to Kill while Armed, plus doing so “intend[ing] to (A) Intimidate or coerce a significant portion of the civilian population of: (i) The District of Columbia; or (ii) The United States”). Although to our knowledge Attempted First Degree Murder has not been charged in the District of Columbia since the inception of the D.C.V.S.G, the D.C.V.S.G. specifically provides that an Attempt Crime of Violence while Armed is the same group offense level as the unarmed completed offense—in this case, an unarmed First Degree Murder, a Group One Offense. See D.C.V.S.G., Appendix C at C-4 and §2.1. As such, the Government submits that the Act of Terrorism while Armed offense should also be designated as a Group One Offense.⁵

As calculated by the Probation Office, the defendant’s D.C.V.S.G. range for the crime of Assault With Intent to Kill while Armed is 90-180 months and range for the crime of Act of Terrorism while Armed is 48-120 months. However, if the Court treats the Act of Terrorism while Armed offense as a Group One Offense, then the Act of Terrorism while Armed would have a D.C.V.S.G. sentence recommendation of 360 months.⁶

Separate and apart from the calculated D.C.V.S.G. range for both offenses, the D.C.V.S.G. provides some additional guidance for imposing sentences in circumstances such as this one. First, pursuant to D.C.V.S.G. §5.2.2(4), the Court could depart upward from any recommended sentencing range for Counts Two and Four if it determines that the “crime committed or attempted was substantially premeditated, as evidenced by a high degree of planning or sophistication or planning over an extended period of time.” D.C.V.S.G. §5.2.2(4). Second, pursuant to

⁵ At a minimum, the Act of Terrorism while Armed offense should be designated as the same group offense level as the other underlying felony of Assault with Intent to Kill while Armed. If treated in this manner, both would carry the D.C.V.S.G. range of 90-180 months.

⁶ The range for a Group One Offense is 360-720 months, but the statutory maximum for the offense is 360 months.

D.C.V.S.G. §6.1, sentences for counts involving multiple victims in one event “must be imposed consecutively.” D.C.V.S.G. §6.1.

Finally, pursuant to the Plea Agreement, the defendant acknowledged that his “entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines range.” See Plea Agreement at 5.

B. The U.S. Code Offense – Interstate Transportation of a Firearm and Ammunition

The U.S. Code offense of Interstate Transportation of a Firearm and Ammunition (hereinafter, the “Firearm Offense”) carries a penalty of not more than 10 years. 18 U.S.C. § 924(b). In United States v. Booker, 543 U.S. 220 (2005), the Supreme Court ruled that the United States Sentencing Guidelines are no longer mandatory. However, “[a]s a matter of administration and to secure nationwide consistency, the Sentencing Guidelines should be the starting point and the initial benchmark” for determining the defendant’s sentence. Gall v. United States, 552 U.S. 38, 49 (2007). While, to be sure, “[i]n accord with 18 U.S.C. § 3553(a), the Guidelines, formerly mandatory, now serve as one factor among several courts must consider in determining an appropriate sentence,” Kimbrough v. United States, 552 U.S. 85, 91 (2007), it remains the case that “the Commission fills an important institutional role: It has the capacity courts lack to ‘base its determinations on empirical data and national experience, guided by a professional staff with appropriate expertise,’” id. at 574 (quoting United States v. Pruitt, 502 F.3d 1154, 1171 (10th Cir. 2007) (McConnell, J., concurring)). The Supreme Court accordingly recognized that, “[i]n the ordinary case, the Commission’s recommendation of a sentencing range will ‘reflect a rough approximation of sentences that might achieve § 3553(a)’s objectives.” Kimbrough, 552 U.S. at

89 (quoting Rita v. United States, 551 U.S. 338, 350 (2007)). As one member of this Court has held, “Booker requires judges to engage in a two-step analysis to determine a reasonable sentence.” United States v. Doe, 413 F. Supp.2d 87, 90 (D. D.C. 2006) (Bates, J.)

[A] district court shall first calculate (after making the appropriate findings of fact) the range prescribed by the guidelines. Then, the court shall consider that range as well as other relevant factors set forth in the guidelines and those factors set forth in [18 U.S.C.] § 3553(a) before imposing sentence.

United States v. Hughes, 401 F.3d 540, 546 (4th Cir. 2005).

When weighing the § 3553(a) factors as part of its calculus of an appropriate sentence, the Court should consider not only the nature and circumstances of the offense and the history and characteristics of the defendant, but also the applicable sentencing objectives—that is, that the sentence: (1) reflect the seriousness of the offense; (2) promote respect for the law; (3) provide just punishment; (4) afford adequate deterrence; (5) protect the public; and (6) effectively provide the defendant with needed educational or vocational training and medical care. See 18 U.S.C. § 3553(a)(1) and (2). In addition, the sentence should reflect “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6).

The Probation Office has determined—and the government agrees—that the defendant’s total adjusted offense level for the Firearm Offense is 34, his criminal history category is I, and his sentencing guideline range is 151-188 months. However, pursuant to 18 U.S.C. § 924(b) and U.S.S.G. § 5G1.1(a), the statutorily-authorized maximum sentence for the offense (i.e., 120 months) is greater than the minimum recommended guideline sentence of 151 months under the U.S.S.G. Therefore, the statutorily-authorized maximum sentence for the offense of 120 months shall be the guidelines sentence. Notably, the parties also agreed pursuant to the Plea Agreement

that “solely for the purposes of calculating the applicable range under the U.S.S.G., neither a downward nor upward departure from the Stipulated Guidelines Sentence for Count One set forth above [that is, 120 months] is warranted. Accordingly, neither party will seek any departure to the Stipulated Guidelines Sentence for Count One, nor will either party suggest that the Court consider such a departure.” See Plea Agreement at 4.

III. An Analysis of the Factors Enunciated in 18 U.S.C. § 3553(a) Demonstrates that a Substantial Period of Incarceration Is Warranted

A. The Nature and Circumstances of the Offenses

Without question, on August 15, 2012, the defendant intended to commit a mass killing of innocent civilians. The defendant’s detailed and thoughtful planning of the crimes and near success in carrying them out are sufficient in themselves to establish this disturbing truth. However, the defendant also freely acknowledged as much throughout his statement to the FBI afterwards. Indeed, but for the courageous acts of Mr. Johnson, who was seriously injured in the shooting, the defendant would have almost certainly succeeded in committing a massacre of epic proportions. The overwhelming evidence in this case establishes that much and more.

1. The Defendant Intended to Commit Mass Murder

The defendant clearly intended to kill as many people at the FRC as he could on August 15, 2012. By his own admission, the defendant had been thinking about perpetrating similar violence for years but had just never gone through with it. Tr. Def.’s Stat. at 9-10. On that day, the defendant went to the FRC to “basically open[] fire” and kill “as many people as I could.” Tr. Def.’s Stat. at 1, 4, 6, 8. To do so, he armed himself heavily. Several days before the shooting, he purchased a P229 Sig Sauer semiautomatic pistol and had it converted to a 9mm pistol to “be more effective.” Tr. Def.’s Stat. at 23. Upon entering the FRC lobby, the defendant had no less

than 45 rounds of ammunition readily accessible to him—15 rounds loaded in the pistol itself, and 30 more rounds in two additional 15-round magazines in his front pocket—as well as another 50 rounds of ammunition in his backpack. Once at the front desk, the defendant retrieved the loaded pistol from his backpack, and pointed it directly at the upper chest and head of Mr. Johnson with the intent to kill him in order to carry out his evil rampage. See Exhibits A and B. Fortunately, Mr. Johnson had moved closer to the defendant in order to observe his actions. With the muzzle of the defendant’s gun only inches from Mr. Johnson’s face, he reached for the defendant in order to disarm him. During the approximately 30-second struggle with Mr. Johnson, the defendant acted on his well-developed convictions by firing his pistol three times (Tr. Def.’s Stat. at 8, 23), striking Mr. Johnson once and sending two other errant, yet equally dangerous, shots into the occupied lobby area.⁷ See generally Exhibit C. Fortunately, Mr. Johnson, faced with a life-or-death situation, fought back and succeeded in overpowering the defendant. Had Mr. Johnson failed, in all likelihood, numerous people would have lost their lives. The defendant acknowledged this afterwards by telling the FBI that he had planned to kill the people at the FRC and then rub Chick-fil-A sandwiches in their faces as a political “statement” of sorts. Tr. Def.’s Stat. at 3-5, 17. He also told the FBI that if the police had not responded and caught him at the FRC, he intended to go to the second organization on his target list and perpetrate a similar shooting there. Tr. Def.’s Stat. at 11-12.

2. The Defendant Meticulously Planned to Commit Mass Murder

The extent of the defendant’s prior planning further underscores his commitment to kill

⁷ As shown in the videotaped footage of the shooting, another FRC employee was working in the lobby area of the FRC when the defendant entered the premises that day. After hearing the first shot, that employee quickly went to the ground for cover and then proceeded to crawl on his knees and stomach in an effort to escape the danger.

and terrorize those who disagreed with his beliefs. On August 7, 2012, a full **eight** days before the shooting, the defendant identified the Blue Ridge Arsenal in Virginia on the Internet as the place where he would procure the weapon and ammunition to perpetrate his crimes.⁸ See Exhibit H. Two days later, on Thursday, August 9, he went shopping there and picked out a semi-automatic pistol and a 9mm conversion kit. By coincidence, a French documentary film crew was also at the Blue Ridge Arsenal at the time and captured the defendant holding and pointing the P229 pistol he would ultimately purchase. See Exhibits I and J. Even a cursory viewing of the crew's raw footage shows the unassuming and business-like manner in which the defendant made his selection. He picked up the gun the very next day, along with his two hours of free firearms training on the practice range. See Exhibit K.

According to various accounts, the defendant spent the majority of the weekend interacting closely with members of his immediate and extended family at gatherings in southwestern Virginia and North Carolina. When he arrived home on Sunday, August 12, however, he returned to his planning. As indicated above and further established in the attached exhibits, over the next several days, the defendant: (1) selected multiple organizational targets based on their publically-held positions on gay marriage and gay rights (Exhibit L); (2) mapped their locations to facilitate his travel to those locations (Exhibit L); (3) created a consolidated list of these targets, often noting corresponding addresses (Exhibit E); (4) rehearsed, in its entirety, his planned trip to the FRC by driving to the East Falls Church Metro stop, taking the Metro train to the Gallery Place Metro stop, walking to the FRC, and obtaining entry to the controlled lobby area by falsely giving

⁸ In explaining his actions to the FBI, the defendant stated that he had been thinking about perpetrating similar violence "probably for years," and had even wanted to make a bomb, but "I didn't have the patience for it." Def.'s Stat. at [time]; [time].

a fictitious name and claiming to be there to meet someone (“[j]ust basically trying to go over exactly what I was gonna do today” (Tr. Def.’s Stat. at 18; Exhibit M); (5) purchased the 15 Chick-fil-A chicken sandwiches as crude props to accentuate his “political statement” (Tr. Def.’s Stat. at 3-5, 17; Exhibit N); (6) purchased a new backpack to carry and conceal the loaded pistol, the extra ammunition, and the sandwiches while carrying out the offenses (Exhibits O and P); and (7) received approximately two hours of firearms training at Blue Ridge Arsenal and loaded his magazines the night before (Exhibits Q and R). At almost each step along the way, video cameras captured the quiet and deliberate manner in which the defendant undertook the various tasks. By observing the defendant’s demeanor and interactions with others throughout this planning process, one can readily conclude that the defendant was motivated by a firm resolve and purpose. Indeed, under any application of the standard, the defendant’s crimes were “substantially premeditated, as evidenced by a high degree of planning or sophistication or planning over an extended period of time.” See D.C.V.S.G. §5.2.2(4).

**3. Without Remorse or Repentance, the Defendant Used
Violence to Advance his Political Cause**

Both at the crime scene and later in his statement to the FBI, the defendant made it abundantly clear that he knowingly and unrepentantly embraced violence as a means of garnering attention for his political agenda. After shooting Mr. Johnson and being subdued, he told Mr. Johnson, “It’s not about you,” it’s about the FRC and its policies. And yet, the defendant intentionally shot and attempted to kill Mr. Johnson based solely on his apparent association with FRC.

FBI Agent: And this is so if he [Johnson] didn’t grab it from ya, your, was your intention, it was to shoot him?

Corkins: I would have shot him.

FBI Agent: And, and it was to kill him?

Corkins: Yes.

* * *

FBI Agent: When you guys are struggling with the gun, how did the gun discharge?

Corkins: I pulled the trigger.

FBI Agent: You pulled the trigger? Okay. So it wasn't, it wasn't like you guys were struggling around the gun and the trigger just accidentally went off. You pulled the trigger?

Corkins: Yeah.

Def.'s Stat. at [time].⁹

While still on the crime scene, several MPD officers overheard the defendant repeat his motivation for the crimes: "I don't like the organization and what it stands for" and "I don't like these people, and I don't like what they stand for." See Statement of Offense at 4. Later, in his statement to the FBI, the defendant reiterated this disturbing justification:

FBI Agent: You said you wanted to make a statement.

Corkins: Yeah, it's basically a statement against the people who work in that building.

FBI Agent: Okay.

Corkins: I consider myself a political activist.

FBI Agent: Okay.

Corkins: And with their stance against gay rights and Chicken-fil-A, they endorse

⁹ The defendant later stated "I got a few shots off." Tr. Def.'s Stat. at 23. When asked how many, he replied, "I'm not sure, maybe around 3." Id.

Chicken-fil-A and also Chicken-fil-A [undecipherable] came out against gay marriage . . . so I was going to use that as kind of a statement.

Tr. Def.'s Stat. at 3.

FBI Agent: And then if you would have killed him, what would you, you said, you would have . . . you were trying to . . .

Corkins: I would have gone upstairs. I wanted to go on the elevator and go upstairs to the office part of the building?

FBI Agent: And do what else?

Corkins: Uh, kill as many people as I could.

Tr. Def.'s Stat. at 8.

At no time in his statement to the FBI did the defendant exhibit any remorse for the violence and terror he sought to effect at the FRC. Rather, when asked by the FBI what he thought should happen to him for committing the shooting, the defendant flatly replied, "Nothing."

Def.'s Stat. at 1:02:25.

4. The Defendant Seriously Injured Mr. Johnson

Mr. Johnson did not ask to be a hero on August 15, 2012; rather, the defendant forced him to become one. Fortunately for the other occupants of the FRC building, including another employee working in the lobby area at the time, Mr. Johnson met the threat head on and was ultimately able to overpower a very determined assailant. But for Mr. Johnson's heroic actions, the defendant would likely have killed or severely injured numerous people in the building that day. In acting, however, Mr. Johnson suffered a serious gunshot wound, the prolonged loss of the normal use of his arm, the ongoing need for medical attention, and countless other consequences.

In his victim impact statement ("VIS") to the Court, Mr. Johnson aptly summarized the adverse physical, psychological, and emotional impacts the defendant's violent attack has had on

his life. He has undergone successive surgeries to treat the devastating gunshot injuries to his left arm, followed by additional emergent care for life-threatening blood clots that formed as a result and months of “grueling physical therapy sessions.” Psychologically, Mr. Johnson regularly experiences anger and frustration at how the shooting has either materially inhibited or altogether ended his ability to perform important features of his job, participate in sports and workout (e.g., weightlifting), and consume some of his favorite foods and beverages—all aspects of life that he once enjoyed immensely. These feelings are fueled by what, as Mr. Johnson appropriately describes was “such a senseless crime. Many innocent people were going to be ruthlessly murdered and taken away from their families and friends forever with no remorse.”

5. As the Intended Targets of the Defendant’s Armed Attack, the FRC and its Employees Were Also Victims of Terrorism

The FRC is a conservative lobbying group that, according to its own mission statement, seeks to “shape[] the public debate and formulate[] public policy that values human life and upholds the institutions of marriage and the family.” It is a national non-profit organization with a staff of approximately 80 individuals, the majority of whom work at the FRC’s headquarters building in Washington, D.C.

When the defendant entered and attacked the FRC headquarters building on August 15, 2012, approximately 50 FRC employees were working inside at the time. Leonardo Johnson and one other employee were in the lobby area, while the other FRC employees were working in dedicated office space on the upper floors of the building—a short elevator ride away. Ultimately, because Mr. Johnson interceded, many of the FRC employees did not learn about the attack until after Mr. Johnson had effectively thwarted it in the lobby area. Nonetheless, in the minutes, hours, and days to follow they would quickly learn either from their personal

observations or those of others how close and real the danger had been. In their victim impact statements, the FRC and its employees describe how this new-found terror—generated by the defendant’s attack on the FRC—has invaded their personal security and otherwise peaceful daily existences:

Every day, our staff has to deal with the fact that each of us was a potential victim. For those in our DC headquarters, we enter the building, walk past our armed security guards who were added after the shooting and pass the desk where Leo was shot. We are grateful for Leo’s extraordinary actions, but are pained by his injury and pray for his full recovery. Yet every day many on our team are reminded of the attack and relive the trauma. Our family members are reminded every day that they may have lost a family member that day had Leo not intervened. And their worries continue, wondering about further violence.

VIS of FRC at 1.

On August 15, 2012, my life changed in a way that I would never wish on anyone. It was a bright sunny day, and I was on my way to a daily Mass at a nearby church. I was not anticipating walking out of an elevator to see the blood of a good friend of mine on the back of Mr. Corkins, while he was lying on the floor. In an instant, my sense of security was gone forever. . . . Mr. Corkins may not realize what he did to me that day. I have experienced nightmares in the days and months that followed, as well as the fear I have of certain popping sounds. The most lasting impact is the lack of security I feel on a daily basis, I am angered that this assault made me feel like I can never be safe at the office again.

VIS of FRC Staff Member #2 at 1.

My office—on an upper floor of the FRC headquarters—was far enough away from the action that, to be honest, I never even heard the shots that morning. I learned of the shooting only when colleagues appeared at my door and I saw from my window the arriving first responders. I quickly called my wife at home and assured her of my safety. She seemed calm, and, all things considered, appeared to absorb the shock of the situation well—or so we thought. The cracks would be masked that day, but would soon reveal themselves in a stress-induced illness that would drastically alter the daily life of my family.

VIS of FRC Staff Member #1 at 1.

Like every day I start my day with the expectation that my peace and personal security would be maintained and not be intruded upon. Yet, on that day those

things and more were abruptly and intrusively shattered. At that point, my every day privilege of returning home to family and friends safely were interrupted and my assurance of the same turned into doubt.

VIS of FRC Staff Member #3 at 1.

In short, while only Mr. Johnson was physically injured, numerous FRC employees sustained deeper and, arguably, more harmful psychological injuries. Namely, the persistent fear caused by knowing that someone had sought to unleash unimaginable carnage upon them solely because of their deeply-held moral and political beliefs.¹⁰

B. The History and Characteristics of the Offender

The defendant is an intelligent and educated man, who was raised by a loving family. His incarceration will no doubt be a hardship on them, and the government sympathizes with their situation. There is, however, nothing that indicates that the burden on the defendant's family will be any different from that of the burden borne by the family of other violent criminals.

According to the Probation Office, the defendant is receiving ongoing mental health treatment. In large part, the defendant's attending physicians appear to have treated the defendant through a combination of prescription medications and periodic counseling sessions. Although the defendant appears to suffer from bouts of severe depression and unidentified "psychosis," there is absolutely nothing to indicate that the defendant did not fully comprehend what he was planning and sought to accomplish in the shooting perpetrated at the FRC. Instead, the detailed nature of his planning and execution reveal the deliberate and clear-headed manner in which the defendant acted in this case.

¹⁰ The FRC, as an organization, has detailed the compensatory damages it seeks in the worksheet attached to its organizational victim impact statement. The government asks the Court to order the defendant to pay restitution for all reasonably foreseeable costs to the FRC resulting from his criminal conduct.

In short, the Government submits that the defendant's personal history and his family situation do not present uniquely mitigating circumstances such that they should materially impact his sentence.

C. The Need to Promote Respect for the Law, to Provide Just Punishment, to Afford Adequate Deterrence, and to Protect the Public

Imposing a substantial term of imprisonment in this case is absolutely necessary to promote respect for the law, provide just punishment, afford adequate deterrence, and serve to protect the public from the defendant. Standing alone, the violence the defendant wrought was reprehensible and warrants a significant term of imprisonment. And yet, his conduct was exponentially more egregious in that he employed violence instead of accepted forms of expression—that is, free speech, peaceful protest, and the democratic process—to advance a political cause. This was exactly what the D.C. Council was seeking to punish and deter in criminalizing acts of domestic terrorism such as this.

The District of Columbia's Omnibus Anti-Terrorism Act of 2002 defines an Act of Terrorism as "an act or acts that constitute a specified offense [e.g., Assault with Intent to Kill and Attempted Murder] . . . that are intended to (A) intimidate or coerce a significant portion of the civilian population of: (i) The District of Columbia; or (ii) The United States" 22 D.C. Code § 3152. There is no case law interpreting or defining "intimidate or coerce a significant portion of the population." However, the relevant legislative history provides some additional insight into what the D.C. Council meant:

By "intimidate or coerce" a population, the Committee intends to capture violent acts that are committed with the specific intent of purposely inspiring fear and intimidation among a population, in much the same way Americans have been affected by the September 11, 2001 attacks. As noted in the beginning of this report, the effects of terrorist crimes reach beyond the immediate victims and their

families to affect broader populations of people. The purpose of Title I of this legislation is to punish the perpetrators of terrorist crimes who have an agenda that goes beyond the specified offense itself and that perpetuates a broader attempt to intimidate a population or to influence the policy or conduct of government.

By using the term “significant portion of the civilian population,” the Committee intends to capture violent acts that affect not only the entire populations of the District or the United States, but also a substantial number of people within those populations, or entire subsets, discreet groups, or communities of people. This would include, for example, violent acts that are meant to intimidate or coerce the District’s Jewish or African American communities, either the entirety of those communities or a portion of them. A further example of a significant portion of the population could be a portion of the community with an identifiable political association, for example, republicans or District-based supporters of a Palestinian state.

Council of the District of Columbia, Committee on the Judiciary Report, Subject: Bill 14-373, the “Omnibus Anti-Terrorism Act of 2002,” p. 17 (April 4, 2002).

Here, the defendant’s armed assault on the FRC and its employees constituted nothing less than a direct attack on our democratic system, an essential component of which is the freedom of persons and entities to engage in political speech and expression. In that respect, the defendant’s act of terrorism clearly achieved one of its intended purposes—to inject fear into the hearts of those associated with the FRC or its political causes and otherwise intimidate or coerce them from openly participating in the democratic process. By imposing a sufficiently severe sentence in this case, the Court will be sending the appropriate message: namely, the use of violence as a means to obtain political ends in the District of Columbia and the United States will not be tolerated.

D. The Need to Provide the Defendant with Educational or Vocational Training

The defendant does not appear to need such training. In any event, the other factors bearing on the seriousness of the offenses and the need for strong deterrence outweigh this element in fashioning a just sentence.

E. The Need to Avoid Unwarranted Sentence Disparities Among Defendants with Similar Records Who Have Been Found Guilty of Similar Conduct

The District of Columbia's Omnibus Anti-Terrorism Act (the "Act") was enacted in 2002. Since that time, this is the first case in which a defendant has been prosecuted and convicted for a violation of sections 3152 and 3153 of the Act ("Definitions" and "Acts of Terrorism; Penalties," respectfully). Accordingly, there are no prior sentences available for direct comparison. The below cases, however, are somewhat instructive.

In United States v. Gorbey, 54 A.3d 668 (D.C. 2012), the defendant was successfully prosecuted and convicted for, among other things, a violation of a different section of the Act, section 3154, which prohibits the manufacture or possession of a weapon of mass destruction.¹¹ Because the Gorbey case was prosecuted under the same Act and shares some factual similarities to this case, it is an appropriate case for comparison.

The essential facts of Gorbey, as articulated by the District of Columbia Court of Appeals, are as follows:

On January 18, 2008, at about 1:00 p.m., a woman approached a United States Capitol Police ("USCP") Officer near the intersection of Delaware and D Streets, N.E., and told the officer that a man with a gun had asked her for directions to the United States Supreme Court. From the USCP command center, an officer watched the video feed from surveillance cameras in the area around the U.S. Capitol and saw images of a man walking with a shotgun. As shown on a recording from those cameras, USCP officers stopped and arrested the man—appellant Michael Gorbey—at the intersection of First and D Streets, N.E. At the time he was stopped, appellant had a shotgun in his hand and a sword on his back. Twenty-seven shotgun shells were stored in the bulletproof vest he was wearing, and he also was in possession of hunting knives and a .45-caliber round, which officers found in the backpack he was carrying. Appellant claimed that he was en route to a meeting with Chief Justice John Roberts of the United States

¹¹ To our knowledge, other than this case and Gorbey, there are no other cases involving the successful prosecution of an offense delineated under the Act.

Supreme Court.

Minutes after appellant was stopped, USCP officers found a truck illegally [citation omitted] parked nearby and could see in it “heavy gauge wire coming out of [the] radio ... to the glove compartment ... [a]nd then ... coming out of the back of the vehicle,” as well as “the stock of a rifle and a homemade bow and arrow” . . . [USCP officers ultimately] conducted a search of the inside of the truck (which was “in some disarray” from the disruptive tool). They found ammunition on the floorboard of the passenger compartment but, during this initial search, they did not find an explosive device. USCP officers found the keys to the truck in appellant’s pocket and the certificate of title to the truck in the backpack appellant had been carrying at the time of his arrest.

The USCP officers moved appellant’s truck to a secure storage area at 800 North Capitol Street, N.W., and, on February 8, 2008, conducted another search of the passenger compartment, pursuant to a search warrant. After moving the passenger seat forward, officers found an object that one of the officers described as a “home-made bomb.” The object (hereafter referred to as the “device”) consisted of “a metal can spray painted red” and “a clear bottle filled with what looked like lead pellets,” and “everything was duct taped.” After the bomb squad used a tool to “disrupt” the device, officers completed a search of the passenger compartment and cab of the truck. They recovered a “large amount” of black powder; firecrackers; lighters; primer or percussion caps; shotgun shells and shotgun cartridges; 550 rounds of long rifle ammunition; 200 rounds of other ammunition of various calibers; a rifle scope; and the (disrupted) components of the device (i.e., the metal can, duct tape, black powder, metal pellets, and glass fragments).

Appellant was charged and subsequently convicted, on May 16, 2008, of fourteen separate offenses in connection with the events described above: unlawful possession of a firearm by a convicted felon; two counts of carrying a dangerous weapon outside the home or business (shotgun and sword) (“CDW”); possession of an unregistered firearm (“UF”); eight counts of unlawful possession of ammunition (“UA”); manufacture, transfer, use, possession, or transportation of explosives for an unlawful purpose; [footnote omitted] and **attempted manufacture or possession of a weapon of mass destruction (“WMD”)**.

Gorbey, 54 A.3d at 675-76. For his crimes, the trial court sentenced Gorbey to an aggregate term of 264 months of imprisonment (i.e., 22 years). The District of Columbia Court of Appeals affirmed the defendant’s convictions and left undisturbed the trial court’s aggregate sentence.

While Gorbey is somewhat instructive in that it represents the only other case prosecuted under the District of Columbia's Omnibus Anti-Terrorism Act, a significantly longer sentence is warranted in this case for many reasons. First, whereas Gorbey involved the commission of D.C. Code offenses only, the defendant here is being sentenced for having also committed a serious federal firearms offense that, by itself, carries the recommended Sentencing Guideline of 10 years. More importantly, by comparison, the defendant's conduct and the specific charges in this case are substantially more egregious than that of Gorbey in every respect.

Unlike Gorbey, whose half-baked, armed appearance near the U.S. Supreme Court was destined to fail from the outset, the defendant methodically planned his crimes with a clear and obtainable objective in mind. Over the course of more than a week, the defendant undertook and accomplished a variety of tasks necessary to his mission. That planning allowed him to gain entry into the FRC, virtually unsuspected, and initiate his violent actions. His overall purpose was clear and unwavering—to kill as many people at the FRC as he could and make a political statement in the process. And, but for the quick actions of Mr. Johnson, he likely would have succeeded.

In recent cases where other defendants have committed or attempted to commit similar acts of terrorism involving a careful and deliberate plan to commit mass murder, many courts have given significantly lengthier sentences than in Gorbey. These sentences reflect the need to punish those who seek to kill and terrorize significant portions of the civilian population, keep the populace safe, and deter others. By way of example:

- On August 10, 2012, Naser Jason Abdo was sentenced in the United States District Court for the Western District of Texas to two consecutive life sentences plus sixty years for his unsuccessful plan to create and detonate a bomb inside a restaurant

frequented by soldiers from Fort Hood military base in Killeen, Texas, and to then shoot any survivors. See Judgment, United States v. Abdo, Cr. No. 11-182 (W.D. Tex. August 10, 2012). Abdo was arrested while in possession of a .40 caliber pistol and bomb-making instructions and components.

- On December 20, 2011, Kevin Harpham was sentenced in the United States District Court for the Eastern District of Washington to 32 years, the maximum allowed pursuant to the plea agreement, for planting a bomb along the parade route of a Martin Luther King Day parade in Spokane, Washington. See Sentencing Memorandum, United States v. Harpham, Cr. No. 11-42 (E.D. Wash. December 27, 2011). The device was discovered and disarmed without incident or injury. Id.
- Several recent cases involving FBI sting operations have also resulted in lengthy sentences. On September 14, 2012, Amine El Khalifi was sentenced to 30 years in prison in the United States District Court for the Eastern District of Virginia for attempting to carry out a suicide bomb attack on the U.S. Capitol. See Judgment, United States v. Khalifi, Cr. No. 12-37 (E.D. Va. September 14, 2012). On April 6, 2012, Antonio Martinez was sentenced in the United States District Court for the District of Maryland to 25 years in prison for planning to detonate a bomb at an armed forces recruiting station. See Judgment, United States v. Martinez, Cr. No. 10-798 (D. Md. April 6, 2012). On May 9, 2011, Michael C. Finton was sentenced in the United States District Court for the Southern District of Illinois to 28 years in prison for driving what he believed to be a bomb to the federal courthouse in

Springfield, Illinois. See Judgment, United States v. Finton, Cr. No. 10-30215 (S.D. Ill. May 9, 2011). On October 28, 2010, Hosam Smadi was sentenced to 30 years in prison in the United States District Court for the Northern District of Texas for his attempt to blow up a downtown Dallas skyscraper. See Judgment, United States v. Smadi, Cr. No. 09-294 (N.D. Tex. October 28, 2010). In each of these cases, the defendants were unwittingly working with undercover FBI employees, and the public was never in any actual imminent danger.¹²

In addition, in this court, on June 29, 1995, United States District Judge Charles R. Richey sentenced Francisco Duran to 40 years for his failed attempt to kill the President, in which Duran drove across country, positioned himself in front of the White House with a semiautomatic assault rifle under his trench coat, and then began firing in the direction of a tour group on the North lawn until he was tackled by a bystander and later arrested. See Judgment, United States v. Duran, Cr. No. 94-447(D.D.C. June 30, 1995); see also United States v. Duran, 96 F.3d 1495, 1497 (D.C. Cir. 1996) (affirming conviction and summarizing facts of the case).

Significantly, in each of the above-referenced cases, nobody was harmed; nor, except for Duran, were they ever in any immediate danger of being harmed. For example, Gorbey's crimes involved the mere possession or attempted possession of dangerous weapons and implements—he was never accused or convicted of actually employing them in a violent manner (e.g., assault, attempted assault, etc.). In this case, however, the defendant intentionally shot and seriously

¹² The government found only one recent FBI sting case that did not involve a longer sentence than that in Gorbey. On November 1, 2012, Rezwan Ferdaus was sentenced in the United States District Court for the District of Massachusetts to 17 years incarceration pursuant to a Rule 11(c)(1)(C) agreement for plotting an attack against the Capital and Pentagon and attempting to provide detonation devices to terrorists. The defendant was working with FBI undercover employees, whom he believed were members of al-Qaeda. See Judgment, United States v. Ferdaus, Cr. No.11-10331 (D. Mass. November 1, 2012)

injured Mr. Johnson, who is still suffering from the physical and emotional effects of that tragic day. Furthermore, by firing his weapon multiple times in an occupied lobby and shooting and injuring Mr. Johnson, the defendant achieved his broader purpose—to terrorize the FRC and its employees, including those who every day walk past the crime scene where they observed their co-worker and friend severely injured in the course of protecting their safety, as well as other like-minded individuals.

In sum, Mr. Johnson's actual pain and suffering, coupled with the emotional trauma endured by the FRC employees, must also be considered in fashioning any overall sentence that the defendant receives. Accordingly, the Government submits that an aggregate sentence of 45 years for the defendant's three separate offenses would be consistent with and not disparate from those of similarly situated defendants.

Conclusion

For the foregoing reasons, the Court should sentence the defendant as recommended in this memorandum.

Respectfully submitted,

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