

Written Testimony of

Michael German
Fellow

Brennan Center for Justice
at New York University Law School

Hearing: Domestic Extremism in America:
Examining White Supremacist Violence After
Recent Attacks

Before the United States Senate
Committee on Homeland Security and Government
Affairs

Thursday, June 9, 2022

Chair Peters, Ranking Member Portman, and members of the Committee, thank you for inviting me to testify regarding white supremacist violence following the deadly attack on the Tops Friendly Market in Buffalo, New York this May. For too long, law enforcement has deprioritized investigations into white supremacist and far-right militant violence, despite the deadly results. While recent racist attacks have raised public awareness and galvanized Congress to act, the nature and scope of the problem must be better understood in order for effective reforms to be established. The Brennan Center has published four reports describing intelligence abuses and deficiencies in the law enforcement response to white supremacist and far-right militant violence over the last several years that contain detailed recommendations for reform, which I will summarize below.¹ I appreciate the attention this committee is focusing on this issue and submit this statement to aid your efforts.

The Great Replacement Theory and White Supremacist Violence

The Buffalo attack, which left 10 people dead, was explicitly intended to intimidate and coerce the Black community in New York and across the nation, and therefore clearly meets the statutory definition of domestic terrorism passed by Congress in 2001.² It followed previous mass shootings by avowed white supremacists who are often called “lone wolves,” including a 2019 attack targeting the Latinx community in El Paso, Texas, which killed 23 people, and the 2018 attack on the Jewish community in Pittsburgh, Pennsylvania that killed 11 people. Our sympathies are with the survivors, their families, and all communities victimized by white supremacist and far-right militant violence.

Each of these recent white supremacist mass killers allegedly made prior references to the “great replacement” in statements posted on various online platforms. The “great replacement,” sometimes also called “white genocide,” is a racist and anti-Semitic conspiracy theory that claims that there is a leftist (or sometimes Jewish) plot to systematically displace white Americans in the United States through non-white immigration, race mixing, and increased birth rates in communities of color. It is an old concept that has animated the global white supremacist movement for decades, as it frames white people as victims in need of protection and urges preventative action – conveniently characterized as defensive rather than offensive – to protect white social, political, and economic dominance.³ It

serves to allow followers who are inclined to commit offensive violence against innocents to characterize themselves as honorable defenders of their people rather than criminals.

The “great replacement” became a topic of mainstream media interest when white supremacists marching at the start of the violent 2017 Unite the Right rally in Charlottesville, VA in 2017 were filmed chanting “Jews will not replace us.”⁴ And though the FBI and Justice Department regard white supremacist violence as domestic terrorism, the great replacement theory and white supremacist violence are and always have been international in scope. An Australian white supremacist who in 2018 attacked a mosque in Christchurch, New Zealand killing 50 people titled his manifesto, “The Great Replacement.” It referenced a 2015 white supremacist attack against a Black church in Charleston, South Carolina and a 2011 white supremacist mass killing in Norway as inspiration. The El Paso and Buffalo shooters modeled their attacks on the Christchurch mass shooting and wrote their own manifestos cribbing heavily from the Christchurch attacker’s.

This evidence suggests violent white supremacists are not always “lone wolves,” as they are habitually characterized by law enforcement and the media. They often collaborate with like-minded individuals, learn from studying previous attacks, and seek to inspire others by issuing public statements paying homage to one other as martyrs to the cause. When I was working undercover in the white supremacist movement, its leaders instructed us to employ what they called “lone wolf” tactics when committing criminal acts, as part of a broader “leaderless resistance” strategy.⁵ The strategy directed individuals or small cells to separate themselves from any larger white supremacist group before committing an attack to prevent the government from lodging conspiracy charges that could destabilize the larger movement. Individuals or small cells that properly utilize this strategy can make it impossible for law enforcement to prosecute a broader conspiracy relative to any particular criminal act. But that doesn’t mean that law enforcement can’t learn important details from these investigations that will be useful to anticipate the next attack.

Though the Buffalo shooter was initially called a lone wolf, more recent media reports indicate that investigators are now seeking information about at least six people who he made aware of his plans prior to the attack, including a former

federal agent. Fifteen people accepted his invitation to read his manifesto and watch his livestream of the attack in a Discord chatroom. The shooter's online diary also claimed someone he called "the Sandman" provided assistance in selecting the weapon he should purchase for the task.⁶

But the great replacement theory and the fear of demographic change is not only shared among violent white supremacists. A French white nationalist, Renaud Camus, wrote a book titled "The Great Replacement," claiming there was a globalist plot to replace the white population of France with Muslim immigrants. Camus has repeatedly and publicly disavowed support for violence, however.⁷ The number of non-violent white supremacists that traffic in racist conspiracy theories far exceeds the number who commit violence in furtherance of them. Moreover, an Associated Press/NORC Center for Public Affairs poll conducted before the Buffalo shooting indicated that almost one-third of Americans agreed with the statement that "a group of people is trying to replace native-born Americans with immigrants for electoral gains." Twenty-nine percent of Americans believed immigration increases are "leading to native-born Americans losing economic, political, and cultural influence," according to the poll.⁸

That these core tenets of the "replacement theory" are so widely believed should not be surprising, as politicians and media pundits have long exploited racial resentments and public fears of demographic change to sway voters and build an audience. Back in 2006, for instance, Fox News host John Gibson ran a segment bemoaning a news report that nearly half of the children in the U.S. under five years of age were non-white, and that the U.S. population was projected to be majority Hispanic within twenty-five years. He urged non-Hispanic people to "make more babies."⁹ Fox News hosts have continued to promote these ideas ever since. A recent Yahoo/YouGov poll found that 54 percent of Fox News viewers believe that "a group of people in this country are trying to replace native-born Americans with immigrants and people of color who share their political views."¹⁰

Even within government, white supremacist beliefs are distressingly widespread. Members of Congress and state legislatures have increasingly promoted the types of conspiracy theories discussed above, and even participated in white supremacist events.¹¹ Our immigration policies have long been influenced by racial bias.¹² Law enforcement and the military have acknowledged infiltration of their ranks by white supremacists and far-right militants. At some point we must acknowledge that

white supremacy is not an “extremist” belief system, but instead far too mainstream. It is particularly dangerous when authority figures promote conspiracy theories because individuals hearing these messages may interpret it as government authorization to act in violation of the law.

Social Media, Terrorism Prevention, and Flawed Theories of Radicalization

Unfortunately, counterterrorism efforts since the al Qaeda attacks on 9/11 have focused on a discredited theory of terrorist radicalization that posits that the exposure to and adoption of radical ideas is a reliable predictor of terrorist violence.¹³ This theory has long been disproven through empirical research, but the FBI and its law enforcement and intelligence partners cling to a terrorism prevention strategy based on its flawed premise, because it justifies broad and intrusive investigative and intelligence collection authorities.¹⁴ The prevention strategy relies on massive data collection activities that infringe on all Americans’ privacy, countering violent extremism programs that label entire communities as suspect, and “see something, say something” programs that spread mutual suspicion and animosity, dividing Americans against each other. And crucially, there isn’t any evidence they work to prevent terrorist attacks.

Yet after each failure, the FBI doubles down on the flawed methodology. Though FBI and Department of Homeland Security analysts and other law enforcement officials issued timely warnings about far-right militants who had posted on social media calls for violence at the Capitol on January 6, 2021, FBI, DHS, and Capitol Police leaders ignored them.¹⁵ But after the attack, the FBI invested another \$27 million to conduct more monitoring of social media to detect potential threats—as if the problem had been insufficient monitoring of social media rather than a failure of the FBI to respond to threats unfolding before in plain view.¹⁶ This additional monitoring wasn’t helpful in preventing the Buffalo shooting, or the hundreds of other mass shootings that have taken place in the U.S. since that contract was signed.

It seems intuitive that effective social media monitoring might provide important clues that could help law enforcement anticipate and prevent an attack. After all, the attackers in Buffalo, Pittsburgh, and El Paso all gained access to white supremacist texts online and expressed their hateful and violent intentions on various social media platforms. If someone had reported this online activity to law enforcement, it is presumed the police could have acted to prevent the attack. But as discussed

above, racist conspiracy theories like the “great replacement” are commonplace, not just on social media but in mainstream political discourse. The head of FBI counterterrorism explained her failure to act on a January 5th warning about a social media posting call for “war” at the Capitol on January 6th by stating that, “Thousands and thousands of tips come in just like this one every day. And not all of those get elevated to senior leadership.”¹⁷ Broadscale social media monitoring identifies so many false positives that it drowns out true threats and overwhelms law enforcement responders, just as false fire alarms tend to dull firefighters’ response times.

In fact, this dulling effect may have been a factor in the deficient law enforcement response to earlier warnings regarding the alleged Buffalo shooter. When concerned individuals at his school reported his threatening to engage in a school shooting, law enforcement reportedly had him hospitalized for a psychological evaluation but did little to follow up.¹⁸ The tendency for law enforcement to downplay white supremacist violence as a threat may have played a role as well. One can imagine that the law enforcement response may have been more aggressive if the Buffalo shooter had instead expressed support for ISIS or al Qaeda.

Moreover, social media has proven to be a double-edged sword for white supremacists and far-right militants. While it allows them to spread their message and establish like-minded communities, it also leaves a permanent record of their activities that often is used against them in criminal and civil trials. When popular social media companies have barred white supremacist content for violating terms of service regarding racist and threatening content, those who post such content moved to less-known outlets that sometimes cater to these groups. White supremacists and far-right militants formed communities on Discord, Gab, and Parler, for instance, all of which suffered significant data breaches that exposed this content.¹⁹ The leaked Discord chats of the organizers of the violent Unite the Right rally played a prominent, and likely decisive role in a civil action that held them liable for \$26 million in damages.²⁰

If law enforcement is to be more effective in addressing white supremacist violence, it is essential for law enforcement to better understand how the violent element within the white supremacist movement networks and operates. This requires focusing on the tactics violent white supremacists employ rather than mass surveillance of ideological groups. The FBI should account for, catalog, and

investigate all incidents of white supremacist and far-right militant violence to build an evidence-driven understanding of these crimes, their instrumentalities, and the networks that aid, abet, and perpetrate them. It is also important to recognize that while white supremacist are the most violent and deadly among the perpetrators the FBI categorizes as domestic terrorists, they make up only a small subset of the mass shootings that occur each year. And these mass killings are only a small subset of the total number of U.S. homicides. While the total number of murders each year significantly lower than rates seen in the 1980s, the murder clearance rate has fallen too, to a historic low of just over 50 percent in 2020.²¹ Any terrorism or targeted violence prevention strategy has to recognize that failing to solve violent crimes undermines the overall mission of protecting public safety.

Preventing Another Failure

Fortunately, Congress has already done the work necessary to provide federal law enforcement with all the statutory tools it needs to properly address white supremacist and far-right militant violence. It passed 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 to prosecute twice as many domestic terrorism cases as international terrorism cases, using only one-fifth of the investigative resources.²² 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, anti-fascists, and most recently revealed, Concerned Women of America.²³ The Justice Department's failed attempt to prosecute more than 200 anti-Trump activists who happened to be near locations 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.²⁴

The DHS Office of Intelligence and Analysis has also come under withering

criticism from a number of sources, both internal and external, for the poor quality of its reporting, its targeting of journalists and protesters, and attempts by high-level officials to politicize its threat assessments.²⁵ A whistleblower complaint by the former acting head of I&A alleged that DHS leaders asked him to alter intelligence assessments to downplay the threat of white supremacist violence and amplify reporting on anti-fascists and anarchists to match Trump administration rhetoric.²⁶

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. A May 2021 report required by the National Defense Authorization Act of 2020 confirmed that the FBI does not track the annual incidents of lethal and non-lethal violence committed by groups it categorizes as “domestic violent extremists.”²⁷ 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.²⁸ 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.²⁹ 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 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.

Indeed, the Justice Department has been using these tools to charge more than 846 people with crimes related to the January 6th attack, including federal crimes of terrorism.³⁰ Yet, with an estimated 2,500 individuals having participated in the attack, there is still much to be done. Judges presiding over the Capitol breach cases have criticized the Justice Department for their charging decisions, particularly for allowing misdemeanor pleas that limit the sentences they could impose.³¹ And militant groups like the Proud Boys have reorganized since January 6th and continue to menace local communities across the U.S. with little intervention from law enforcement.³² Most shockingly, militants involved in the January 6th attack continue to engage in public violence, yet federal prosecutors have not brought new charges.³³

The Biden administration issued the government's first national strategy on countering domestic terrorism. It recognized that white supremacist and far-right militants posed the "most persistent and violent threats," and highlighted the need for better data to facilitate a comprehensive assessment of the domestic terrorism threat.³⁴ Yet the problem is far from solved. What's needed, and what the Justice Department has so far refused to produce, is a comprehensive national strategy specifically designed specifically to address white supremacist and far-right militant violence, beginning with the collection of accurate data about these attacks across all its programs. Absent such an approach, there will continue to be failure to properly prioritize domestic terrorism resources.

Ironically, the multiple pathways Congress has provided to prosecute white supremacist and far-right militant violence inadvertently have given the Justice Department another way to obscure the true nature of the threat in its reporting. If a white supremacist murdered 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. But it often puts white supremacist violence into lower-prioritized programs.

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 such 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 even acknowledge that hate crimes occur in their jurisdiction in federal reporting.³⁵ Crime victim surveys suggest that 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.³⁶

The Biden domestic terrorism strategy recognizes the need for collaboration between federal domestic terrorism prosecutors and hate crimes prosecutors, and the FBI created fusion cells to link domestic terrorism and hate crimes investigations long before the January 6th attack.³⁷ But the Justice Department has not changed its policy of deferring hate crimes investigations to local authorities. It is unclear in the Justice Department guidance implementing the domestic terrorism strategy whether hate crimes prosecuted locally will be accounted for, and of course, it is impossible to count cases not investigated or charged as hate crimes because of a lack of interest, rather than lack of evidence.³⁸

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.³⁹ 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.⁴⁰ 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 in order to 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 at 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.

I have to say these violent crimes prosecutions *probably* do not appear in Justice Department domestic terrorism data because the Justice Department redacts the docket numbers when it discloses non-sensitive prosecution data to the public, making it impossible to cross-check the statistical accomplishments it claims against case records. The Brennan Center sued the Justice Department to obtain these docket numbers in terrorism prosecutions so the public could better understand how the government uses its counterterrorism authorities.⁴¹ Though the Justice Department acknowledged that it used this data in reporting to Congress regarding its terrorism prosecutions, in litigation it argued that it needed to withhold docket numbers because a substantial number of the defendants convicted in cases it reports as domestic terrorism prosecutions are not actually terrorists. In contrast, the Department routinely releases defendant information in prosecutions that it considers to be linked to international terrorism, even where the crimes charged bear no clear relation to terrorism. The judge hearing the case wrote that, “the public has an interest in knowing that the [Justice Department’s prosecutions] database contains inaccuracies and that those inaccuracies may have resulted in erroneous public reporting from the Department.”⁴²

Without a national strategy focused on documenting the full scope of white supremacist and far-right violence, cases involving these 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.⁴³ 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, and pursuing state charges may have been an appropriate choice in these cases. But the Justice Department does not properly account for them as potential acts of domestic terrorism that need to be recorded in threat assessments that inform a national strategy. The failure to acknowledge the organized and interstate nature of violent white supremacist and far-right militant groups forfeits intelligence that could be used to prepare for and perhaps prevent future attacks.

The FBI has also thwarted congressional demands for data regarding its domestic terrorism program. In 2017, Sen. Durbin introduced the Domestic Terrorism Prevention Act, which would have required the FBI to produce data regarding how it used its domestic terrorism resources.⁴⁴ The bill sought data documenting the number of terrorist incidents and corresponding fatalities, and the number of investigations and prosecutions for each of the FBI's 11 domestic terrorism categories, which included white supremacists, anarchists, environmentalists, far-right militants, and Black Identity Extremists, and others. This data would allow Congress to determine if the FBI was disproportionately investigating categories that produced fewer fatal attacks.

Though the bill had not passed yet, 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 (RMVE) category, and the far-right militia and the anarchist categories into a single Anti-Government and Anti-Authority Violent Extremist category (AGAAVE). These groupings make little operational sense. Subjects of an investigation of white supremacists would rarely overlap or work together with subjects of an investigation into Black Identity Extremists, and likewise for militias and anarchists. Some Proud Boys chapters are openly white supremacist, while others disavow racism, leaving it unclear if different FBI field offices will categorize cases against the same group differently.⁴⁵ What these misguided groupings would appear to accomplish, however, as Sen. Durbin suggested in a letter to the Justice Department, is obscuring the comparative data his bill sought.⁴⁶ These groupings confuse which groups are receiving investigative attention, as the relatively high rate of violence committed by white supremacists can be used to justify resources for the RMVE category, which can then be used to investigate less violent Black extremists. Likewise, the relatively high rate of violence from far-right militants could be used to direct resources to the AGAAVE category, which could then be

used to investigate less-violent anarchists.

Other FBI categories include Animal Rights/Environmental Violent Extremists and Abortion-Related Violent Extremists, which the FBI says includes pro-choice violent extremists. Including these categories among its domestic terrorism program signals to Joint Terrorism Task Force members that they should conduct investigations targeting these groups, despite the fact that there has never been a single homicide committed by pro-choice, animal rights, or environmental activists in the U.S.⁴⁷ The FBI claims its domestic terrorism investigations are focused on violence and not ideology, but it uses ideologies as categories for its domestic terrorism program promotes. The FBI's establishment of these ideological categories was arbitrary, based its own subjective preferences rather than a complete and objective analysis of domestic terrorism incidents that occur in the U.S., which it admitted it does not collect.⁴⁸

Terrorism investigations should be focused where evidence indicates deadly violence is most likely to occur, not distributed among ideological categories that include protest groups and activists that do not regularly commit deadly violence. Some animal rights and environmental activists have engaged in non-violent civil disobedience and damaged property. These lesser crimes should never be mistaken for terrorism, and most often can better be addressed by local law enforcement. The FBI should not be using its domestic terrorism resources and authorities to target non-violent crimes and civil disobedience, particularly when it fails to properly account for and address all the deadly white supremacist and far-right militant violence within its domestic terrorism program.

National Strategy on Countering Domestic Terrorism Helpful But Insufficient

The Biden administration's domestic terrorism strategy is a positive step toward reform, but it is hampered by the FBI's improper categorization scheme. The strategy highlights the fact that white supremacist and far-right militant violence are the most prevalent and most deadly of the domestic terrorism categories, but it had to wrestle with the FBI's language to make its intent clear. It uses the FBI's language identifying "racially and ethnically motivated violent extremists" but then has to add a parenthetical, "(principally those who promote superiority of the white race)" to make clear that it intends the focus of cases in this category to be white supremacists rather than so-called "Black Identity Extremists," which go

unmentioned.⁴⁹ The intelligence community assessment of the domestic terrorism threat that is embedded in the strategy includes a similar caveat, referring to “RMVEs who promote the superiority of the white race” as the most serious trans-national threat. But in describing the most lethal threats, it uses “racially and ethnically motivated violent extremists (RMVEs) and militia violent extremists (MVEs),” adopting the FBI’s revised category that includes groups other than white supremacists, but abandoning the use of the AGAAVE category to focus on one element within it.⁵⁰ These tortured addendums and reductions inject unnecessary confusion that could have been avoided if the FBI had not awkwardly combined dissimilar groups into a single category.

The domestic terrorism strategy also references other “ideologies” that may motivate domestic terrorism and specifically mentions animal rights and environmental activism, reinforcing the perception that domestic terrorism investigators and prosecutors should pursue cases targeting these groups despite the lack of deadly violence attributed to them.⁵¹ The FBI’s establishment of an entire domestic terrorism category focused on animal rights and environmental activism creates a false equivalency with white supremacists and far-right militants that pose significantly more persistent deadly threats.

The FBI has shown a stubborn determination to resist reform efforts and to utilize its domestic terrorism authorities to harass disfavored political activism involving protest activities or non-violent civil disobedience. Compelling FBI managers and Justice Department prosecutors to focus on white supremacist and far-right militant violence they otherwise choose to ignore requires specificity in the language used to set its domestic terrorism strategy, policy, and practices.

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, given the plethora of authorities and resources already available to the Justice Department and FBI. Adding new ones would only 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 all incidents of white supremacist violence across all its investigative programs so it can better understand the true nature and scope of the impact these crimes have on American communities, and provide this information to Congress in a timely and reliable way.

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

The Justice Department and Department of Homeland Security need 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. The language in the strategy needs to be specific in order to compel a focus on this most deadly form of domestic terrorism. Generalized language gives law enforcement agencies room to use resources devoted to domestic terrorism or domestic violent extremism to target groups engaging in protest activities and non-violent civil disobedience rather than deadly violence. This misallocation of resources tends to disproportionately result in investigations targeting communities of color, environmentalists, and anti-racist protesters. 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 each domestic terrorism category, with fewer resources devoted to groups that engage in property crimes like vandalism rather than violence harmful to human life. The FBI should treat all cases in which 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 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 also 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.

5. 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. This strategy could include criminal domestic terrorism investigations, civil actions, and reporting to local prosecutors and police departments for administrative action. A national strategy will ensure that 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, which would require disclosure of such misconduct to defendants in cases in which these law enforcement officers testify as witnesses.

- 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 unidentified 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 where warranted by the officers' conduct; 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. Current racial profiling guidelines issued by the Department of Justice are incomplete, unenforceable, and inapplicable to state and local law

enforcement. Banning racial profiling through comprehensive legislation would mark a significant step toward mitigating the potential harm caused by racist officers undetected within the ranks.

- Strengthen whistleblower protections for FBI employees and other federal law enforcement agents. Employees of the FBI and other federal law enforcement agencies are in the best position to identify waste, fraud, and abuse of authority in the enforcement of the law. Congress should ensure the employees entrusted to protect public safety and national security receive protection for properly reporting internal misconduct, with access to federal courts to vindicate these rights. The Federal Bureau of Investigation Whistleblower Enhancement Act of 2015 could serve as a model for such legislation.

- 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 public safety and the rule of law and threatens social cohesion. Rethinking this problem requires that Congress increase its oversight to reorient the Justice Department's policies and practices to ensure that attention and resources are allocated to those areas where the threat of violence against individuals and communities is the greatest.

¹ Faiza Patel, et. al., *A Course Correction for Homeland Security*, BRENNAN CTR. FOR JUST., April 20, 2022, <https://www.brennancenter.org/our-work/research-reports/course-correction-homeland-security>; Michael German and Sarah Robinson, *Wrong Priorities on Fighting Terrorism*, BRENNAN CTR. FOR JUST., Oct. 2018, available at <https://www.brennancenter.org/our-work/research-reports/wrong-priorities-fighting-terrorism> [hereinafter “WRONG PRIORITIES ON TERROR”]. Michael German and Emmanuel Mauleon, *Fighting Far-Right Violence and Hate Crimes*, BRENNAN CTR. FOR JUST., July 1, 2019, available at <https://www.brennancenter.org/our-work/research-reports/fighting-far-right-violence-and-hate-crimes>; Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, BRENNAN CTR. FOR JUST., August 27, 2020, available at <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>.

² 18 U.S.C. § 2331(5).

³ David Lane, convicted member of the terrorist group The Order, summarized the white supremacist mission statement in 14 words, “we must secure the existence of white people and a future for white children.” See, e.g., George Michael, *David Lane and the Fourteen Words*, TOTALITARIAN MOVEMENTS AND POLITICAL RELIGIONS, Vol. 3, No. 1, 43-61, March 2009, <https://www.tandfonline.com/doi/abs/10.1080/14690760903067986>

⁴ Emma Green, *Why the Charlottesville Marchers Were Obsessed With Jews*, THE ATLANTIC, August 15, 2017, <https://www.theatlantic.com/politics/archive/2017/08/nazis-racism-charlottesville/536928/>.

⁵ George Michael, *This is WAR! Tom Metzger, White Aryan Resistance, and the Lone Wolf Legacy*, FOCUS ON TERRORISM, Vol. 14, 2016, available at: [https://www.researchgate.net/publication/303446060 This is War Tom Metzger White Aryan Resistance and the Lone Wolf Legacy](https://www.researchgate.net/publication/303446060>This_is_War_Tom_Metzger_White_Aryan_Resistance_and_the_Lone_Wolf_Legacy).

⁶ Lou Michel and Dan Herbeck, *Authorities Investigating if Retired Federal Agent Knew of Buffalo Mass Shooting Plans in Advance*, BUFFALO NEWS, May 31, 2022, https://buffalonews.com/news/local/authorities-investigating-if-retired-federal-agent-knew-of-buffalo-mass-shooting-plans-in-advance/article_bd408f18-dd39-11ec-be53-df8fdd095d6f.html.

⁷ See, e.g., Joe Haim and James McAuley, *New Zealand Attacks Offer the Latest Evidence of a Web of Supremacist Extremism*, WASHINGTON POST, March 15, 2019, https://www.washingtonpost.com/world/europe/new-zealand-suspect-inspired-by-far-right-french-intellectual-who-feared-nonwhite-immigration/2019/03/15/8c39fba4-6201-4a8d-99c6-aa42db53d6d3_story.html.

⁸ AP-NORC Center for Public Affairs Research, *Immigration Attitudes and Conspiratorial Thinkers: A Study Issued on the 10th Anniversary of The Associated Press-NORC Center for Public Affairs Research*, May 2022, <https://apnorc.org/projects/immigration-attitudes-and-conspiratorial-thinkers/>.

⁹ Ben Armbruster, *Gibson: “Make More Babies” Because “in Twenty-Five Years... the Majority of the Population is Hispanic*, MEDIA MATTERS FOR AMERICA, May 12, 2006, <https://www.mediamatters.org/fox-nation/gibson-make-more-babies-because-twenty-five-years-majority-population-hispanic>.

¹⁰ Andrew Romano, *Poll: 61% of Trump Voters Agree With Idea Behind ‘Great Replacement’ Theory*, YAHOO NEWS, May 24, 2022, <https://news.yahoo.com/hed-poll-61-of-trump-voters-agree-with-idea-behind-great-replacement-conspiracy-theory-090004062.html>.

¹¹ Erin Mansfield and Candy Woodall, *Republican Politicians All Over the Country Have Repeated the Great Replacement Theory*, USA TODAY, May 29, 2022, <https://www.usatoday.com/story/news/politics/2022/05/29/republicans-great-replacement-theory/9798199002/?gnt-cfr=1>.

¹² Donald S. Dobkin, *Race and the Shaping of U.S. Immigration Policy*, UCLA CHICANA/O LATINA/O LAW REVIEW, 28, (2009), <https://escholarship.org/content/qt2m0272wv/qt2m0272wv.pdf>.

¹³ Faiza Patel, *Rethinking Radicalization*, BRENNAN CTR. FOR JUST., March 8, 2011,

<https://www.brennancenter.org/our-work/research-reports/rethinking-radicalization>.

¹⁴ A recent literature review conducted by researchers at the Center for Information, Technology, and Public Life at the University of North Carolina found that “the term ‘radicalization’ does not serve as a useful analytical frame for studying the spread of far-right and fringe ideas online.” Alice Marwick, et. al., *Far-Right Online Radicalization: A Review of the Literature*, THE BULLETIN OF TECHNOLOGY AND PUBLIC LIFE, May 10, 2022, <https://citap.pubpub.org>.

¹⁵ Hannah Allam, et.al., *Red Flags*, WASHINGTON POST, October 31, 2021,

<https://www.washingtonpost.com/politics/interactive/2021/warnings-jan-6-insurrection/>.

¹⁶ Aaron Schaffer, *The FBI is Spending Millions on Social Media Tracking Software*, WASHINGTON POST, April 5, 2022, <https://www.washingtonpost.com/politics/2022/04/05/fbi-is-spending-millions-social-media-tracking-software/>.

¹⁷ Paul Sonne, Matt Zapotoczky, and Devlin Barrett, *D.C. Guard Chief Says ‘Unusual’ Restrictions Slowed Deployment of Backup During Capitol Riot*, WASHINGTON POST, March 3, 2021,

https://www.washingtonpost.com/national-security/capitol-riot-hearing/2021/03/02/a4867a48-7b81-11eb-85cd-9b7fa90c8873_story.html.

¹⁸ Ashley Southall, et. al., *Before the Massacre, Erratic Behavior and a Chilling Threat*, NEW YORK TIMES, May 15, 2022, <https://www.nytimes.com/2022/05/15/nyregion/gunman-buffalo-shooting-suspect.html>.

¹⁹ Joe Khalili, *Massive Parler Data Leak Exposes Millions of Posts, Messages, and Videos*, TECH RADAR, January 12, 2021, <https://www.techradar.com/news/massive-parler-data-leak-exposes-millions-of-posts-messages-and-videos>;

Nitasha Tiku, *Violent Alt-Right Chats Could Be Key to Charlottesville Lawsuits*, WIRED, August 27, 2017, <https://www.wired.com/story/leaked-alt-right-chat-logs-are-key-to-charlottesville-lawsuits/>;

Kevin Collier and Brandy Zadrozny, *Gab, a Social Platform Favored by the Far Right Says it Was Hacked*, NBC NEWS, March 1, 2021, <https://www.nbcnews.com/tech/security/gab-social-platform-favored-far-right-says-it-was-hacked-n1259156>.

²⁰ Ellie Silverman, et. al., *Spencer, Kessler, Cantwell and Other White Supremacists Found Liable in Deadly Unite the Right Rally*, WASHINGTON POST, November 23, 2021, <https://www.washingtonpost.com/dc-md-va/2021/11/23/charlottesville-verdict-live-updates/>.

²¹ Weihua Li and James Larty, *As Murders Spiked, Police Solved About Half in 2020*, THE MARSHALL PROJECT,

January 12, 2022, <https://www.themarshallproject.org/2022/01/12/as-murders-spiked-police-solved-about-half-in-2020>.

²² WRONG PRIORITIES ON TERROR.

²³ 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>;

Ryan Lovelace, *Grassley Presses FBI to Explain its Monitoring of Conservative Women’s Group*, THE WASHINGTON TIMES, July 26, 2021, <https://www.nytimes.com/2021/01/30/us/politics/trump-right-wing-domestic-terrorism.html>.

²⁴ 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 Protestors*, 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-c1cb691f1402_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>.

²⁵ DHS Office of the General Counsel, *Report on DHS Administrative Review into I&A Open Source Collection and Dissemination Activities During Civil Unrest, Portland, Oregon, June Through July 2020*, DHS, January 6, 2021, <https://s3.documentcloud.org/documents/21074152/dhs-intelligence-internal-review-report-20210930.pdf>; Rep. Adam B. Schiff, chair of the H. Permanent Select Comm. on Intelligence, to Chad F. Wolf, acting secretary of homeland security, and Brian Murphy, acting undersecretary, I&A, July 22, 2020, https://intelligence.house.gov/uploadedfiles/20200722hpsci_chm_letter_to_dhs.pdf; Department of Homeland Security Office of Inspector General, *DHS Actions Related to an I&A Intelligence Product Deviated from Standard Practice*, DHS-OIG, April 26, 2022, <https://www.cnn.com/2022/03/08/politics/dhs-ig-report-threats-intelligence-january-6/index.html>; Shane Harris, *DHS Compiled ‘Intelligence Reports’ on Journalists Who Published Leaked Documents*, Washington Post, July 30, 2020, https://www.washingtonpost.com/national-security/dhs-compiled-intelligence-reports-on-journalists-who-published-leaked-documents/2020/07/30/5be5ec9e-d25b-11ea-9038-af089b63ac21_story.html; Geneva Sands, *Watchdog Finds DHS Identified Threats Prior to January 6 But Did Not Share Intelligence Until After the Attack*, CNN, March 8, 2022, <https://www.cnn.com/2022/03/08/politics/dhs-ig-report-threats-intelligence-january-6/index.html>.

²⁶ Kelly Weill, *Whistleblower: DHS Hyped “Antifa,” Soft-Pedaled White Supremacist Threat*, THE DAILY BEAST, September 9, 2020, <https://www.thedailybeast.com/whistleblower-dhs-hyped-antifa-soft-pedaled-white-supremacist-threat>.

²⁷ Federal Bureau of Investigation & Dept. of Homeland Security, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, May 2021, 21, <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view>.

²⁸ Kate Irby, *White and far-right extremists kill more cops, but FBI tracks black extremists more closely, many worry*, McCLATCHY, Jan. 24, 2018, <https://www.mcclatchydc.com/news/nation-world/national/article196423174.html>.

²⁹ 42 U.S. Code § 1985.

³⁰ Madison Hall, et. al., *At Least 846 People Have Been Charged in the Capitol Insurrection So Far. This Searchable Table Shows Them All*, THE INSIDER, May 23, 2022, <https://www.insider.com/all-the-us-capitol-pro-trump-riot-arrests-charges-names-2021-1>; Clare Hymes and Cassidy MacDonald, *Two Proud Boys Committed ‘Crimes of*

Terrorism,' *Federal Prosecutors Say*, CBS NEWS, Feb. 19, 2021, <https://www.cbsnews.com/news/proud-boys-capitol-riot-terrorism-crimes/>; Cassidy McDonald and Clare Hymes, *Oath Keepers Member Committed 'Crime of Terrorism' in Capitol Riot, Prosecutors Say*, CBS NEWS, Feb. 24, 2021, <https://www.cbsnews.com/news/oath-keepers-jessica-watkins-crime-of-terrorism/>.

³¹ Marshall Cohen, *Top DC Federal Judge Criticizes "Schizophrenic" Justice Department Approach to Jan. 6 Cases*, CNN, Oct. 28, 2021, <https://www.cnn.com/2021/10/28/politics/dc-federal-judge-january-6-cases/index.html>.

³² Tess Owen, *All the Terrible Things Proud Boys Have Done Since Storming the Capitol*, VICE NEWS, June 23, 2021, <https://www.vice.com/en/article/pkb377/all-the-terrible-things-proud-boys-have-done-since-storming-the-capitol>; Katie Shepherd, *Portland Police Stand Down as Proud Boys and Far-Right Militias Flash Guns and Brawl With Antifa Counterprotesters*, WASHINGTON POST, Aug. 22, 2022, <https://www.washingtonpost.com/nation/2020/08/22/portland-police-far-right-protest/>.

³³ Amy Goodman, *Proud Boys & Far-Right Groups Tied to Jan. 6 Attack Reporters & Others at Anti-Mask, Anti-Vax Rally*, DEMOCRACY NOW!, Aug. 23, 2021, https://www.democracynow.org/2021/8/23/anti_vaccine_protest_los_angeles; Trevor Aaronson, *Proud Boy Admits False Statements to FBI, But Prosecutors Haven't Charged Him With a Felony*, THE INTERCEPT, Jan. 3, 2022, <https://theintercept.com/2022/01/03/capitol-riot-january-6-proud-boys-fbi/>.

³⁴ *National Strategy for Countering Domestic Terrorism*, White House National Security Council, June 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>.

³⁵ 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).

³⁶ 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>.

³⁷ Statement for the Record of Michael McGarrity and Calvin Shivers, *Confronting Violent White Supremacy (Part II): Adequacy of the Federal Response—Hearing before the Subcommittee on Civil Rights and Civil Liberties of the Committee on Oversight and Reform, House of Representatives, 116th Cong. 22* (2019), <https://www.fbi.gov/news/testimony/confronting-white-supremacy>.

³⁸ Office of the Deputy Attorney General, Dept. of Justice, *Guidance Regarding Investigations and Cases Related to Domestic Violent Extremism*, March 8, 2021, https://www.scribd.com/document/507550668/DVE-Guidance#fullscreen&from_embed.

³⁹ 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>.

⁴⁰ Isabel Rosales, *39 Suspected Gang Members Charged in Major Drug, Gun Trafficking Investigation in Pasco*, ABC ACTION NEWS, Nov. 15, 2018, <https://www.abcactionnews.com/news/region-pasco/39-suspected-gang-members-charged-in-major-drug-gun-trafficking-investigation-in-pasco>.

⁴¹ 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 SCHOOL OF LAW et al v. UNITED STATES DEPARTMENT OF JUSTICE.

⁴² Memorandum Opinion and Order, filed Jul. 1, 2021, p. 28, 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 SCHOOL OF LAW et al v. UNITED STATES DEPARTMENT OF JUSTICE.

⁴³ Sean Emery, *Blaze Bernstein Murder Case: Samuel Woodward Charged With a Hate Crime, DA Says*, O.C. REGISTER, Aug. 2, 2018, <https://www.oregionlive.com/2018/08/02/samuel-woodward-will-face-a-hate-crime-enhancement-in-the-blaze-bernstein-murder-case/>; David K. Li, *White Supremacists Pleads Guilty to Race-Hate Murder of Black Man in New York*, NBC NEWS, Jan. 23, 2019, <https://www.nbcnews.com/news/us-news/white-supremacist-pleads-guilty-race-hate-murder-black-man-new-n961731>; Aimee Green, *Russell Couturier: racial Bias Murder Conviction Could Be the First in 30 Years in Oregon*, OREGONIAN, Mar. 19, 2019, <https://www.oregonlive.com/news/2019/03/jury-finds-russell-courtier-guilty-of-murdering-black-teen-with-jeep.html>.

⁴⁴ The Domestic Terrorism Prevention Act of 2017, S. 2148.

⁴⁵ See for example, Kahron Spearman, *Yes, Of Course the Proud Boys are White Nationalists, Here's Why*, DAILY DOT, Oct. 9, 2020, <https://www.dailydot.com/debug/proud-boys-white-nationalists/>; Will Carless, *Proud Boys Splintering After Capitol Riot, Will More Radical Factions Emerge?*, G, Feb. 12, 2021, <https://www.usatoday.com/story/news/nation/2021/02/12/proud-boys-splintering-after-capitol-riot-revelations-leader/6709017002/>.

⁴⁶ 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>.

⁴⁷ Federal Bureau of Investigation and Department of Homeland Security, Strategic Intelligence Assessment and Data on Domestic Terrorism, May 2021, https://www.dni.gov/files/NCTC/documents/news_documents/ndaa-domestic-terrorism-strategic-report-051421.pdf.

⁴⁸ *Id.*, at 21.

⁴⁹ The National Security Council, *National Strategy for Countering Domestic Terrorism*, 6, June 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>.

⁵⁰ *Id.*, at 10.

⁵¹ *Id.*, at 9.