



**Written Testimony of Maya M. Berry
Executive Director
Arab American Institute**

**“Domestic Terrorism and Violent Extremism:
Examining the Threat of Racially, Ethnically, Religiously,
and Politically Motivated Attacks, Part II”**

**Hearing Before the U.S. Senate Committee on
Homeland Security & Governmental Affairs**

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Chairman Peters, Ranking Member Portman, and members of the Committee, thank you convening today’s hearing and for including our perspective. My name is Maya Berry and I am the Executive Director of the Arab American Institute (AAI), a national nonpartisan, civil rights advocacy organization that represents the interests of approximately 3.7 million Arab Americans. My testimony offers the perspective of both a community that has been directly impacted by bias-motivated attacks, as well as an organization that provides research and analysis on these very issues. This intersection is critical to both understanding and improving the response to racially, ethnically, religiously, and politically motivated attacks.

It is a core belief of the Arab American Institute that for our country to live up to its ideals, we must ensure strong civil rights *and* civil liberties protections for all. For more than thirty-five years, AAI has led on efforts to improve hate crime data collection and reporting¹, combat discrimination and bias, strengthen civil liberties protections, support efforts to improve government oversight and accountability, and ensure the voices of those directly impacted by hate violence and discriminatory government policies and programs are uplifted. Today, nearly a month away from the twentieth anniversary of the terrorist attacks of September 11th – this work remains just as important.

The threat of domestic terrorism is not new. This testimony primarily focuses on the threat of white supremacist violence – a threat which FBI Director Christopher Wray has testified is the “top threat we face from Domestic Violent Extremists.”²

¹ *Ethnically Motivated Violence Against Arab-Americans: Hearing Before the H. Subcomm. On Criminal Justice, 99th Cong.* (July 1986) (statement by Dr. James Zogby, Executive Director, Arab American Institute)

² *Oversight of the Federal Bureau of Investigation: the January 6 Insurrection, Domestic Terrorism, and Other Threats: Hearing Before the Senate Committee on the Judiciary, 117th Cong.* (March 2021) (Statement of Christopher A. Wray, Director, Federal Bureau of Investigation).

White supremacist violence is rooted in the deepest, darkest chapters of our nation's history. There are ample historical antecedents, including lynchings and other immeasurable atrocities that remain largely unacknowledged.³

The resurgence of white supremacist violence over the past decade has devastated communities. White supremacists have targeted communities and government institutions ranging from the attack on the Oak Creek Gurdwara in 2012 which took the lives of six individuals; the shooting at the Mother Emanuel AME Church in Charleston, South Carolina which took the lives of nine worshipers in 2015; the violence that erupted in Charlottesville, Virginia in 2017 which took the life of one and injured many others; the shooting at the Tree of Life Synagogue in Pittsburgh, Pennsylvania which took the lives of 11 people in 2018; the massacre at an El Paso Wal Mart in 2019 which took the lives of 23 people; a plot to kidnap Michigan Governor Gretchen Whitmer in 2020; and the violent insurrection on our very Capitol that put the lives of members of Congress and their staff at risk just months ago on January 6th. These incidents are just a snapshot of the terror that violent white supremacists have unfolded on our communities.

The federal government first directly responded to the scourge of white supremacist violence by passing The Enforcement Act of 1870, also known as the “Ku Klux Klan Act” – the first of three bills passed during the Reconstruction Era to protect formerly enslaved African Americans from acts of violence and intimidation at the hands of the KKK.⁴ Indeed, passing and enforcing hate crime laws was the federal government's response to states who failed to protect the civil rights of their residents. Hate crime laws have evolved over time and – because of broad bipartisan and near unanimous support from Congress - now include the COVID-19 Hate Crime Act and the accompanying Khalid Jabara and Heather Heyer NO HATE Act Amendment.⁵

The most recent hate crime data from the Federal Bureau of Investigation's Uniform Crime Reporting Program demonstrate a troubling trend of increased violent offenses. The *2019 Hate Crime Statistics* show the deadliest year on record for reported hate crimes – for the second year in a row.⁶ Though notoriously underreported, over the past six years, the FBI statistics have shown alarming spikes or steady increases in anti-Black⁷, anti-Asian⁸, anti-Arab⁹, anti-Hispanic or Latino¹⁰,

³ See generally Equal Justice Initiative, *Lynching in America: Confronting the Legacy of Racial Terror* (3rd ed. 2017), <https://lynchinginamerica.eji.org/report>.

⁴ The Enforcement Act of 1870, 2 ch. 114, 16 Stat. 140 (1870). Gregory L. Padgett, *Racially Motivated Violence and Intimidation: Inadequate State Enforcement and Civil Rights Remedies*, 75 J. Crim. L. & Criminology 103, 120 n. 124 (1984), <https://pdfs.semanticscholar.org/ebd7/d3149c67d92518e4bdc76fedd70c64ab4fe9.pdf>.

⁵ *Bill Signing: S. 937*, The White House (May 20, 2021), www.whitehouse.gov/briefing-room/statements-releases/2021/05/20/bill-signing-s-937/.

⁶ *AAI Statement on FBI's 2019 Hate Crime Data Release*, Arab American Institute (Nov. 20, 2020), www.aaiusa.org/library/aai-statement-on-fbis-2019-hate-crime-data-release.

⁷ *Table 1, Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2017* ucr.fbi.gov/hate-crime/2017/topic-pages/tables/table-1.xls.

⁸ *U.S. Attorney's Office And FBI Condemn Acts Of Violence And Discrimination Targeting Asian Americans*, Department of Justice (Mar. 25, 2021), www.justice.gov/usao-nv/pr/us-attorneys-office-and-fbi-condemn-acts-violence-and-discrimination-targeting-asian.

⁹ *Table 1, Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2017* ucr.fbi.gov/hate-crime/2017/topic-pages/tables/table-1.xls.

¹⁰ *Table 1, Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2019* ucr.fbi.gov/hate-crime/2019/topic-pages/tables/table-1.xls.

anti-Jewish¹¹, anti-Muslim¹², and anti-Sikh¹³ hate crimes. While the subject of this hearing focuses on racially, ethnically, and religiously motivated attacks, we would be remiss to not mention the increases in hate crimes against other protected categories, including anti-LGBTQ hate crimes.¹⁴

While the present threat of white supremacist violence is not without precedent, the policy debate over how to address this threat has begun shifting from the paradigm of civil rights enforcement to a national security framework. As an organization that represents a securitized community¹⁵, we believe it is imperative to ensure impacted communities are protected through rigorous civil rights enforcement and not further harmed by historically flawed and discriminatory national security policies.

From the incarceration of Japanese Americans during World War II to the Trump Administration's Muslim Ban – our country has justified sweeping constraints on civil rights and civil liberties in the name of national security.

Indeed, many communities have experienced tangible harm from discriminatory government counterterrorism policies. For American Muslims, an example is found in the notorious New York Police Department's surveillance of mosques, community centers, restaurants, and other frequented establishments.¹⁶ For Arab Americans, it was reported that the city of Dearborn, Michigan – which has the highest concentration of Arab Americans in the country and a population of less than 100,000 people - has the second largest number of individuals on the terrorist watch list, second only to New York City.¹⁷

Over the course of the last twenty years, the federal government's counterterrorism authorities have expanded significantly, often with little oversight¹⁸. In the aftermath of the terrorist attacks of September 11th, Congress passed the USA PATRIOT Act, which among other things considerably augmented the federal government's surveillance authorities and codified a federal definition of "domestic terrorism."

While some acts of violence meet the definition of domestic terrorism and warrant an appropriate national security strategy, we must ensure such a response does not further harm communities or jeopardize civil rights and civil liberties of Americans.

¹¹ *Table 1, Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2017* ucr.fbi.gov/hate-crime/2017/topic-pages/tables/table-1.xls.

¹² *Table 1, Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2015* (Dec. 3, 2015), ucr.fbi.gov/hate-crime/2015/tables-and-data-declarations/1tabledatadecpdf.

¹³ *Table 1, Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2018* ucr.fbi.gov/hate-crime/2018/topic-pages/tables/table-1.xls.

¹⁴ *New FBI Hate Crimes Report Shows Increases in Anti-LGBTQ Attacks*, Human Rights Campaign, (Nov. 17, 2020), www.hrc.org/press-releases/new-fbi-hate-crimes-report-shows-increases-in-anti-lgbtq-attacks.

¹⁵ *Responding to White Supremacist Violence: A securitized community's perspective on domestic terrorism.*, Arab American Institute (Jan. 9, 2021), www.aaiusa.org/library/responding-to-white-supremacist-violence.

¹⁶ *Highlights of AP's Pulitzer Prize-winning probe into NYPD intelligence operations*, Associated Press www.ap.org/about/awards-and-recognition/highlights-of-aps-pulitzer-prize-winning-probe-into-nypd-intelligence-operations.

¹⁷ Ryan Devereaux, *Barack Obamas Secret Terrorist-Tracking System, by the Numbers*, *The Intercept* (Aug. 5, 2014), theintercept.com/2014/08/05/watch-commander/.

¹⁸ Elizabeth Goitein, *Transparency & Oversight*, Brennan Center for Justice (Oct. 18, 2016), www.brennancenter.org/issues/protect-liberty-security/transparency-oversight.

Federal law enforcement agencies have asserted expansive authorities under this definition without commensurate oversight or transparency. Furthermore, on the investigative end, the FBI has not published a report on federal domestic terrorism cases since 2005. As to domestic terrorism prosecutions, the National Security Division of the U.S. Department of Justice has never published a domestic equivalent to its chart on public or unsealed international terrorism and terrorism-related convictions.

The scarcity of public data is in no way due to a lack of relevant authorities, but rather a lack of oversight and accountability. Even when Congress has pressed for more information related to domestic terrorism, federal law enforcement agencies have not been adequately forthcoming. With little publicly available information, current domestic terrorism authorities are open to broad interpretation if not subject to abuse.

Further, with the well-warranted focus on violence that meets the definition of domestic terrorism, there have been calls for Congress to create a new charge of domestic terrorism. We, along with 156 other civil rights organizations,¹⁹ oppose such a charge as it is both unnecessary and will likely harm the very communities targeted by white supremacist violence.

The shifting focus to a national security response to this violence implies the current framework for addressing this violence is inadequate. This is false. Congress has enacted 57 laws as “federal crimes of terrorism.”²⁰ Of those, 51 laws in the federal criminal code apply to acts that meet the definition of domestic terrorism. Additionally, there are five federal hate crime statutes²¹ that can be invoked, and other charges that can be utilized, including conspiracy and racketeering.²² Federal law enforcement has expansive authorities under existing law to successfully investigate and prosecute white supremacist violence. It is not an issue of whether the legal framework adequately addresses the current threat, it is an issue of enforcement and the political will to prioritize combatting these threats.

From the perspective of a community that is both targeted by bias-motivated hate and government actions ostensibly designed to keep us all safe, we respectfully provide the following concrete recommendations for how the response to white supremacist violence can be improved. While not comprehensive, we believe these provide a good starting point.

- Communities must have trust in their government to be able to report and respond to threats. A significant roadblock to establishing trust is the continued profiling of communities by law enforcement.²³ Past efforts to curb profiling, a practice that is both ineffective and discriminatory, have fallen short. In 2014, then Attorney General Eric Holder released a revised Guidance Regarding the Use of Race by Federal Law Enforcement

¹⁹ *157 Civil Rights Organizations Oppose a New Domestic Terrorism Charge*, The Leadership Conference on Civil and Human Rights (Jan. 19, 2021), <https://civilrights.org/resource/135-civil-rights-organizations-oppose-a-new-domestic-terrorism-charge/>.

²⁰ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, sec. 120005, 108 Stat. 1796, 2022-23 (codified at 18 U.S.C. § 2339A (2012))

²¹ *Hate Crime Laws*, The United States Department of Justice <https://www.justice.gov/crt/hate-crime-laws>.

²² Michael German & Sara Robinson, *Wrong Priorities on Fighting Terrorism*, The Brennan Center for Justice at New York Law School https://www.brennancenter.org/sites/default/files/2019-08/Report_Wrong_Priorities_Terrorism.pdf.

²³ *Office of Justice Programs, DOJ*, Policing in Arab-American Communities After September 11 <https://www.ojp.gov/ncjrs/virtual-library/abstracts/policing-arab-american-communities-after-september-11>.

Agencies. The initial guidance was issued by Attorney General Ashcroft in 2003. Yet the revised guidance contained significant loopholes. Specifically, that guidance excluded screenings at the border, intelligence operations and national security, or local law enforcement when not part of federal operations. To be effective, the federal government must finally ban profiling in any context, including but not limited to policing, immigration enforcement, border operations, ports of entry, and intelligence programming.²⁴ Further, we recommend legislation, such as the End Racial Profiling Act (ERPA), which would apply profiling prohibitions to state and local law enforcement in all contexts.

- White supremacist violence is also a civil rights concern and criminal prosecution alone cannot address the problem. While we correctly elevate the response to this violence, we must be careful to not create a hierarchy where hate crimes are deemed a lesser problem than violence that meets the definition of domestic terrorism. The scourge of violence must be met with a strategic, effective response whether a hate crime or domestic terrorism, or both. As such, AAI supports increased support for the Department of Justice’s Civil Rights Division and Community Relations Service. Protecting communities from the threat of white supremacist violence requires rigorous enforcement of federal civil rights laws. The Civil Rights Division must be resourced appropriately to tackle the challenges at hand. Additionally, the Community Relations Service (CRS) must essentially be rebuilt. Under the Trump Administration, CRS faced severe budget cuts²⁵. CRS, known as “America’s Peacemaker,” is a key asset of DOJ, and one in which it can play a significant role in building community trust with federal government. Furthermore, during a time when communities are seeking non-law enforcement responses to address community concerns, CRS has the potential to have a significant positive impact on communities.
- Additionally, AAI supports the Domestic and International Terrorism DATA Act (H.R. 3106), which passed the House and was received in the Senate in October 2019²⁶. The DATA Act would require the Department of Justice, and Homeland Security, along with the FBI, to share detailed information about their counterterrorism efforts, including data on incidents, investigations, and prosecutions. This would promote, not only a better understanding of the threats facing communities, but also increase oversight of the federal government’s expansive counter terrorism powers. This legislation has three main requirements: (1) annual reporting on federal counterterrorism efforts, including domestic and international terrorism incidents, investigations, and prosecutions; (2) regular audits of federal reports to promote oversight and accountability of federal agencies; and (3) additional federal research on domestic and international terrorism.
- In May 2019, it was reported that the FBI changed its investigative classification for white supremacist violence with a broader category that encompasses different forms of “racially

²⁴ *ACLU RESPONSE TO REVISED DOJ GUIDANCE ON THE USE OF RACE BY FEDERAL LAW ENFORCEMENT AGENCIES*, ACLU (Dec. 8, 2014), <https://www.aclu.org/press-releases/aclu-response-revised-doj-guidance-use-race-federal-law-enforcement-agencies>.

²⁵ *Community Relations Service FY 2020 Budget Request*, Department of Justice <https://www.justice.gov/jmd/page/file/1142416/download>.

²⁶ *H.R. 3106 - Domestic and International Terrorism DATA Act*, Congress.gov <https://www.congress.gov/bill/116th-congress/house-bill/3106?q=%7B%22search%22%3A%5B%22HR+3106%22%5D%7D&s=8&r=9>.

motivated violent extremism.”²⁷ Before this change in classification, one of the FBI’s categories was simply focused on white supremacists violence.²⁸ The FBI must provide a clear justification for this change in domestic terrorism categorizations which seemingly offer less clarity on the nature of the true threat our country is facing.

- To ensure existing prevention efforts do not violate civil rights and liberties like the countering violent extremism programs that preceded them, we recommend increased congressional oversight to DHS, including of the newly launched Center for Prevention Programs and Partnerships (CP3) and Targeted Violence and Terrorism Prevention (TVTP) programs, which have historically been found to be discriminatory and ineffective. Beyond the efficacy issue requiring measurable metrics for success, compelling congressional testimony and detailed reports from these programs outlining whether, when, and how demographic information, such as race, ethnicity, religion, or national origin, is used is crucial in providing stringent oversight.
- Finally, to reckon with the expansive DHS authorities now in place, Congress should require a complete mapping of post-9/11 era programs and the impact they have had on communities. As has been noted, DHS is “the only government entity that, as part of its regular operations, conducts invasive physical searches of millions of Americans and their belongings each week without any predicate. It is also one of the only government agencies that retains huge amounts of data on individuals, using only “implied consent” for justification.”²⁹ Mapping of DHS information collected, the purpose of its collection, how it is used within DHS, and if it is shared with local, state or federal agencies or foreign governments is critical to understanding the effect of DHS programs on all Americans, particularly those who have faced a disparate impact of counterterrorism policies, including Arab Americans, American Muslims, Black Americans, and Asian Americans.

Thank you for the opportunity to testify before your committee today and for the important congressional oversight you are providing by convening this hearing. The Arab American Institute remains ready to offer our support and expertise in efforts that address the surge of hate violence our county is experiencing, while also protecting the safety, and civil rights and civil liberties of all communities.

²⁷ Felicia Sonmez, *Democrats accuse Trump administration of trying to obfuscate the white supremacist threat with new categories for domestic terrorism*, Washington Post (May 2, 2019), https://www.washingtonpost.com/politics/democrats-accuse-trump-administration-of-trying-to-obfuscate-the-white-supremacist-threat-with-new-categories-for-domestic-terrorism/2019/05/02/831cf86e-6d23-11e9-a66d-a82d3f3d96d5_story.html.

²⁸ *Joint Intelligence Bulletin*, Foreign Policy (May 10, 2017), <https://www.documentcloud.org/documents/3924852-White-Supremacist-Extremism-JIB.html>.

²⁹ Lawson, Chappell, Alan Bersin, and Juliette N. Kayyem, eds. *Beyond 9/11: Homeland Security for the Twenty-First Century*. Cambridge, Mass.: MIT Press, August 2020, page 303.