

DOMESTIC TERRORISM PREVENTION ACT OF 2020

SEPTEMBER 21, 2020.—Ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 5602]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5602) to authorize dedicated domestic terrorism offices within the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation to analyze and monitor domestic terrorist activity and require the Federal Government to take steps to prevent domestic terrorism, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	7
Background and Need for the Legislation	8
Hearings	14
Committee Consideration	14
Committee Votes	15
Committee Oversight Findings	21
New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate	21
Duplication of Federal Programs	21
Performance Goals and Objectives	21
Advisory on Earmarks	21
Section-by-Section Analysis	22
Changes in Existing Law Made by the Bill, as Reported	24
Committee Correspondence	27

The amendment is as follows:

Strike all that follows after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Domestic Terrorism Prevention Act of 2020”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Recent reports have demonstrated that White supremacists and other far-right-wing extremists are the most significant domestic terrorism threat facing the United States, including—

(A) a February 22, 2019, New York Times op-ed, by a Trump Administration United States Department of Justice official, who wrote that “white supremacy and far-right extremism are among the greatest domestic-security threats facing the United States. Regrettably, over the past 25 years, law enforcement, at both the Federal and State levels, has been slow to respond. . . . Killings committed by individuals and groups associated with far-right extremist groups have risen significantly.”;

(B) an April 2017 Government Accountability Office report on the significant, lethal threat posed by domestic violent extremists, which—

(i) explained that “[s]ince September 12, 2001, the number of fatalities caused by domestic violent extremists has ranged from 1 to 49 in a given year.”; and

(ii) noted that “[F]atalities resulting from attacks by far right wing violent extremists have exceeded those caused by radical Islamist violent extremists in 10 of the 15 years, and were the same in 3 of the years since September 12, 2001. Of the 85 violent extremist incidents that resulted in death since September 12, 2001, far right wing violent extremist groups were responsible for 62 (73 percent) while radical Islamist violent extremists were responsible for 23 (27 percent).”;

(C) an unclassified May 2017 joint intelligence bulletin from the Federal Bureau of Investigation and the Department of Homeland Security, which found that “white supremacist extremism poses [a] persistent threat of lethal violence,” and that White supremacists “were responsible for 49 homicides in 26 attacks from 2000 to 2016 . . . more than any other domestic extremist movement”.

(2) Recent domestic terrorist attacks include—

(A) the August 5, 2012, mass shooting at a Sikh gurdwara in Oak Creek, Wisconsin, in which a White supremacist shot and killed 6 members of the gurdwara;

(B) the April 13, 2014, mass shooting at a Jewish community center and a Jewish assisted living facility in Overland Park, Kansas, in which a neo-Nazi shot and killed 3 civilians, including a 14-year-old teenager;

(C) the June 8, 2014, ambush in Las Vegas, Nevada, in which 2 supporters of the far-right-wing “patriot” movement shot and killed 2 police officers and a civilian;

(D) the June 17, 2015, mass shooting at the Emanuel AME Church in Charleston, South Carolina, in which a White supremacist shot and killed 9 members of the church;

(E) the November 27, 2015, mass shooting at a Planned Parenthood clinic in Colorado Springs, Colorado, in which an anti-abortion extremist shot and killed a police officer and 2 civilians;

(F) the March 20, 2017, murder of an African-American man in New York City, allegedly committed by a White supremacist who reportedly traveled to New York “for the purpose of killing black men”;

(G) the May 26, 2017, attack in Portland, Oregon, in which a White supremacist allegedly murdered 2 men and injured a third after the men defended 2 young women whom the individual had targeted with anti-Muslim hate speech;

(H) the August 12, 2017, attacks in Charlottesville, Virginia, in which—

(i) a White supremacist killed one and injured nineteen after driving his car through a crowd of individuals protesting a neo-Nazi rally, and of which former Attorney General Jeff Sessions said, “It does meet the definition of domestic terrorism in our statute.”; and

(ii) a group of 6 men linked to militia or White supremacist groups assaulted an African-American man who had been protesting the neo-Nazi rally in a downtown parking garage;

(I) the July 2018 murder of an African-American woman from Kansas City, Missouri, allegedly committed by a White supremacist who reportedly bragged about being a member of the Ku Klux Klan;

(J) the October 24, 2018, shooting in Jeffersontown, Kentucky, in which a White man allegedly murdered 2 African Americans at a grocery store after first attempting to enter a church with a predominantly African-American congregation during a service;

(K) the October 27, 2018, mass shooting at the Tree of Life Synagogue in Pittsburgh, Pennsylvania, in which a White nationalist allegedly shot and killed 11 members of the congregation;

(L) the April 27, 2019, shooting at the Chabad of Poway synagogue in California, in which a man yelling anti-Semitic slurs allegedly killed a member of the congregation and wounded 3 others;

(M) the August 3, 2019, mass shooting at a Walmart in El Paso, Texas, in which a White supremacist with anti-immigrant views killed 22 people and injured 26 others;

(N) the December 10, 2019, shooting at a Kosher supermarket in Jersey City, New Jersey, in which 2 men with anti-Semitic views killed 3 people in the store and a law enforcement officer in an earlier encounter; and

(O) the December 28, 2019, machete attack at a Hanukkah celebration in Monsey, New York, in which a man who had expressed anti-Semitic views stabbed 5 individuals.

(3) In November 2019, the Federal Bureau of Investigation released its annual hate crime incident report, which found that in 2018, violent hate crimes reached a 16-year high. Though the overall number of hate crimes decreased slightly after three consecutive years of increases, the report found a 4-percent increase in aggravated assaults, a 15-percent increase in simple assaults, and a 13-percent increase in intimidation. There was also a nearly 6-percent increase in hate crimes directed at LGBTQ individuals and a 14-percent increase in hate crimes directed at Hispanic and Latino individuals. Nearly 60 percent of the religion-based hate crimes reported targeted American Jews and Jewish institutions. The previous year's report found that in 2017, hate crimes increased by approximately 17 percent, including a 23-percent increase in religion-based hate crimes, an 18-percent increase in race-based crimes, and a 5-percent increase in crimes directed against LGBTQ individuals. The report analyzing 2016 data found that hate crimes increased by almost 5 percent that year, including a 19-percent rise in hate crimes against American Muslims. Similarly, the report analyzing 2015 data found that hate crimes increased by 6 percent that year. Much of the 2015 increase came from a 66-percent rise in attacks on American Muslims and a 9-percent rise in attacks on American Jews. In all 4 reports, race-based crimes were most numerous, and those crimes most often targeted African Americans.

(4) On March 15, 2019, a White nationalist was arrested and charged with murder after allegedly killing 50 Muslim worshippers and injuring more than 40 in a massacre at the Al Noor Mosque and Linwood Mosque in Christchurch, New Zealand. The alleged shooter posted a hate-filled, xenophobic manifesto that detailed his White nationalist ideology before the massacre. Prime Minister Jacinda Ardern labeled the massacre a terrorist attack.

(5) In January 2017, a right-wing extremist who had expressed anti-Muslim views was charged with murder for allegedly killing 6 people and injuring 19 in a shooting rampage at a mosque in Quebec City, Canada. It was the first-ever mass shooting at a mosque in North America, and Prime Minister Trudeau labeled it a terrorist attack.

(6) On February 15, 2019, Federal authorities arrested U.S. Coast Guard Lieutenant Christopher Paul Hasson, who was allegedly planning to kill a number of prominent journalists, professors, judges, and "leftists in general". In court filings, prosecutors described Lieutenant Hasson as a "domestic terrorist" who in an email "identified himself as a White Nationalist for over 30 years and advocated for 'focused violence' in order to establish a white homeland."

(7) On November 3rd, 2019 a 24 year old man who authorities say was among masked Antifa supporters attacking conservatives at a June Demonstration in Portland, Oregon, was sentenced Friday to nearly six years in prison in connection with brutal assault. Gage Halupowski pleaded guilty to second-degree assault after authorities accused him of using a weapon against a conservative demonstrator who suffered blows to the head that the victim claims left him with a concussion and cuts that required 25 staples to close.

(8) On December 12, 2019, an assailant involved in the prolonged firefight in Jersey City, NJ, that left six people dead, including one police officer, was linked on Wednesday to the Black Hebrew Israelite movement, and had public anti-Semitic posts online, a law enforcement official said.

(9) On February 8, 2020, A gunman stormed a NYPD precinct after firing at police van, wounding 2. The police commissioner called the Bronx rampage an "assassination attempt," on law enforcement.

SEC. 3. DEFINITIONS.

In this Act—

(1) the term "Director" means the Director of the Federal Bureau of Investigation;

(2) the term “domestic terrorism” has the meaning given the term in section 2331 of title 18, United States Code, except that it does not include acts perpetrated by individuals associated with or inspired by—

(A) a foreign person or organization designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189);

(B) an individual or organization designated under Executive Order 13224 (50 U.S.C. 1701 note); or

(C) a state sponsor of terrorism as determined by the Secretary of State under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 4605), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371);

(3) the term “Domestic Terrorism Executive Committee” means the committee within the Department of Justice tasked with assessing and sharing information about ongoing domestic terrorism threats;

(4) the term “hate crime incident” means an act described in section 241, 245, 247, or 249 of title 18, United States Code, or in section 901 of the Civil Rights Act of 1968 (42 U.S.C. 3631);

(5) the term “Secretary” means the Secretary of Homeland Security; and

(6) the term “uniformed services” has the meaning given the term in section 101(a) of title 10, United States Code.

SEC. 4. OFFICES TO COMBAT DOMESTIC TERRORISM.

(a) AUTHORIZATION OF OFFICES TO MONITOR, ANALYZE, INVESTIGATE, AND PROSECUTE DOMESTIC TERRORISM.—

(1) DOMESTIC TERRORISM UNIT.—There is authorized a Domestic Terrorism Unit in the Office of Intelligence and Analysis of the Department of Homeland Security, which shall be responsible for monitoring and analyzing domestic terrorism activity.

(2) DOMESTIC TERRORISM OFFICE.—There is authorized a Domestic Terrorism Office in the Counterterrorism Section of the National Security Division of the Department of Justice—

(A) which shall be responsible for investigating and prosecuting incidents of domestic terrorism; and

(B) which shall be headed by the Domestic Terrorism Counsel.

(3) DOMESTIC TERRORISM SECTION OF THE FBI.—There is authorized a Domestic Terrorism Section within the Counterterrorism Division of the Federal Bureau of Investigation, which shall be responsible for investigating domestic terrorism activity.

(4) STAFFING.—The Secretary, the Attorney General, and the Director shall each ensure that each office authorized under this section in their respective agencies shall—

(A) have adequate number of employees to perform the required duties;

(B) have not less than 1 employee dedicated to ensuring compliance with civil rights and civil liberties laws and regulations; and

(C) require that all employees undergo annual anti-bias training.

(5) SUNSET.—The offices authorized under this subsection shall terminate on the date that is 10 years after the date of enactment of this Act.

(b) JOINT REPORT ON DOMESTIC TERRORISM.—

(1) BIENNIAL REPORT REQUIRED.—Not later than 180 days after the date of enactment of this Act, and each 6 months thereafter for the 10-year period beginning on the date of enactment of this Act, the Secretary of Homeland Security, the Attorney General, and the Director of the Federal Bureau of Investigation shall submit a joint report authored by the domestic terrorism offices authorized under paragraphs (1), (2), and (3) of subsection (a) to—

(A) the Committee on the Judiciary, the Committee on Homeland Security and Governmental Affairs, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on the Judiciary, the Committee on Homeland Security, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

(A) an assessment of the domestic terrorism threat posed by White supremacists and neo-Nazis, including White supremacist and neo-Nazi infiltration of Federal, State, and local law enforcement agencies and the uniformed services; and

(B)(i) in the first report, an analysis of incidents or attempted incidents of domestic terrorism that have occurred in the United States since April

19, 1995, including any White-supremacist-related incidents or attempted incidents; and

(ii) in each subsequent report, an analysis of incidents or attempted incidents of domestic terrorism that occurred in the United States during the preceding 6 months, including any White-supremacist-related incidents or attempted incidents; and

(C) a quantitative analysis of domestic terrorism for the preceding 6 months, including—

(i) the number of—

(I) domestic terrorism related assessments initiated by the Federal Bureau of Investigation, including the number of assessments from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism;

(II) domestic terrorism-related preliminary investigations initiated by the Federal Bureau of Investigation, including the number of preliminary investigations from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, and how many preliminary investigations resulted from assessments;

(III) domestic terrorism-related full investigations initiated by the Federal Bureau of Investigation, including the number of full investigations from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, and how many full investigations resulted from preliminary investigations and assessments;

(IV) domestic terrorism-related incidents, including the number of incidents from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, the number of deaths and injuries resulting from each incident, and a detailed explanation of each incident;

(V) Federal domestic terrorism-related arrests, including the number of arrests from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, and a detailed explanation of each arrest;

(VI) Federal domestic terrorism-related indictments, including the number of indictments from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, and a detailed explanation of each indictment;

(VII) Federal domestic terrorism-related prosecutions, including the number of incidents from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, and a detailed explanation of each prosecution;

(VIII) Federal domestic terrorism-related convictions, including the number of convictions from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, and a detailed explanation of each conviction; and

(IX) Federal domestic terrorism-related weapons recoveries, including the number of each type of weapon and the number of weapons from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism; and

(ii) an explanation of each individual case that progressed through more than 1 of the stages described under clause (i), including the specific classification or subcategory for each case.

(3) HATE CRIMES.—In compiling a joint report under this subsection, the domestic terrorism offices authorized under paragraphs (1), (2), and (3) of subsection (a) shall, in consultation with the Civil Rights Division of the Department of Justice and the Civil Rights Unit of the Federal Bureau of Investigation, review each hate crime incident reported during the preceding 6 months to determine whether the incident also constitutes a domestic terrorism-related incident.

(4) CLASSIFICATION AND PUBLIC RELEASE.—Each report submitted under paragraph (1) shall be—

(A) unclassified, to the greatest extent possible, with a classified annex only if necessary; and

(B) in the case of the unclassified portion of the report, posted on the public websites of the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation.

(5) NONDUPLICATION.—If two or more provisions of this subsection or any other law impose requirements on an agency to report or analyze information on domestic terrorism that are substantially similar, the agency shall construe such provisions as mutually supplemental, so as to provide for the most extensive reporting or analysis, and shall comply with each such requirement as fully as possible.

(c) DOMESTIC TERRORISM EXECUTIVE COMMITTEE.—There is authorized a Domestic Terrorism Executive Committee, which shall—

(1) meet on a regular basis, and not less regularly than 4 times each year, to coordinate with United States Attorneys and other key public safety officials across the country to promote information sharing and ensure an effective, responsive, and organized joint effort to combat domestic terrorism; and

(2) be co-chaired by—

(A) the Domestic Terrorism Counsel authorized under subsection (a)(2)(B);

(B) a United States Attorney or Assistant United States Attorney;

(C) a member of the National Security Division of the Department of Justice; and

(D) a member of the Federal Bureau of Investigation.

(d) FOCUS ON GREATEST THREATS.—The domestic terrorism offices authorized under paragraphs (1), (2), and (3) of subsection (a) shall focus their limited resources on the most significant domestic terrorism threats, as determined by the number of domestic terrorism-related incidents from each category and subclassification in the joint report for the preceding 6 months required under subsection (b).

SEC. 5. TRAINING TO COMBAT DOMESTIC TERRORISM.

(a) REQUIRED TRAINING AND RESOURCES.—The Secretary, the Attorney General, and the Director shall review the anti-terrorism training and resource programs of their respective agencies that are provided to Federal, State, local, and Tribal law enforcement agencies, including the State and Local Anti-Terrorism Program that is funded by the Bureau of Justice Assistance of the Department of Justice, and ensure that such programs include training and resources to assist State, local, and Tribal law enforcement agencies in understanding, detecting, deterring, and investigating acts of domestic terrorism and White supremacist and neo-Nazi infiltration of law enforcement and corrections agencies. The domestic-terrorism training shall focus on the most significant domestic terrorism threats, as determined by the quantitative analysis in the joint report required under section 4(b).

(b) REQUIREMENT.—Any individual who provides domestic terrorism training required under this section shall have—

(1) expertise in domestic terrorism; and

(2) relevant academic, law enforcement, or other community-based experience in matters related to domestic terrorism.

(c) REPORT.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act and twice each year thereafter, the Secretary, the Attorney General, and the Director shall each submit a biannual report to the committees of Congress described in section 4(b)(1) on the domestic terrorism training implemented by their respective agencies under this section, which shall include copies of all training materials used and the names and qualifications of the individuals who provide the training.

(2) CLASSIFICATION AND PUBLIC RELEASE.—Each report submitted under paragraph (1) shall be—

(A) unclassified, to the greatest extent possible, with a classified annex only if necessary; and

(B) in the case of the unclassified portion of each report, posted on the public website of the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation.

SEC. 6. INTERAGENCY TASK FORCE.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, the Director, the Secretary, and the Secretary of Defense shall establish an interagency task force to analyze and combat White supremacist and neo-Nazi infiltration of the uniformed services and Federal law enforcement agencies.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the interagency task force is established under subsection (a), the Attorney General, the Director, the Sec-

retary, and the Secretary of Defense shall submit a joint report on the findings of the task force and the response of the Attorney General, the Director, the Secretary, and the Secretary of Defense to such findings, to—

- (A) the Committee on the Judiciary of the Senate;
 - (B) the Committee on Homeland Security and Governmental Affairs of the Senate;
 - (C) the Select Committee on Intelligence of the Senate;
 - (D) the Committee on Armed Services of the Senate;
 - (E) the Committee on the Judiciary of the House of Representatives;
 - (F) the Committee on Homeland Security of the House of Representatives;
 - (G) the Permanent Select Committee on Intelligence of the House of Representatives; and
 - (H) the Committee on Armed Services of the House of Representatives.
- (2) CLASSIFICATION AND PUBLIC RELEASE.—The report submitted under paragraph (1) shall be—
- (A) submitted in unclassified form, to the greatest extent possible, with a classified annex only if necessary; and
 - (B) in the case of the unclassified portion of the report, posted on the public website of the Department of Defense, the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation.

SEC. 7. DEPARTMENT OF JUSTICE SUPPORT FOR HATE CRIME INCIDENTS WITH A NEXUS TO DOMESTIC TERRORISM.

(a) COMMUNITY RELATIONS SERVICE.—The Community Relations Service of the Department of Justice, authorized under section 1001(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000g), may offer the support of the Service to communities where the Department of Justice has brought charges in a hate crime incident that has a nexus to domestic terrorism.

(b) FEDERAL BUREAU OF INVESTIGATION.—Section 249 of title 18, United States Code, is amended by adding at the end the following:

“(e) FEDERAL BUREAU OF INVESTIGATION.—The Attorney General, acting through the Director of the Federal Bureau of Investigation, shall assign a special agent or hate crimes liaison to each field office of the Federal Bureau of Investigation to investigate hate crimes incidents with a nexus to domestic terrorism (as such term is defined in section 3 of the Domestic Terrorism Prevention Act of 2020).”

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Justice, the Federal Bureau of Investigation, the Department of Homeland Security, and the Department of Defense such sums as may be necessary to carry out this Act.

Purpose and Summary

The need to fight domestic terrorism in America is increasingly urgent. Over the course of the 116th Congress, the Committee has investigated this issue, including conducting a hearing entitled “Hate Crimes and the Rise of White Nationalism” on April 9, 2019. In the hearing witnesses highlighted Congress’ critical role in addressing the disturbing increase in white supremacist violence, provided examples of how hate groups have proliferated inside the United States, and detailed how social media platforms have become dangerous recruiting tools in the white nationalist movement. Additionally, the Committee heard testimony from communities that have been systematically targeted by white nationalist groups. Since that time a number of additional horrific white supremacist attacks have occurred.¹ The shooting spree at a Walmart in El Paso, Texas, last August, which left 22 people dead and 24 more wounded, marked the deadliest attack in modern times against the Latino community in the United States.² The El Paso attack was

¹ *Murder and Extremism in the United States in 2019*, Anti-Defamation League (Feb. 2020), <https://www.adl.org/murder-and-extremism-2019#introduction-murder-and-extremism-in-the-united-states-in-2019>.

² *Id.*

also the third deadliest act of violence by a domestic extremist in more than 50 years.³ In addition, since the deadly rampage at Pittsburgh’s Tree of Life synagogue, at least 16 white supremacists have been arrested for their alleged roles in terrorist plots, attacks or threats against the Jewish community.⁴ And, over the last decade, right-wing extremists have been responsible for 75 percent of all domestic extremist-related murders.⁵ These attacks are a stark demonstration of the threat white supremacist organizations pose.

With three-fourths of all domestic terrorist attacks coming from white supremacists, the federal government must allocate its resources to the most deadly threats. H.R. 5602 authorizes the collection of data, call for the results of the data collection to be published, and requires the FBI to focus its resources on the greatest threats. Additionally, H.R. 5602 authorizes the creation of three offices, one each within the Department of Homeland Security (DHS), the Department of Justice (DOJ), and the Federal Bureau of Investigation (FBI), to monitor, investigate and prosecute cases of domestic terrorism. The newly created offices will provide Congress joint biannual reports assessing the state of domestic terrorism threats, with a specific focus on white supremacists.

Background and Need for the Legislation

I. DOJ’S HATE CRIMES & DOMESTIC TERRORISM ENFORCEMENT REGIMEN

The DOJ was created in the post-Civil War era, motivated, at least in part, by Congress’ intent to enforce the Reconstruction Amendments and to have an entity within the Executive Branch to serve as a “champion” of civil rights.⁶ To this day, DOJ serves as the Nation’s chief law enforcement organization and carries out the United States’ efforts to protect civil rights and it does so through various divisions, sections, and offices. The FBI’s Criminal Investigative Division (CID) investigates cases involving a variety of criminal statutes that make it illegal to interfere with any person who is participating in a federally protected activity, such as public education, employment, jury service, travel, or the enjoyment of public accommodations, or helping another person to do so, based on their race or perceived race.⁷ CID also investigates crimes allegedly committed because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person, where the crime occurred within a federal jurisdiction.⁸

Following the passage of the Civil Rights Act of 1957, DOJ created the Civil Rights Division (CRT).⁹ Along with individual U.S. Attorney’s Offices, the Criminal Section of CRT prosecutes hate crimes investigated by CID, and has prosecuted a number of high profile hate crimes, including prosecutions following the Tree of

³ *Id.*

⁴ *One Year After the Tree of Life Attack, American Jews Face Significant Threats*, Anti-Defamation League (Oct. 18, 2019), <https://lasvegas.adl.org/news/adl-report-right-wing-extremists-killed-38-people-in-2019-far-surpassing-all-other-murderous-extremists/>.

⁵ *See Murder and Extremism in the United States in 2019*.

⁶ Seth P. Waxman, *Twins at Birth: Civil Rights and the Role of the Solicitor General*, 75 Ind. L.J. 1297, 1297, 1300–01 (2000) (footnote omitted).

⁷ 18 U.S.C. § 245 (2018).

⁸ 18 U.S.C. § 249 (2018).

⁹ Civil Rights Act of 1957, Pub. L. No. 85–315, 71 Stat. 634 (1957).

Life Synagogue massacre, the mass shooting in El Paso, and the Victoria Mosque arson.¹⁰

The Department's manner of prosecuting terrorism cases has changed substantially in the last 20 years. Before the September 11th attacks, the United States generally distinguished international and domestic terrorism matters by the type of alleged perpetrator. The FBI labeled foreign-born or foreign-based terrorists as "international terrorists," while federal authorities considered acts of domestic terror as a subset of criminal behavior.¹¹ Following the September 11th attacks, Congress enacted the USA PATRIOT Act of 2001 (Patriot Act), which ushered in a dramatic shift in law enforcement authority.¹² Title VIII of the Patriot Act changed the definition of domestic terrorism, added a number of crimes to the list of those labeled terrorism, and criminalized cyberterrorism.

In 2005, the FBI established the National Security Branch (NSB) to merge its Counterterrorism Division, Counterintelligence Division, Directorate of Intelligence, Weapons of Mass Destruction Directorate, and Terrorist Screening Center. Only a year later, the DOJ created the National Security Division (NSD), which similarly brought together prosecution-focused counterterrorism operations and the Foreign Intelligence Surveillance Act (FISA) litigation sections. The NSB and NSD form the vanguard of the Nation's efforts to prevent and prosecute terrorism cases.

In the last year, the FBI has changed the way it approaches domestic terrorism. In his testimony to the Senate Homeland Security Committee in 2019, FBI Director Christopher Wray, noted that terrorism, including domestic terrorism, remains the FBI's primary focus.¹³ Director Wray noted that white supremacists constitute the largest share of domestic terrorists and that white supremacists have perpetrated the "most lethal" attacks in the last few years.¹⁴ According to Director Wray, the FBI arrested 107 individuals during fiscal year 2019 in connection with domestic terrorism investigations, which was "close to the same number on the international terrorism front."¹⁵ At any given time, the FBI has "about 900 [open] domestic terrorism investigations," a "huge chunk" of which "involve racially motivated violent extremists."¹⁶ Of these, the

¹⁰U.S. DOJ, Justice News, *Additional Charges Filed in Tree of Life Synagogue Shooting* (Jan. 29, 2019), <https://www.justice.gov/opa/pr/additional-charges-filed-tree-life-synagogue-shooting>; U.S. Dept. of Justice, Justice News, *Texas Man Charged with Federal Hate Crimes and Firearm Offenses Related to August 3, 2019, Mass-Shooting in El Paso* (Feb. 6, 2020), <https://www.justice.gov/opa/pr/texas-man-charged-federal-hate-crimes-and-firearm-offenses-related-august-3-2019-mass>; U.S. Dept. of Justice, Justice News, *Texas Man Sentenced to Almost 25 Years for Hate Crime in Burning Down Mosque in Victoria, Texas* (Oct. 17, 2018), <https://www.justice.gov/opa/pr/texas-man-sentenced-almost-25-years-hate-crime-burning-down-mosque-victoria-texas>.

¹¹National Consortium for the Study of Terrorism and Responses to Terrorism, *Patterns of Intervention in Federal Terrorism Cases* 7 (Aug. 2011), https://www.dhs.gov/sites/default/files/publications/OPSR_TP_Countermeasures-Patterns-Intervention-Federal-Terrorism-Cases_Aug2011-508.pdf.

¹²USA Patriot Act, Pub. L. No. 107-56, 115 Stat. 272 (2001).

¹³*Threats to the Homeland Before the S. Homeland Security & Gov. Aff. Comm.*, 116th Cong. (2019) (statement of Christopher Wray, FBI Director).

¹⁴*Id.*

¹⁵*Id.* Prior to this testimony, FBI Assistant Director for Counterterrorism Michael McGarrity testified before the Committee on Homeland Security that the FBI was investigating 850 domestic terrorism cases—and of those, about 40 percent involved racially motivated extremism, mostly white supremacist extremism. *Confronting the Rise of Domestic Terrorism in the Homeland before the Comm. on Homeland Sec.*, 116th Cong. (2019) (statement of Michael McGarrity, FBI Assistant Director). <https://homeland.house.gov/activities/hearings/confronting-the-rise-of-domestic-terrorism-in-the-homeland>.

¹⁶*Id.*

most lethal “over the last few years” have involved white supremacists.¹⁷

II. HATE CRIMES AND DOMESTIC TERRORISM STATUTORY AUTHORITIES

Federal law defines domestic terrorism as involving acts that are “dangerous to human life that are a violation of the criminal laws of the United States or of any State; appear to be intended to intimidate or 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; and occur primarily within the territorial jurisdiction of the United States.”¹⁸

While domestic terrorism is defined in federal law, the definition does not accompany an associated crime or prohibitive behavior. Rather, absent an explicit crime prohibiting domestic terrorism, federal authorities charge terrorism acts, whether domestic or international in nature, under two laws that prohibit terrorism-related acts. The first statute, which passed in 1994, criminalizes material support of one of 57 underlying terrorism-related crimes.¹⁹

Of 57 predicate terrorism offenses referenced in Section 2339A of Title 18 of the United States Code federal prosecutors may use 51 of the offenses to charge domestic terrorism.²⁰ The underlying predicate terrorism crimes include: maliciously damaging, destroying by means of fire or explosive any building or personal property used in interstate or foreign commerce;²¹ hostage taking;²² or willful or malicious destruction of any of the works, property, or material of any communication line, station, or system.²³ While the vast majority of those charged under § 2339A have been internationally based, DOJ has charged at least four individuals for domestic crimes under these statutes.²⁴ The FBI also uses a second statute, 18 U.S.C. § 2339B, to investigate international terrorism. Despite the international focus of section 2339B, DOJ has also charged domestically based United States citizens under this statute.²⁵

Section 5602 of the National Defense Authorization Act for Fiscal Year 2020, which was sponsored by Representative Bennie Thompson and signed into law by President Trump in January 2020, included a domestic terrorism reporting requirements.²⁶ The 2020 NDAA provisions require the FBI and DHS, along with the Director of National Intelligence, to jointly track, manage and report on instances of domestic terrorism in the United States.²⁷ The three agencies must produce an initial report within 180 days of the bill’s enactment that includes a full analysis of any completed or attempted instances of domestic terrorism.²⁸ Subsequent reports re-

¹⁷*Id.*

¹⁸ 18 U.S.C. § 2331(5) (2018).

¹⁹ 18 U.S.C. § 2339A (2018); 18 U.S.C. § 2332b(g) (2018).

²⁰ Michael German & Sara Robinson, *Wrong Priorities on Fighting Terrorism*, Brennan Ctr. (Oct. 31, 2018), <https://www.brennancenter.org/publication/wrong-priorities-fighting-terrorism>.

²¹ 18 U.S.C. § 844(i) (2018).

²² 18 U.S.C. § 1203 (2018).

²³ 18 U.S.C. § 1362 (2018).

²⁴ See German & Robinson, *supra* note 15, at 8.

²⁵ See *id.*

²⁶ National Defense Authorization Act for Fiscal Year 2020, S.1790, 116th Cong. § 5602 (2019).

²⁷ See *id.* at § 5602.a–b.

²⁸ See *id.* at § 5602.a–b, e.

quired pursuant to the NDAA must be submitted annually and must include information on training that these agencies provide to state and federal law enforcement agencies.²⁹ Notably, the NDAA amendments make clear that these documents and reports shall, to the extent possible, be unclassified and publicly available.³⁰

III. CONGRESSIONAL REPORTING DEFICIENCIES

From the mid-1980s through the 2000s, the FBI issued an annual report, *Terrorism*, which provided insight on both domestic and international terrorist threats.³¹ Despite its great value, the publication was discontinued in 2005, leaving a dearth of clearly tracked information. In February 2019, House Homeland Security Committee Chairman, Bennie Thompson, and House Judiciary Committee Chairman, Jerrold Nadler, sent a letter to FBI Director Wray, inquiring about the discontinuation of this reporting.³² In a March 27, 2019 response, Director Wray cited “resource allocation issues” as the reason for its discontinuation.³³

IV. “BLACK IDENTITY EXTREMIST” DESIGNATION

During Attorney General Jeff Sessions’ tenure, the FBI’s counterterrorism intelligence gathering came under heavy criticism. In an August 2017 Intelligence Assessment (Assessment) the FBI’s Counterterrorism Division designated “Black Identity Extremists” as a modern iteration of groups such as the Black Liberation Army, which was involved in a number of violent incidents in the 1970s. Based on a number of high-profile cases involving police use of force against African-American individuals, the FBI speculated in the Assessment—which was leaked to the press—that there may be a resurgence of attacks by what the FBI gave the new label “Black Identity Extremists.”³⁴ Civil rights and civil liberties groups roundly criticized the Assessment, both for the rhetoric it used, and for the FBI’s apparent unwarranted focus on protest groups largely made up of African Americans.³⁵ The Congressional Black Caucus also expressed concerns, including that the Assessment conflated black Americans exercising free speech with violent extremism.³⁶ There are no specific “black identity extremist” groups named in the report nor did the report describe any shared ideology or name any leaders. The report further reinforced repeated concerns voiced by advocates that the FBI was unnecessarily surveilling leaders in Black Lives Matter protests.

²⁹ See *id.* at § 5602.d (yearly publication for 5 years).

³⁰ See *id.* at § 5602.e.

³¹ FBI, *Terrorism 2002/2005*, <https://www.fbi.gov/stats-services/publications/terrorism-2002-2005> (last visited Feb. 26, 2020).

³² Letter from Chairman Bennie Thompson, H. Comm. on Homeland Security, & Chairman Jerrold Nadler, H. Comm. on the Judiciary, to FBI Director Christopher Wray (Feb. 14, 2019) (on file with H. Comm. on the Judiciary Democratic staff).

³³ Letter from FBI Director Christopher Wray to Chairman Jerrold Nadler, H. Comm. on the Judiciary (Mar. 27, 2019) (on file with H. Comm. on the Judiciary Democratic staff).

³⁴ FBI, *Intelligence Assessment, Black Identity Extremists Likely Motivated to Target Law Enforcement* (Aug. 3, 2017), <https://www.documentcloud.org/documents/4067711-BIE-Redacted.html>.

³⁵ See *e.g.*, Andrew Cohen, *The FBI’s New Fantasy: ‘Black Identity Extremists’*, Brennan Center (Oct. 11, 2017), <https://www.brennancenter.org/blog/fbi-new-fantasy-black-identity-extremists>.

³⁶ See Letter from the Congressional Black Caucus to Christopher Wray (Oct. 13, 2017), https://cbc.house.gov/uploadedfiles/cbc_rm_thompson_cummingers_conyers_letter_to_fbi_re_intel_assessment.pdf.

In April 2019, the FBI notified Congressional staff that it was modifying how it categorized hate crimes incidents. In his testimony before the House Judiciary Committee in February 2020, Director Wray confirmed that the FBI has collapsed the previous nine categories it used to identify hate crime incidents into four categories.³⁷ The new categories are: (1) racially-motivated violent extremism; (2) anti-government/anti-establishment extremism; (3) animal rights and environmental extremism; and (4) abortion extremism. Director Wray also described an additional category, “other domestic terrorism,” which would encompass, for instance, attempted mail bombings.³⁸

V. WHITE SUPREMACY IN THE MILITARY

Servicemember participation in white supremacist organizations dates back to a time well before 1948, when President Truman ordered the integration of the military branches.³⁹ The Ku Klux Klan openly recruited members of the military through the 1980s.⁴⁰ In 1986, the Defense Department began efforts to stem servicemembers’ participation in white supremacist organizations when Defense Secretary Caspar Weinberger ordered military personnel to reject these organizations.⁴¹ Commanders inconsistently applied the 1986 directive, thus allowing some white supremacists to continue to serve.⁴² After the 1995 Oklahoma City bombing, the Department of Defense explicitly banned servicemembers from participating in white supremacist organizations.⁴³ This policy largely remains in place.

Recent attacks by former servicemembers have brought renewed attention to the military’s response to white supremacists within its ranks. In November 2015, Frazier Miller was sentenced to death on murder charges after he killed three people during an April 13, 2014, attack on a Jewish community center facilities in Overland Park, Kansas.⁴⁴ Miller served 20 years in the U.S. Army, including 13 years as a Green Beret, and later went on to found a chapter of the Ku Klux Klan.⁴⁵ Wade Michael Page, an Army veteran and an avowed white supremacist, killed six Sikh worshipers in a 2012 attack of the gurdwara (Sikh temple) in Oak Creek, Wisconsin, and was reportedly radicalized while in uniform.⁴⁶ More recently, a number of then-current and former servicemembers were

³⁷ *Oversight of the Federal Bureau of Investigation Before the H. Jud. Comm.*, 116th Cong. (2020) (statement of Christopher Wray, FBI Director).

³⁸ *Id.*

³⁹ Exec. Order No. 9981, 3 C.F.R. § 772 (1941–1948).

⁴⁰ Dave Philipps, *White Supremacism in the U.S. Military, Explained*, N.Y. Times, (Feb. 27, 2019), at A22.

⁴¹ U.S. Dep’t of Def., Dir. 1325.6, Guidelines for Handling Dissident and Protest Activities Among Members of The Armed Forces (12 Sept 1969) (change 2) (Sept. 8, 1986) (on file with DoD).

⁴² See e.g., Phil Stewart & Missy Ryan, *Wisconsin Shooting Suspect Discharged from Army in 1998*, Reuters (Aug. 6, 2012), <https://www.reuters.com/article/us-usa-wisconsin-shooting-army-idUSBRE87K04Y20120821>

⁴³ U.S. Dep’t of Def., Dir. 1325.6, Guidelines for Handling Dissident and Protest Activities Among Members of The Armed Forces (Oct. 1, 1996), <https://biotech.law.lsu.edu/blaw/dodd/corres/pdf/d13256—100196/d13256p.pdf>.

⁴⁴ Steven Yaccino & Dan Barry, *Bullets, Blood and Then Cry of ‘Heil Hitler’*, N.Y. Times (Apr. 14, 2014), at A1.

⁴⁵ *Id.*

⁴⁶ Erica Goode & Serge F. Kovaleski, *Wisconsin Killer Fed and Was Fueled by Hate-Driven Music*, N.Y. Times (Aug. 6, 2012), <https://www.nytimes.com/2012/08/07/us/army-veteran-identified-as-suspect-in-wisconsin-shooting.html>; Marilyn Elias, *Sikh Temple Killer Wade Michael Page Radicalized in Army*, S. Poverty L. Ctr. (Nov. 11, 2012), <https://www.splcenter.org/fighting-hate/intelligence-report/2012/sikh-temple-killer-wade-michael-page-radicalized-army>.

linked in 2017 to the Atomwaffen Division, a violent white supremacist group.⁴⁷ Yet, the Department of Defense (DoD) reported to Congress that only 18 servicemembers have been discharged for extremist activity over the past five years.⁴⁸ A recent poll of servicemembers by the *Military Times* found that more than one-third of active-duty troops and more than half of servicemembers of color said that they have witnessed examples of white nationalism or ideologically driven racism within the ranks.⁴⁹

On February 11, 2020, the House Subcommittee on Military Personnel held a hearing, entitled “Alarming Incidents of White Supremacy in the Military—How to Stop It?,” on white supremacy in the U.S. Armed Forces. Employees of the Department of Defense and various branches of the Armed Services, as well as researchers specializing in military extremism testified about the rise in white supremacist ideology among both active and retired servicemen and women.⁵⁰ During the hearing, DoD representatives from the criminal investigations divisions of the represented military branches acknowledged that their respective agencies do not generally pursue investigations into military personnel who are members of, or who share the ideologies of, extremist groups. They testified that investigations are opened only when instances of activity or active participation (fundraising, attending rallies, having tattoos, etc.) in these white supremacist or extremist ideologies are identified.⁵¹ Even in those circumstances, where the DoD confirms active participation, removal from military service is not required.⁵²

In 2019, however, Cory Reeves, an airman in the U.S. Air Force, was identified as an active fundraiser for the white nationalist group Identity Evropa. Although Reeves was initially only demoted for his white supremacist activities, an Air Force administrative discharge board recommended his discharge from service in February of 2020.⁵³ The Marine Corps has faced issues as well, dishonorably discharging a number of Marines who have been found espousing white supremacist beliefs over the past few years, including an individual who, online, had praised Nazis and discussed running over demonstrators.⁵⁴

⁴⁷A.C. Thompson, et al., *Ranks of Notorious Hate Group Include Active-Duty Military*, ProPublica (May 3, 2018), <https://www.propublica.org/article/atomwaffen-division-hate-group-active-duty-military>.

⁴⁸Philipps, *supra* note 30.

⁴⁹Leo Shane III, *Signs of White Supremacy, Extremism Up Again in Poll of Active-Duty Troops*, *Military Times* (Feb. 6, 2020), <https://www.militarytimes.com/news/pentagon-congress/2020/02/06/signs-of-white-supremacy-extremism-up-again-in-poll-of-active-duty-troops/>.

⁵⁰*Alarming Incidents of White Supremacy in the Military—How to Stop It? Before H. Armed Serv. Subcomm. on Military Personnel*, 116th Cong. (2020), <https://armedservices.house.gov/2020/2/subcommittee-on-military-personnel-hearing-alarming-incidents-of-white-supremacy-in-the-military-how-to-stop-it>.

⁵¹*Id.*

⁵²*Id.*

⁵³Stephen Losey, *EOD Marine Separated for Ties to White Supremacist Groups*, *Air Force Times* (Apr. 19, 2018), <https://www.marinecorpstimes.com/news/your-marine-corps/2018/04/19/eod-marine-separated-for-ties-to-white-supremacist-groups/>.

⁵⁴Shawn Snow, *Board Recommends Discharge of Airman with White Nationalist Ties*, *Air Force Times* (Feb. 24, 2020), <https://www.airforcetimes.com/news/your-air-force/2020/02/24/board-recommends-discharge-of-airman-with-white-nationalist-ties/>. Shawn Snow, *Another Marine is Being Investigated for Neo-Nazi Ties Amid Military Concerns About White Supremacy*, *Marine Times* (Feb. 26, 2019), <https://www.marinecorpstimes.com/news/your-marine-corps/2019/02/26/another-marine-is-being-investigated-for-neo-nazi-ties-amid-concerns-about-white-supremacy-in-the-ranks/>.

VI. WHITE SUPREMACY IN LAW ENFORCEMENT

White supremacists have long sought to infiltrate law enforcement agencies.⁵⁵ According to a leaked document drafted by the FBI Counter Terrorism Division, infiltration by members of white supremacist groups continues to pose a threat to law enforcement agencies around the country.⁵⁶ Currently, there is no federal database that tracks attempts by white supremacists to infiltrate law enforcement agencies. In the absence of formal tracking, several organizations and media outlets published investigative findings on law enforcement officers who have engaged in racist, nationalist, or white supremacist activity.⁵⁷ These efforts have uncovered hundreds of white supremacists who are currently employed or retired law enforcement and have prompted agencies across the nation to open internal inquiries into officer conduct, in some instances leading to termination of employment.⁵⁸

More recently, following the death of George Floyd on May 25, 2020, law enforcement agencies have faced additional scrutiny, with particular focus on the presence of racism and white supremacy among some law enforcement officers. A number of published reports have discovered examples of law enforcement officers who espouse white supremacist beliefs. One such example that has received nationwide attention involves three law enforcement officers in Wilmington, North Carolina, who made racist remarks on tape and urged civil strife.⁵⁹

Hearings

In compliance with section 103(i) of House Resolution 6, On April 9, 2019, the Judiciary Committee held a hearing titled, “Hate Crimes and the Rise of White Nationalism,” to investigate the recent spread of white identity ideology, the effect white nationalist groups have had on impacted communities, and the increase in domestic terrorist acts motivated by hate.

Committee Consideration

On March 11, 2020, the Committee met in open session and ordered the bill, H.R. 5602, favorably reported, an amendment in the

⁵⁵Vida B. Johnson, *The Epidemic of White Supremacist Police*, The Appeal (Aug. 7, 2017), <https://theappeal.org/the-epidemic-of-white-supremacist-police-4992cb7ad97a/>.

⁵⁶Michelle Fox, *Texas Officers Fired for Membership in KKK*, ABC News (Jan. 7, 2006), <https://abcnews.go.com/US/story?id=93046&page=1>; See Vida B. Johnson, *The Epidemic of White Supremacist Police*; See Vida B. Johnson, *KKK in The PD*; Alice Speri, *The FBI Has Quietly Investigated White Supremacist Infiltration of Law Enforcement*, The Intercept (Jan. 31, 2017), <https://theintercept.com/2017/01/31/the-fbi-has-quietly-investigated-white-supremacist-infiltration-of-law-enforcement/>.

⁵⁷Will Carless & Michael Corey, *To Protect and Slur*, Reveal News (June 14, 2019), <https://www.revealnews.org/article/inside-hate-groups-on-facebook-police-officers-trade-racist-memes-conspiracy-theories-and-islamophobia/>; Emily Hoerner & Rick Tulsy, *Cops Across The US Have Been Exposed Posting Racist and Violent Thins On Facebook. Here's the Proof.*, BuzzFeed News (June 1, 2019), <https://www.buzzfeednews.com/article/emilyhoerner/police-facebook-racist-violent-posts-comments-philadelphia>.

⁵⁸See Will Carless & Michael Corey, *To Protect and Slur*; Hatewatch Staff, *City of Anniston Fires Police Officer for Membership in Hate Group*, ACLU (June 19, 2015), <https://www.splcenter.org/hatewatch/2015/06/18/city-anniston-fires-police-officer-membership-hate-group>.

⁵⁹Jason Slotkin, *North Carolina Police Chief Fires Three Officers Over Racist Comments Caught On Tape*, NPR (Jun. 25, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/25/883358818/wilmington-n-c-police-fires-three-officers-over-racist-comments-caught-on-tape>.

nature of a substitute with one additional amendment, by a recorded vote of 24 to 2, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following votes occurred during the Committee's consideration of H.R. 5602.

1. An amendment by Mr. Buck to supplement the finding section of the bill by adding a number of additional examples of extremist violence and in requiring the FBI to consider Antifa, anarchists, fascist, socialists, ant-Semites, and black supremacists in making the threat assessments required by the H.R. 5602, was defeated by a rollcall vote of 19 to 9.

Roll Call No.

Date: 3/11/2020

COMMITTEE ON THE JUDICIARY

House of Representatives

116th Congress

Amendment # 1 () to ANS HR 5602 offered by Rep. Buck

PASSED

FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)			
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)			
Val Demings (FL-10)			
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)			
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)		✓	
	AYES	NOS	PRES.
Doug Collins (GA-27)			
James F. Sensenbrenner (WI-05)	✓		
Steve Chabot (OH-01)			
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)			
Ken Buck (CO-04)	✓		
John Ratcliffe (TX-04)			
Martha Roby (AL-02)			
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)			
Debbie Lesko (AZ-08)	✓		
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)	✓		
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	9	19	

2. An amendment by Mr. Resenthaler that would have added to a number of the bill's sections that require federal agencies to specifically review neo-Nazis, Antifa, and other violent hate organizations when assessing threats, was defeated by a rollcall vote of 16 to 10.

Roll Call No.

Date: 3/11/2020

COMMITTEE ON THE JUDICIARY

House of Representatives
116th Congress

Amendment # 2 () to ANS HR 5602 offered by Rep. Reschenthaler

PASSED

FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)			
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)			
Hank Johnson (GA-04)			
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)			
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)		✓	
	AYES	NOS	PRES.
Doug Collins (GA-27)			
James F. Sensenbrenner (WI-05)	✓		
Steve Chabot (OH-01)			
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)	✓		
Ken Buck (CO-04)	✓		
John Ratcliffe (TX-04)			
Martha Roby (AL-02)			
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)			
Debbie Lesko (AZ-08)	✓		
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)	✓		
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	10	60	

3. Motion to report H.R. 5602, as amended, favorably was agreed to by a rollcall vote of 24 to 2.

Roll Call No.

Date: 3/11/20

COMMITTEE ON THE JUDICIARY

House of Representatives
116th Congress

Final Passage on HR 5602

PASSED
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)			
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)			
Hank Johnson (GA-04)			
Ted Deutch (FL-22)	✓		
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Debbie Mucarsel-Powell (FL-26)	✓		
Veronica Escobar (TX-16)	✓		
	AYES	NOS	PRES.
Doug Collins (GA-27)			
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)			
Louie Gohmert (TX-01)			
Jim Jordan (OH-04)			
Ken Buck (CO-04)	✓		
John Ratcliffe (TX-04)			
Martha Roby (AL-02)			
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)	✓		
Debbie Lesko (AZ-08)	✓		
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)			✓
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	24	2	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report. These include conclusions by the Committee following the February 5, 2020, oversight hearing on the Federal Bureau of Investigation. The sole witness during February 5, 2020, hearing was the Honorable Christopher A. Wray, Director of the FBI.

New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office (CBO). The Committee has requested but not received from the Director of the CBO a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

Duplication of Federal Programs

No provision of H.R. 5602 establishes or reauthorizes a program of the Federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance. As detailed in the descriptive portions of this report, the Amendment in the Nature of a Substitute that the Committee favorably reported clarified the Committee’s intent that the reporting requirements in H.R. 5602 supplement those mandated in current law by Section 5602 of the National Defense Authorization Act for Fiscal Year 2020.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5602 would facilitate the Federal government’s ability to monitor, investigate, and prosecute incidents of domestic terrorism. Additionally, the bill requires the Department of Defense and the Attorney General to assess and report to Congress on the prevalence of white supremacist ideology in the military and federal law enforcement.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5602 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. Section 1 of the bill contains the short title, the “Domestic Terrorism Prevention Act of 2020”.

Sec. 2. Findings. Section 2 of the bill makes a number of findings related to the significant domestic terrorism threat facing the United States, including that white supremacists and other far-right-wing extremists are the most significant domestic terrorism threat facing the country.

Sec. 3. Definitions. Section 3 of the bill defines several terms, including “domestic terrorism,” which means “activities that” (1) “involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;” (2) “appear to be intended . . . to intimidate or 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;” and (3) “occur primarily within the territorial jurisdiction of the United States”; and excludes acts perpetrated by individuals associated with or inspired by foreign terrorist organizations.

Sec. 4. Offices to Combat Domestic Terrorism. Section 4 of the bill authorizes, for ten years, domestic terrorism offices within the Office of Intelligence and Analysis of DHS, the Counterterrorism Section of the National Security Division of DOJ, and the Counterterrorism Division of the FBI. Collectively, the offices are responsible for monitoring, analyzing, investigating, and prosecuting domestic terrorism. The Secretary of Homeland Security, the Attorney General, and the FBI Director must each ensure that the authorized offices are adequately staffed to perform their required duties, including at least one staffer dedicated to ensuring compliance with civil rights and civil liberties laws and regulations. All staff must undergo annual anti-bias training.

This section also requires these offices to issue biannual reports to the House and Senate Judiciary, Homeland Security, and Intelligence Committees that assess the domestic terrorism threat posed by white supremacists and neo-Nazis (including white supremacist and neo-Nazi infiltration of Federal, State, and local law enforcement agencies and the uniformed services); analyze domestic terrorism incidents that occurred in the previous six months; and provide transparency through a quantitative analysis of domestic terrorism-related assessments, investigations, incidents, arrests, indictments, prosecutions, convictions, and weapons recoveries, as well as an explanation of each individual case that progressed through more than one of those stages.

This section clarifies that all hate crime incidents must be reviewed to determine whether an incident also constitutes a domestic terrorism-related incident. The joint report must be unclassified to the greatest extent possible, with a classified annex only if necessary. The unclassified portion of the joint report must be made available to the public online. If any provision is duplicative of another reporting provision already in law, the agencies shall provide for the most extensive reporting analysis.

Additionally, this section codifies the Domestic Terrorism Executive Committee, which must meet at least four times per year to coordinate with United States Attorneys and other public safety officials to promote information sharing and ensure an effective, responsive, and organized joint effort to combat domestic terrorism.

Finally, this section requires the DHS, DOJ, and FBI domestic terrorism offices to focus their limited resources on the most significant domestic terrorism threats, as determined by the number of domestic-terrorism-related incidents included in the joint report.

Sec. 5. Training to Combat Domestic Terrorism. Section 5 of the bill requires the Secretary of Homeland Security, the Attorney General, and the FBI Director to review the anti-terrorism training and resource programs that are provided by their respective agencies to Federal, State, local, and tribal law enforcement agencies (including the State and Local Anti-Terrorism Program, funded by DOJ's Bureau of Justice Assistance) and ensure that such programs include training and resources to assist law enforcement agencies in understanding, detecting, deterring, and investigating acts of domestic terrorism and white supremacist and neo-Nazi infiltration of law enforcement and corrections agencies.

The training must focus on the most significant domestic terrorism threats, as determined by the joint report, and individuals providing the training must have expertise in domestic terrorism and relevant academic, law enforcement, or other community-based experience. Additionally, the Secretary of Homeland Security, the Attorney General, and the FBI Director must each submit a biannual report to the House and Senate Judiciary, Homeland Security, and Intelligence Committees on the training implemented by their respective agencies, including copies of all training materials used and the names and qualifications of the individuals who provide the training. The reports must be unclassified to the greatest extent possible, with a classified annex only if necessary. The unclassified portion of the reports must be made available to the public online.

Sec. 6. Interagency Task Force. Section 6 of the bill directs, within 180 days, the Secretary of Homeland Security, the Attorney General, and the FBI Director, along with the Secretary of Defense, to establish an interagency task force to combat white supremacist and neo-Nazi infiltration of the uniformed services and federal law enforcement. The task force must report on its findings and response to the House and Senate Judiciary, Homeland Security, Intelligence, and Armed Services Committees within a year of its establishment. The report must be unclassified to the greatest extent possible, with a classified annex only if necessary. The unclassified portion of the report must be made available to the public online.

Sec. 7. Department for Justice Support for Hate Crime Incidents with a Nexus to Domestic Terrorism. Section 7 of the bill provides the DOJ's Community Relations Service the ability to offer support to communities where DOJ has brought charges in a hate crime incident that has a nexus to domestic terrorism and directs the FBI to assign a special agent or hate crimes liaison to each FBI field office to investigate hate crime incidents with a nexus to domestic terrorism.

Sec. 8. Authorization of Appropriations. Section 8 of the bill authorizes such sums as necessary to be appropriated to DHS, DOJ, the FBI, and DoD to carry out these requirements.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

* * * * *

CHAPTER 13—CIVIL RIGHTS

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§ 249. Hate crime acts

(a) IN GENERAL.—

(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.—Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

(i) death results from the offense; or

(ii) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.—

(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person—

(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

- (I) death results from the offense; or
- (II) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(B) CIRCUMSTANCES DESCRIBED.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

(I) across a State line or national border; or

(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, dangerous weapon, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

(iv) the conduct described in subparagraph (A)—

(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

(II) otherwise affects interstate or foreign commerce.

(3) OFFENSES OCCURRING IN THE SPECIAL MARITIME OR TERRITORIAL JURISDICTION OF THE UNITED STATES.—Whoever, within the special maritime or territorial jurisdiction of the United States, engages in conduct described in paragraph (1) or in paragraph (2)(A) (without regard to whether that conduct occurred in a circumstance described in paragraph (2)(B)) shall be subject to the same penalties as prescribed in those paragraphs.

(4) GUIDELINES.—All prosecutions conducted by the United States under this section shall be undertaken pursuant to guidelines issued by the Attorney General, or the designee of the Attorney General, to be included in the United States Attorneys' Manual that shall establish neutral and objective criteria for determining whether a crime was committed because of the actual or perceived status of any person.

(b) CERTIFICATION REQUIREMENT.—

(1) IN GENERAL.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or a designee, that—

(A) the State does not have jurisdiction;

(B) the State has requested that the Federal Government assume jurisdiction;

(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or

(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(2) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(c) **DEFINITIONS.**—In this section—

(1) the term “bodily injury” has the meaning given such term in section 1365(h)(4) of this title, but does not include solely emotional or psychological harm to the victim;

(2) the term “explosive or incendiary device” has the meaning given such term in section 232 of this title;

(3) the term “firearm” has the meaning given such term in section 921(a) of this title;

(4) the term “gender identity” means actual or perceived gender-related characteristics; and

(5) the term “State” includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.

(d) **STATUTE OF LIMITATIONS.**—

(1) **OFFENSES NOT RESULTING IN DEATH.**—Except as provided in paragraph (2), no person shall be prosecuted, tried, or punished for any offense under this section unless the indictment for such offense is found, or the information for such offense is instituted, not later than 7 years after the date on which the offense was committed.

(2) **DEATH RESULTING OFFENSES.**—An indictment or information alleging that an offense under this section resulted in death may be found or instituted at any time without limitation.

(e) **FEDERAL BUREAU OF INVESTIGATION.**—*The Attorney General, acting through the Director of the Federal Bureau of Investigation, shall assign a special agent or hate crimes liaison to each field office of the Federal Bureau of Investigation to investigate hate crimes incidents with a nexus to domestic terrorism (as such term is defined in section 3 of the Domestic Terrorism Prevention Act of 2020).*

COMMITTEE CORRESPONDENCE

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMANMIKE ROGERS, ALABAMA
RANKING MEMBER

One Hundred Sixteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

September 16, 2020

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

I write to you regarding H.R. 5602, the "Domestic Terrorism Prevention Act of 2020."

H.R. 5602 contains provisions that fall within the jurisdiction of the Committee on Homeland Security. I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner and, accordingly, I will not seek a sequential referral of the bill. However, agreeing to waive consideration of this bill should not be construed as the Committee on Homeland Security waiving, altering, or otherwise affecting its jurisdiction over subject matters contained in the bill which fall within its Rule X jurisdiction.

Further, I request your support for the appointment of Homeland Security conferees during any House-Senate conference convened on this or similar legislation. I also ask that a copy of this letter and your response be included in the legislative report on H.R. 5602 and in the *Congressional Record* during floor consideration of this bill.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

Handwritten signature of Bennie G. Thompson in black ink.

Bennie G. Thompson
Chairman

cc: The Honorable Nancy Pelosi, Speaker
The Honorable Michael Rogers, Ranking Member
The Honorable Tom Wickham, Parliamentarian

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Sixteenth Congress

September 18, 2020

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
H2-176 Ford House Office Building
Washington, DC 20515

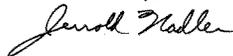
Dear Chairman Thompson:

I am writing to you concerning H.R.5602, the "Domestic Terrorism Prevention Act of 2020."

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Homeland Security. I acknowledge that your Committee will not formally consider H.R. 5602 and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in H.R. 5602 which fall within your Committee's Rule X jurisdiction.

I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,



Jerrold Nadler
Chairman

c: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary
The Honorable Thomas J. Wickham, Jr., Parliamentarian
The Honorable Mike Rogers, Ranking Member, Committee on Homeland Security