

THE DOUBLE STANDARDS

OF U.S. FTO VS. DTO PROSECUTION



MUSLIM PUBLIC
AFFAIRS COUNCIL



Package Guide

The Muslim Public Affairs Council (MPAC) and Emgage have developed this policy package as a guide for members of the federal government and other key stakeholders to:

- better understand the proposed legislation on domestic terrorism (DT),
- recognize the impact of terrorism statutes on and the uneven application of law enforcement tools against American Muslims and communities of color,
- review the double standards in the application of existing statutes defining domestic terrorism and Federal Terrorism Charges on past cases involving white supremacists versus American Muslims,
- shift federal and law enforcement resources to tackle the real threat of domestic terrorism — white supremacy — by highlighting empirical data, and strategize how existing legal codes (as highlighted in our appendix) can be used to prosecute white supremacist terrorism, while making a case against expanded DT charges.

THE AMERICAN MUSLIM EXPERIENCE

American Muslims are the most reliable partners on tackling the issue of terrorism charges. The last time a terrorism charge or a Center for Prevention Programs and Partnerships (CP3) came through, law enforcement bodies used the subsequent expanded tools and powers to disproportionately target and surveil our communities, exposing the double standards in America's counterterrorism agenda. Despite the clear and persistent threat of white supremacy, the Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) have almost exclusively targeted, surveilled, prosecuted, and even entrapped American Muslims. When determining counterterrorism policies in response to the threat of white supremacy and when deliberating a domestic charge, heightened engagement with American Muslim communities will be key to avoiding double standards or any abuse of civil and human rights.

Due to the double standards in the application of counterterrorism laws, we recommend that terrorism be called terrorism regardless of the race, ethnicity, or religion of the perpetrator.

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Policy Brief

EXECUTIVE SUMMARY

For the last few decades, and despite overwhelming evidence identifying white supremacy as the greatest domestic threat, government agencies and law enforcement have disproportionately targeted, surveilled, and harassed American Muslim, Black, and Brown communities under the flag of counterterrorism policy. Additionally, despite these findings and statutory definitions of Domestic Terrorism (DT), white supremacists, along with most white perpetrators who commit violent hate crimes, continue to avoid the over 51 statutory 'Federal Terrorism Charges' and statutes that pose penalties under acts of terrorism, which is nearly never the case for Muslims or communities of color. This double standard arises from the disparate application of Foreign Terrorist Organization (FTO) designation to Muslim terrorist groups, allowing for law enforcement to prosecute American Muslims through material support statutes and pursue federal punishment for crimes of terrorism. To effectively counter the threat of white supremacy, the federal government should establish a singular definition for terrorism and designate all violent extremist groups under that singular definition, regardless of race, color, or creed. Law enforcement agencies should use existing tools for preventing acts of terrorism to mitigate white supremacist violence. If doing so raises civil rights and liberties concerns, then the FBI and other relevant law enforcement bodies need to revisit their practices and amend their counterterrorism procedures to ensure the Bill of Rights is upheld for all Americans.

CONTEXT AND IMPORTANCE OF PROBLEM

The threat of white supremacist violence has spread across America. As the Capitol Hill attacks demonstrate, the growth and evolution of the ideology not only weakens the security of Americans of racial, religious, or other minority backgrounds, but it also undermines the core foundations of our nation's democracy. In a recently issued report, the Office of the Director of National Intelligence (ODNI) warned of an elevated risk posed by domestic violent extremists (DVEs) and identified that extremists "who promote the superiority of the white race are the DVE actors with the **most persistent and concerning transnational connections** because individuals with similar ideological beliefs exist outside of the United States and these RMVEs (racially motivated violent extremists) frequently communicate with and seek to influence each other."¹ Secretary of Homeland Security Alejandro Mayorkas echoed the same concern in a House Homeland Security Committee hearing, calling domestic extremism "the most lethal and persistent terrorism-related threat to the homeland today."²

The federal government is moving rapidly to counter the threat of white supremacy, with key legislative responses expected soon. It is noteworthy that there is no scheduled discussion on the DTO (domestic terrorist organization) / FTO double standards and the impact of a domestic terrorism statute on marginalized communities. In the 116th and 117th Congress, several House and Senate members have introduced bills to mitigate the problem. The DHS has designed a new Targeted Violence and Terrorism Prevention (TVTP) grant program. FBI Director Christopher Wray has called the events of January 6th an act of domestic terrorism and is currently

1. https://www.dhs.gov/sites/default/files/publications/21_0301_odni_unclass-summary-of-dve-assessment-17_march-final_508.pdf

2. <https://homeland.house.gov/activities/hearings/the-way-forward-on-homeland-security>

developing the strategy to prosecute perpetrators. Though in 2019, the Bureau elevated the threat posed by racially-motivated violent extremists RMVEs³ to be on par with that posed by FTOs like ISIS, the FBI claims that it lacks a singular anti-terrorism law whereby domestic terrorism would mount to a federal crime.⁴ In the absence of such a law, white supremacists can escape harsher punishments like federal mandatory minimum sentencing by getting prosecuted through state laws. Many lawmakers and federal agents alike are responding to this by calling for a **domestic terrorism (DT) statute**. In this current environment, because of the unequal application of terrorism charges and the history of law enforcement bodies targeting Muslims and communities of color, a hastily introduced DT statute will only harm American Muslim communities and other minority groups.

We recommend that our national lawmakers engage with communities impacted by counterterrorism policies and that federal agencies stringently institute civil rights and liberties standards prior to creating new legislation and programs. Ultimately, as members of a community that is acutely and disproportionately impacted by **double standards in the application of counterterrorism laws, we recommend that terrorism be called terrorism regardless of the race, ethnicity, or religion of the perpetrator**. Congress should therefore institute **equal investigative and indictment procedures and punishment for all terrorists**.

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3. As Congresswoman Karen Bass (D-CA 37) noted in hearings with former Attorney General Jeff Sessions and FBI Director Christopher Ray, the FBI published a report entitled, "Black Identity Extremists Likely Motivated to Target Law Enforcement Officers", that ultimately led to incarceration of a Black man in Dallas, who had committed no act of violence. This report can be used to target and surveil young Black American activists who may protest police brutality. It's important to note that no equivalent FBI report exists for white supremacist extremists. The groups identified in the said report are long defunct, and the Bureau's establishment of moral equivalence in the absence of any real connection to Black Identity Extremist groups further highlights double standards in our law enforcement's approach to terrorism and extremism.
 4. <https://www.cbsnews.com/news/racially-motivated-violent-extremism-isis-national-threat-priority-fbi-director-christopher-wray/>

CURRENT POLICY

The federal government response to white supremacist terrorism has been inadequate.

- According to FBI assistant director Michael McGarrity, a significant portion of domestic terrorism attacks are conducted by white supremacists.
 - FBI director Christopher Wray implicated “white supremacist violence” as responsible for the global rise in violent hate crimes and terrorist activity, while three-quarters of extremist murders⁵ in the United States were carried out by white supremacist extremists.
- Still, the FBI focuses 80% of its field agents on international terrorism cases, the vast majority of which consists in investigations of so-called “jihadi”-inspired extremists.⁶

Current policy and prosecution precedence allows for federal law enforcement agencies to differentiate between how DTO and FTO cases are prosecuted. If an act of terrorism is committed by an American minority, the suspect is, even in the absence of any violence committed or actual association, connected to an FTO through material support statutes (18 U.S. Code § 2339). If an act of terrorism is committed by a white American, however, they are prosecuted using non-terrorism statutes or state laws. Through disparate application of material support laws and FTO designation, the FBI and other law enforcement bodies have been able to prosecute American Muslim citizens for terrorism and sentence them with harsher federal penalties. Despite ample evidence of white supremacist terrorism being a transnational phenomenon, white American citizens are not prosecuted under existing material support statutes.

5. <https://www.theatlantic.com/ideas/archive/2019/01/homegrown-terrorists-2018-were-almost-all-right-wing/581284/>

6. In his congressional testimony during the June 4, 2019 congressional hearing on white supremacy, Chairman Jamie Raskin compared the 73% of extremist murders committed by domestic terrorism, a category closely associated with white supremacist violence, with the FBI's allocation of 80% of their field agents to international terrorism, a category most closely associated with religious extremists.

PROBLEMS WITH EXISTING LEGAL APPLICATIONS

- In the post-9/11 era, material support has been used by the FBI to implicate American Muslims by connecting them to an FTO, as seen in Appendix A and Appendix B.
- **Though white supremacy is global in nature and white nationalist attacks have demonstrably inspired violence worldwide, the ideology has not provoked any FTO designations or as much community surveillance as “jihadist” ideology has.**

The FBI has thus far accepted a distorted view of jihad to reason that the threat of domestic terrorism posed by Muslims is stronger and greater than that posed by white supremacists. In fact, data suggests that the resources the FBI directs toward countering white supremacist terrorism is almost inversely proportional to the reality of the terror threat.⁷ **At the core of these double standards is how law enforcement applies the FTO (foreign terrorist organization) designation to prosecute American Muslims suspected of terrorism instead of trying them for domestic terrorism.** As the Newburgh Sting Case Study in this package shows, the FBI connects American Muslims (citizens) to an FTO to activate its surveillance and investigation tools. This not only allows for the Bureau to get away with abusing the civil rights and civil liberties of American Muslims, but it also reinforces existing biases within our law enforcement. *[cont.]*

7.

Ibid.

The FBI has utilized material support for FTOs to activate its counterterrorism surveillance and investigation tools against American Muslims, but it has not employed the same tactics to connect white supremacist terrorists to the global white supremacy network to implicate them for terror plots. MPAC's 2019 policy paper "The White Supremacist Threat to America" identified white supremacy as a global, interconnected movement with tendencies toward anti-government terrorism.⁸ Counterterrorism expert J.M. Berger has described white supremacy as "a worldwide phenomenon" premised on a "crisis narrative" over immigration and issues of "mythic" national or Western identity.⁹ Historian Kathleen Belew describes it as "an inherently anti-American project," whose followers are "trying to overthrow the federal government and create a united white polity that will then eventually eradicate people of color in the country and in the world."¹⁰ If designating global white supremacist groups as FTOs to prosecute white supremacist terrorism through a material support charge raises civil rights flags, then the same concerns should apply when connecting American Muslims to FTOs instead of trying them under existing domestic terrorism laws.

8. <https://www.mpac.org/publications/policy-papers/the-white-supremacist-threat-to-america.php>
9. <https://www.vox.com/2019/3/18/18267682/new-zealand-christchurch-shooter-manifesto-online-extremism>
10. <https://www.publicbooks.org/top-10-2019-public-thinker-kathleen-belew-on-the-rise-of-white-power/>

POLICY RECOMMENDATIONS

- **Terrorism is terrorism → institute equal investigative and indictment procedures and punishment for all terrorists.**
 - Establish a singular definition for terrorism and designate all violent extremist groups under that singular definition, regardless of race, color, or creed.
 - Institute even application of existing material support statutes. American Muslims have been disproportionately linked to FTOs through material support statutes for “jihadist” ideology whereas **white supremacist ideology has not provoked any FTO designations or as much community surveillance.**
 - Domestic terrorists, regardless of their identity, should be treated equally under the law and by law enforcement. **Civil rights and liberties and constitutional law must be upheld for all Americans charged under existing/future terrorism statutes.**
 - Foreign terrorists, regardless of their identity, should be treated equally under the law and by law enforcement. **Treatment and punishment of suspected or convicted foreign terrorists should meet the standards of international law and human rights standards.**
- **The double standards in terrorism charges and sentencing needs to be addressed *before* we consider a domestic terrorism statute.**
- The Homeland Security Committee of the U.S. Congress as well as relevant subcommittees should carefully review all recommendations from law enforcement before allotting them increased powers.
 - The burden of proof is on law enforcement agencies to show why they need further powers, and congressional committees should scrutinize the proof.
- Programs should not be designed to target faith-based or ethnic groups, whether domestic or foreign, but designed to **target terrorism regardless of the identity of the perpetrators.**

APPENDICES

- A – Case Study: The Newburgh Sting**
- B – Double Standards in Specific Domestic Terrorism Cases in the U.S.**
- C – Lessons Learned: Past Programs Impact on American Muslims**
- D – Timeline of CVE Program and Impact on American Muslims**
- E – Legal Codes Analysis: Defining Existing Statutes to Address White Supremacy**
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Case Study: The Newburgh Sting

SUMMARY

The 2014 HBO documentary, *The Newburgh Sting*, unravels the FBI's sting operation on four Black Muslim men, whereby the FBI entrapped those men **in the 2009 Bronx terrorism plot**. Directed by David Heilbroner and Kate Davis, the film won a Peabody for Excellence in Journalism and received an Emmy nomination. In 2015, the Muslim Public Affairs Council (MPAC) honored the film with its Voices of Courage and Conscience Award for its brave revelation of the FBI's anti-Islam surveillance and framing tactics.

Through the FBI's own secret recordings, the film explores how the Bureau informant, Shahed Hussain, targets, befriends, and exploits James Cromitie's poverty and identity as a Black American Muslim. Hussain entices Cromitie, David Williams, Onta Williams, and Laguerre Payen with the promise of \$250,000 in return for executing an "Islamist" terrorist bombing plot. The FBI goes so far as to train and equip the four with fake weapons in its efforts to indict them as terrorists.

Ultimately, the jury found Cromitie and his peers guilty on all counts, with each receiving a mandatory minimum sentence of 25 years for conspiracy to use weapons of mass destruction. **The presiding trial judge, U.S. District Judge Colleen McMahon, however, expressed that the "government did not act to infiltrate and foil some nefarious plot; there was no plot to foil."**¹¹

11. https://www.huffpost.com/entry/the-newburgh-sting_b_5234822

RELEVANCE

The FBI's use of an informant to surveil, radicalize, and entrap Cromitie and the other three men paints a vivid picture of the double standards practiced in implicating and charging domestic terrorists. ***The Newburgh Sting is particularly relevant as a case study because it is one of the few times FBI records were actually made available to the public.***¹² Unfortunately, in the post-9/11 era, far too many similar sting operations and trials involving American Muslims were closed to the public eye.

The operation took place in a post-9/11 climate, amidst talks that the FBI would be dismantled for its failure to stop the attacks. Subsequently, the FBI issued internal guidelines indicating that all rules are suspended. One former FBI agent, Michael German, who served the Bureau for 16 years and conducted undercover investigations of right-wing groups, told his coworkers that it's wrong to suspend the Constitution, or otherwise the rules governing the FBI. His concerns, however, were not addressed. Former FBI Assistant Director Thomas Fuentes openly admits that the government agency needs to "keep the fear alive" in order to prevent potentially crippling cuts being made to its terror budget. Once the entrapment was completed, the FBI had a full media blast prepared to broadcast to the nation that they are sufficiently protecting Americans.

Even though three of the four are American citizens, the FBI bypassed civil rights and liberties that would otherwise be of concern when implicating citizens. **The FBI had surveillance and investigative powers to manufacture a terror plot and connect these men to an actual foreign terrorist organization (FTO), Jaish-e-Mohammed (JEM), only because it was able to link them to *Islam*.** In reality, the accused had no connections to JEM whatsoever. The Newburgh Four are Black, Muslim, and poor. That made them easy targets for the FBI.

12. <https://www.brandeis.edu/investigate/government-corporate-wrong-doing/catching-or-creating-terrorists.html>

KEY TAKEAWAYS

- The FBI has thus far used the ideology of jihad to reason that the threat of domestic terrorism posed by Muslims is stronger and greater than that posed by white supremacists even though the ODNI has identified that extremists “who promote the superiority of the white race are the DVE actors with **the most persistent and concerning transnational connections**”.
- **DOUBLE STANDARD:** The FBI has utilized material support for FTOs to activate its counterterrorism surveillance and investigation tools against American Muslims, but it has not employed the same tactics to connect white supremacist terrorists to the global white supremacy network to implicate them for terror plots.
- **White supremacy is global in nature.**
 - MPAC’s 2019 policy paper “The White Supremacist Threat to America”¹³ identified white supremacy as a global, interconnected movement with tendencies toward anti-government terrorism.
 - Counterterrorism expert and former Brookings Institution fellow J.M. Berger has described white supremacy as “a worldwide phenomenon” premised on a “crisis narrative” over immigration and issues of “mythic” national or Western identity.¹⁴ Historian Kathleen Belew describes it as “an inherently anti-American project,” whose followers are “trying to overthrow the federal government and create a united white polity that will then eventually eradicate people of color in the country and in the world.”¹⁵

13. <https://www.mpac.org/publications/policy-papers/the-white-supremacist-threat-to-america.php>
14. <https://www.vox.com/2019/3/18/18267682/new-zealand-christchurch-shooter-manifesto-online-extremism>
15. <https://www.publicbooks.org/top-10-2019-public-thinker-kathleen-belew-on-the-rise-of-white-power/>

- Examples of global white supremacy:
 - **2011 Norway Shooting:**¹⁶ at least 80 people died at the hands of Anders Behring Breivik, a right-wing extremist with anti-Muslim views.
 - **2019 Christchurch Shootings:**¹⁷ a white nationalist terrorist issued a 74-page manifesto and carried out mass shootings at two mosques in Christchurch, NZ, killing at least 50 people and injuring at least 50 more.
 - **2019 Norway Mosque Attack:**¹⁸ a white gunman set out to attack a mosque after killing his stepsister. His plan was foiled by a worshiper at the mosque. The attacker had hailed the Christchurch shooter as a saint.
- The FBI and law enforcement demonstrate identifiable inconsistencies in charges and sentencing.

16. <https://www.nytimes.com/2011/07/23/world/europe/23oslo.html>

17. <https://www.vox.com/identities/2019/3/15/18267163/new-zealand-shooting-christchurch-white-nationalism-racism-language>

18. <https://www.nytimes.com/2019/08/11/world/europe/norway-mosque-attack-terrorism.html>

RECOMMENDATIONS

We ask that Congress conducts a hearing on the double standards of DTO/FTO applications and include a screening of *The Newburgh Sting* documentary. The double standards in terrorism charges and sentencing needs to be addressed before we consider a domestic terrorism statute. This policy package includes a legal codes explainer where we have identified legal codes that can be used to charge and prosecute white supremacist terror attacks and plots under existing domestic terrorism laws. 18 U.S. Code § 2339 and Section 802 of the Patriot Act can be used to charge an act of white supremacy.

Whereas American Muslims can get convicted for **verbal or material support** to a designated FTO like ISIS or JEM, **white supremacist groups have not been designated in that way**. That is the double standard that made the Newburgh Sting possible. As Rep. Lynch (D-MA 8) stated in a joint House Oversight and Reform hearing, “for too long, U.S. counterterrorism efforts had focused almost exclusively on the jihadi terrorist threat.”¹⁹ In the same hearing, **Rep. Raskin urged the FBI, DHS, and other national security agencies to “treat transnational white supremacy as a global national security threat” while upholding civil liberties.**

19. <https://www.congress.gov/event/116th-congress/house-event/LC64537/text?s=1&r=95>

APPENDIX

B

Double Standards in Specific Domestic Terrorism Cases in the U.S.

2006

HAMID HAYAT *Lodi, California*

Visited an al-Qaeda camp in Pakistan

Non-violent

Convicted using terrorism charge

Hayat's confession was vague and contradictory. Prosecution lacked evidence that indicated Hayat intended to commit any violent acts. Prosecution relied on an Islamic prayer note found in Hayat's wallet to show that Hayat intended to commit jihad. In 2020, A federal judge overturned Hamid Hayat's 2006 conviction after Hayat spent 14 years of his 24 year sentence in prison. The judge ruled that Hayat hadn't received a proper defense at trial.

2011

TAREK MEHANNA *Boston, Massachusetts*

Intended to support al-Qaeda

Non-violent

Convicted using terrorism charge

The double standard in prosecution between FTOs and DTOs is clearly demonstrated in the case. In this trial, "thinking about jihad" is prosecuted similarly to "carrying out jihad," which dangerously expands acts of terror to include thought crimes in prosecuting acts of international terrorism. Additionally, since the majority of FTOs listed under the international terrorism statute are Islamist organizations, a disproportionate number of American Muslims are prosecuted under this statute and stripped of their 1st amendment rights due to counterterrorism strategies in investigations. On the other hand, in DTO cases, which are used to prosecute most white supremacist terrorism cases, federal judges ensure that freedom of speech is protected. Activists warn against the adoption of a DT statute primarily because its adoption could infringe upon the constitutional rights of Americans, just as the international terrorism statute has done to American Muslims.

2015

SYED RIZWAN FAROOK & TASHFEEN MALIK *San Bernardino, California*

Shot 36 people, killing 14

Violent

Farook and Malik shot 36 people and killed 14 as part of a terrorist attack at the Inland Regional Center in San Bernardino, California. The two perpetrators died in the final shootout. The FBI investigated this attack as an act of terrorism. This incident is widely known and accepted as a "terrorist act" and "an act of Islamic terrorism." FBI director James Comey stated that investigators did not find evidence that the killers were part of a larger group or foreign terrorist organization.

2015

DYLANN ROOF *Charleston, South Carolina*

Gunned down nine Black churchgoers

Non-violent

Convicted using terrorism charge

FBI director James Comey also led the investigation of Roof's massacre in Charleston, but he reacted very differently with this case. Despite the lack of evidence regarding the San Bernardino couple's association with any FTO at the time, Comey quickly labeled it as a terrorist attack. For the case of Roof, who had a white supremacy manifesto and was also inspired by terrorist groups and terrorist attacks in the past, Comey claimed that he could not connect the Charleston massacre to a case for terrorism. Comey did not conduct a preliminary investigation of the case as a potential act of terrorism, as he did for the San Bernardino attack.

2016

AARYN SNYDER *Fort Wayne, Indiana*

Murdered his 22-year-old Black neighbor

Violent

Convicted WITHOUT using terrorism charge

Snyder belonged to a white supremacist organization and admitted to murdering a Black man to further this racially motivated violent ideology. Snyder did NOT receive a hate crime charge, terrorism charge, or terrorism-related charges. Furthermore, Snyder got away with the murder of a Black man UNTIL he confessed to a detective about the murder while incarcerated for not registering as a sex offender, meaning he also had a criminal history.



Lessons Learned: Past Programs' Impact on American Muslims

COUNTERING VIOLENT EXTREMISM — CVE (2011)

What It Is:

Established under the Obama administration, CVE is a DHS program to counter all violent ideologies by engaging communities in the counterterrorism effort with educational programs and/or counter-messaging. The program originally engaged with community groups, such as local governments, police departments, universities, and nonprofits. The program was rebranded in 2019 as the Office of Targeted Violence and Terrorism Prevention (TVTP). Under the Biden administration, the program is now termed the Center for Prevention Programs and Partnerships (CP3).

Lessons Learned:

- While the intent behind the CVE program was to counter violent extremism through engaging the community in the process, in practice, the program particularly **stigmatized American Muslim communities** by connecting them to foreign organizations simply because of their identity.
- CVE was designed without understanding how American Muslims view and interact with violent extremism and counterterrorism.
- **DOUBLE STANDARD:** Despite the critical and persistent threat of white supremacist violence, American Muslims have been disproportionately harmed by policies and programs like CVE.
- The framework of CVE was constructed to make community partners feel, act, and be perceived by the community as if they were informants for the government, and not partners.

PATRIOT ACT (2001)

What It Is:

The Patriot Act was enacted to tighten national security, particularly as it related to foreign terrorism by expanding the abilities of law enforcement to surveil (tapping domestic and international phones); easing federal, state, and local interagency communication; and expanding the list of activities that can charge an individual with terrorism with overall increased penalties.

Lessons Learned:

- Lack of oversight encourages **abuse of civil rights and liberties**
→ secretive processes receive little external oversight
- Legislative haste breeds grass-roots opposition
- Reviewing the **constitutionality** of the Patriot Act

OPERATION VULGAR BETRAYAL (1989)

What It Is:

In 1989, the FBI field office in Chicago began investigating American Muslim organizations, businesses, communities/neighborhoods, and individuals in the city's Bridgeview suburb as part of a nationwide terrorist money laundering probe. "Operation Vulgar Betrayal", as the investigation was codenamed, was the largest domestic terrorism investigation conducted prior to 9/11.

Lessons Learned:

- The FBI **disproportionately surveilled minority groups.**
- The unwarranted surveillance resulted in **loss of trust** between communities and law enforcement agencies.

GUANTANAMO BAY DETENTION CAMP — GITMO (2002)

What It Is:

The Guantanamo Bay detention camp is a U.S. military prison located on the coast of Cuba. To date, 40 of the 780 people detained remain in the prison, while 9 died in custody, and the rest transferred.

Lessons Learned: ****Failure of Military Tribunals****

- The Guantánamo military commissions system has unconstitutionally not provided detainees with expedient justice.
- Allegations against detainees were not firm, violating international law.
- Severe mental health concerns of the detainees resulting from the detainment were not addressed.
- Although the facility is now 19 years old, no white supremacists, violent or not, have been detained in the detention camp.
- Programs should not be designed to target faith-based or ethnic groups, whether domestic or foreign, but designed to **target terrorism regardless of the identity of the perpetrators.**

RECOMMENDATIONS

- Programs should allow for sufficient time for input from non-governmental organizations and community stakeholders.
- Programs should **not intrude** on the constitutional rights of American citizens, nor break international laws.
- **American Muslims are the most reliable partners on the issue of terrorism charges:** The last time a terrorism charge or a CP3 came through, law enforcement bodies used the subsequent expanded tools and powers to disproportionately target and surveil our communities. When determining counterterrorism policies in response to the threat of white supremacy and when deliberating a domestic charge, heightened engagement with American Muslim communities

will be key to avoiding double standards or any abuse of civil and human rights.

- Terrorism is terrorism → institute **equal investigative and indictment procedures and punishment** for all terrorists.
 - Domestic terrorists, regardless of their identity, should be treated equally under the law and by law enforcement. **Civil rights and liberties and constitutional law must be upheld for all Americans** charged under existing/future terrorism statutes.
 - Foreign terrorists, regardless of their identity, should be treated equally under the law and by law enforcement. **Treatment and punishment of suspected or convicted foreign terrorists should meet the standards of international law and human rights standards.**
 - Existing material support statutes should be applied evenly across the board. In the post-9/11 era, material support has been used by the FBI to implicate American Muslims by connecting them to an FTO. **Though white supremacy is global in nature** and white nationalist attacks have demonstrably inspired violence worldwide, the ideology has not provoked any FTO designations or as much community surveillance as “jihadist” ideology has. In 2020, the State Department designated the Russian Imperial Movement (RIM) as Specially Designated Global Terrorists (SDGTs), falling short of an FTO designation.²⁰ While a step forward, an SDGT designation merely allows for the U.S. Treasury to apply sanctions to the designated person or entity, but it does not allow for prosecution of members on the basis of membership with the SDGT, nor does it activate material support laws. As Anna Meier wrote for The Washington Post, “even in this one instance, the United States has not criminalized white supremacist activity at the same level that it has criminalized extremist Islamist activity.”²¹

20. <https://www.lawfareblog.com/state-department-should-designate-russian-imperial-movement-foreign-terrorist-or-organization>

21. <https://www.washingtonpost.com/politics/2020/04/30/us-labeled-white-supremacist-group-terrorists-first-time-its-less-significant-than-you-think/>



Timeline of CVE and Counterterrorism Programs & Impact on American Muslims

APRIL 19, 1995

STATE & LOCAL ANTI-TERRORISM TRAINING (SLATT) PROGRAM²²

CREATED BY:

THE BUREAU OF JUSTICE ASSISTANCE (BJA) AND FBI

IMPACT ON AMERICAN MUSLIMS:

The State and Local Anti-Terrorism Training (SLATT) program was meant to help State and Local law enforcement better understand, combat, and deter domestic terrorism and violent extremism after the Oklahoma City bombing.

NOVEMBER 2001

PENTTBOM INVESTIGATIONS²³

CREATED BY:

THE IMMIGRATION AND NATURALIZATION SERVICE AND FBI

IMPACT ON AMERICAN MUSLIMS:

Two months after 9/11, Attorney General John Ashcroft directed the FBI to arrest anyone suspected of participating in or supporting the 9/11 attacks (PENTTBOM Investigations).

With the help of the Immigration and Naturalization Service (INS), the FBI detained over 1,200 citizens and aliens, most having Middle Eastern or North African background.

Detainees were refused basic rights such as - access to lawyers, information on reason for detainment, communication with families, and the right to practice their religion. Detainees were physically and mentally abused.

22. <https://bja.ojp.gov/program/state-and-local-anti-terrorism-training-slatt-program/overview>
 23. <https://oig.justice.gov/sites/default/files/archive/special/0306/press.htm%20%20https://www.migrationpolicy.org/article/post-911-policies-dramatically-alter-us-immigration-landscape/>

SEPTEMBER 2001

**NATIONAL
SECURITY
ENTRY-EXIT
REGISTRATION
SYSTEM
(NSEERS)²⁴**

PART OF:
WAR ON TERROR

IMPACT ON AMERICAN MUSLIMS:

After 9/11, the controversial **National Security Entry-Exit Registration System (NSEERS)** was initiated. Meant to strengthen U.S. borders, identify terrorists, and prevent future attacks, the system instead ended up:

- Cracking down on immigration
- Gathering data, tracking, and following U.S. and non-U.S. citizens, mainly from Muslim-majority nations, who were perceived to be “threats” (fingerprints, photographs, addresses, phone numbers)
- Labeling Muslim majority countries, such as Iran, Iraq, Libya, Sudan, and Syria, as high risk
- Discriminatory against Muslims and those originating from Muslim majority countries

The system was ineffective, did not produce quality results, and was dismantled in December, 2016.²⁵

24. <https://www.justice.gov/archive/ag/speeches/2002/natlsecentryexittrackingsys.htm>

25. <https://www.migrationpolicy.org/article/dhs-announces-end-controversial-post-911-immigrant-registration-and-tracking-program>

2002**NYPD MUSLIM
SURVEILLANCE
& MAPPING
PROGRAM²⁶***UNDER:***MAYOR BLOOMBERG***IMPACT ON AMERICAN MUSLIMS:*

After 9/11, the NYPD Muslim Surveillance and Mapping Program began blanket surveillance of Muslim communities in NY and neighboring states (PA, NJ, and CT). Under this program, the NYPD Demographics Unit:

- Mapped out neighborhoods with significant populations of people with one or more of the 28 “ancestries of interest” (populations with association to Islam or Muslim majority countries), including Black Muslim Americans
- Mapped buildings or organizations connected to Muslims in any way, identifying every mosque 100 miles of NY, 31 Muslim student associations, and even restaurants and shops with Muslim activities
- Sent undercover officers as informants, to ALL locations with Muslims, to collect names, background information, and responses to subjects of terrorism and Jihads
- Conducted photo and video surveillance outside mosques

26.

<https://bridge.georgetown.edu/research/factsheet-the-nypd-muslim-surveillance-and-mapping-program>

2007**'SPOT' OR
SCREENING
PASSENGERS BY
OBSERVATION
TECHNIQUE²⁷***CREATED BY:***THE IMMIGRATION AND
NATURALIZATION SERVICE AND
FBI***IMPACT ON AMERICAN MUSLIMS:*

TSA implemented 'SPOT' or Screening Passengers by Observation Technique, a behavior detection program aimed at deterring/preventing terrorist activity. In this program, TSA agents would observe behaviors deemed "suspicious" and go undercover as civilians to extract information. The program discriminated against Brown and Muslim communities by:

- Focusing almost entirely on passengers of Muslim or Middle Eastern origin
- Training TSA agents to detect "suspicious" behavior through a disproportionate number of examples of Arabs or Muslims
- Using racially insensitive imagery depicting Muslims or people of Middle Eastern origin

27. <https://www.aclu.org/blog/national-security/discriminatory-profiling/new-documents-show-tsa-program-blamed-profiling>

2010**BUILDING COMMUNITIES OF TRUST (BCOT) INITIATIVE²⁸***CREATED BY:***DEPARTMENTS OF JUSTICE AND HOMELAND SECURITY***IMPACT ON AMERICAN MUSLIMS:*

Meant to improve the cooperation between police departments, and information sharing with respect to the communities they serve, BCOT was:

- Meant to combat crime and terrorism
- Administered by the Nationwide Suspicious Activity Reporting Initiative (SAR), which provides law enforcement the ability to gather, document, analyze, and share information of potential terrorist activity with each other - proving to be a breach of privacy for many individuals

AUGUST, 2011**CVE INITIATIVE²⁹***CREATED BY:***THE COOPERATION OF VARIOUS LAW ENFORCEMENT AGENCIES***IMPACT ON AMERICAN MUSLIMS:*

Meant to prevent radicalization and recruitment into extremists cells, the CVE initiative:

- Provided grants to law enforcement agencies and communities to identify and flag behaviors associated to radicalization or “pre-terrorism”
- Flagged normal behavior as “suspicious” and indicative of future terrorism
- Racially profiled and discriminated against Muslim communities

28. <https://www.dhs.gov/sites/default/files/publications/Building%20Communities%20of%20Trust.pdf>

29. <https://sites.duke.edu/tcths/2019/08/14/new-report-outlines-key-flaws-with-obama-administrations-counterintelligent-extremism-initiative/>

2011**COUNTERING
VIOLENT
EXTREMISM (CVE)
TASK FORCE³⁰***CREATED BY:***THE DEPARTMENT OF
HOMELAND SECURITY (DHS)
AND DULY LED BY THE DHS AND
THE DEPARTMENT OF JUSTICE
(DOJ)***IMPACT ON AMERICAN MUSLIMS:*

Made up of representatives from an array of different agencies, such as the FBI and National Counterterrorism Center, the CVE Task Force was created to support CVE efforts and integrate better interagency CVE cooperation. The CVE Task force:

- Helps synchronize multi-agency CVE programs and activities
- Leverage new CVE efforts
- Conduct strategic planning in relations to CVE
- Evaluate current CVE programs

APRIL 2016**DON'T BE A
PUPPET WEBSITE³¹***CREATED BY:***THE FBI***IMPACT ON AMERICAN MUSLIMS:*

Advocacy groups called for the shutdown of the FBI website that profiles and perpetuates negative stereotypes of Muslims and those perceived to be Muslim.

30. <https://www.justice.gov/opa/pr/countering-violent-extremism-task-force-fact-sheet>

31. <https://www.aclum.org/en/countering-violent-extremism-flawed-approach-law-enforcement>

2017

CVE UNDER TRUMP³²

BROADENED SIGNIFICANTLY UNDER:

THE TRUMP ADMINISTRATION "COUNTERING RADICAL ISLAM" OR "COUNTERING VIOLENT JIHAD" RENAME CONSIDERED

IMPACT ON AMERICAN MUSLIMS:

Increase of CVE discriminatory focus of Muslim and Black Communities under the Trump Administration. **At least 85% of CVE grants, over half of CVE programs, targeted Muslims, and minority advocacy groups, such as Black Lives Matter.**³³

2017

MUSLIM BAN³⁴

EXECUTIVE ORDER BY:

PRESIDENT TRUMP AND DEPARTMENT OF HOMELAND SECURITY BANNED COUNTRIES

IMPACT ON AMERICAN MUSLIMS:

President Donald Trump signed an executive order placing restrictions on entry for nationals from Muslim majority countries. In total, the policy involved seven nations Iran, Syria, Libya, Yemen, Somalia, Venezuela, and North Korea. Hundreds of travelers were detained and tens of thousands of visas were revoked. The policy has been condemned due to its discriminatory nature towards Muslims. Policy was justified as "not" a Muslim Ban under the reasoning that the policy is "terror and keeping our country safe." This statement from Trump was contradicted by his Associate Attorney General Rudy Giuliani, who stated that Trump wanted a Muslim Ban and required means to do it legally.

32. <https://www.brennancenter.org/our-work/research-reports/why-countering-violent-extremism-programs-are-bad-policy>

33. <https://foreignpolicy.com/2017/10/06/the-fbi-has-identified-a-new-domestic-terrorist-threat-and-its-black-identity-extremists/>

34. <https://www.washingtonpost.com/politics/2019/09/26/trumps-muslim-ban-really-was-muslim-ban-thats-what-data-suggest/>



Legal Codes Analysis: Defining Existing Statutes to Address White Supremacy

18 U.S. CODE § 2331³⁶ **Defining terrorism**

International Terrorism:

Violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States, occurring primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished.

Domestic Terrorism:

Violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States, occurring primarily within the territorial jurisdiction of the United States

Under these definitions, penalties are NOT imposed.

18 USC 351³⁵ **Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault; penalties**

Titled as Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault; penalties, would cover the events of January 6th

Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault; penalties: makes it a Federal offense to kill or kidnap a Member of Congress, a Member-of-Congress elect, certain specified executive branch officials, a major Presidential or Vice Presidential candidate, a Justice of the Supreme Court or a person nominated to be a Justice. Attempts and conspiracies to commit such offenses or to assault any such individual are also made criminal by this section

35. <https://www.law.cornell.edu/uscode/text/18/2331>

36. <https://www.law.cornell.edu/uscode/text/18/351>

18 U.S. CODE § 2339A³⁷**Providing material support to terrorists**

“Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 229, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1091, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332f, 2340A, or 2442 of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), section 46502 or 60123(b) of title 49, or any offense listed in section 2332b(g)(5)(B) (except for sections 2339A and 2339B) or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act...”

18 U.S. CODE § 2339B**Providing material support or resources to designated foreign terrorist organizations**

“Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act)...”

37. <https://www.law.cornell.edu/uscode/text/18/2339A>

18 U.S. CODE § 2332A

Use of weapons of mass destruction

“A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction— (1) against a national of the United States while such national is outside of the United States; (2) against any person or property within the United States, and (A) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense; (B) such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce; (C) any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense... Offense by National of the United States Outside of the United States.— Any national of the United States who, without lawful authority, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction outside of the United States...”

8 U.S. CODE § 2332B³⁸

Acts of terrorism transcending national boundaries:

“Whoever, involving conduct transcending national boundaries and in a circumstance described in subsection (b)— (A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any person within the United States; or (B) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure...”

Federal crimes of terrorism, involving conduct transcending national boundaries:

1. Relating to destruction of aircraft or aircraft facilities
2. Relating to violence at international airports
3. Relating to arson within special maritime and territorial jurisdiction
4. Relating to biological weapons
5. Relating to variola virus
6. Relating to chemical weapons
7. Relating to congressional, cabinet, and Supreme Court assassination and kidnaping
8. Relating to nuclear materials
9. Relating to participation in nuclear and weapons of mass destruction threats to the

38. [https://www.law.cornell.edu/uscode/text/18/2332b#:~:text=Whoever%20threatens%20to%20commit%20an,punished%20under%20subsection%20\(c\).&text=the%20offense%20is%20committed%20within,jurisdiction%20of%20the%20United%20States](https://www.law.cornell.edu/uscode/text/18/2332b#:~:text=Whoever%20threatens%20to%20commit%20an,punished%20under%20subsection%20(c).&text=the%20offense%20is%20committed%20within,jurisdiction%20of%20the%20United%20States)

- United States)
10. Relating to plastic explosives
 11. Relating to arson and bombing of Government property risking or causing death
 12. Relating to arson and bombing of property used in interstate commerce
 13. Relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon
 14. Relating to conspiracy to murder, kidnap, or maim persons abroad
 15. Relating to protection of computers
 16. Relating to protection of computers
 17. Relating to killing or attempted killing of officers and employees of the United States
 18. Relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons
 19. Relating to hostage taking
 20. Relating to government property or contracts
 21. Relating to destruction of communication lines, stations, or systems
 22. Relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States
 23. Relating to destruction of an energy facility
 24. Relating to Presidential and Presidential staff assassination and kidnaping
 25. Relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air
 26. Relating to destruction of national defense materials, premises, or utilities
 27. Relating to national defense material, premises, or utilities
 28. Relating to violence against maritime navigation
 29. Relating to maritime safety
 30. Relating to violence against maritime fixed platforms
 31. Relating to certain homicides and other violence against United States nationals occurring outside of the United States
 32. Relating to use of weapons of mass destruction
 33. Relating to acts of terrorism transcending national boundaries
 34. Relating to bombing of public places and facilities
 35. Relating to missile systems designed to destroy aircraft
 36. Relating to radiological dispersal devices
 37. Relating to acts of nuclear terrorism

38. Relating to harboring terrorists
39. Relating to providing material support to terrorists
40. Relating to providing material support to terrorist organizations
41. Relating to financing of terrorism
42. Relating to military-type training from a foreign terrorist organization
43. Relating to torture
44. Relating to prohibitions governing atomic weapons
45. Relating to sabotage of nuclear facilities or fuel
46. Relating to aircraft piracy
47. Relating to assault on a flight crew with a dangerous weapon
48. Relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft
49. Relating to application of certain criminal laws to acts on aircraft
50. Relating to destruction of interstate gas or hazardous liquid pipeline facility
51. Relating to narco-terrorism

FEDERAL TERRORISM CHARGE APPLICATION

FBI defines Domestic Terrorism as:

activities...[that] involve acts dangerous to human life that violate federal or state law...appear intended to (i) intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping."

U.S. code defines a "federal crime of terrorism" as an offense that is:

"calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct"

DYLANN ROOF

2015

CHARLESTON CHURCH SHOOTING**IDEOLOGY:**

- White supremacy
- Neo-Nazism
- Race war

HYPOTHETICAL FEDERAL TERRORISM APPLICATION:**18 USC § 2331(5) (Definition):**

- Domestic Terrorism

18 USC § 2339A:

- Providing material support to terrorists.

18 USC § 2332b:

- To influence or affect the conduct of government by intimidation or coercion (Neo-Nazism / race war)
- Relating to financing of terrorism

Hypothetical FTO designation for Nazism & fringe Neo-Nazi groups**18 USC § 2339B:**

- Providing material support or resources to designated foreign terrorist organizations (Neo-Nazism).

NO FEDERAL TERRORISM CHARGE**RELEVANT CHARGES (NOT FULL):**

33 federal charges, including:

- 9 counts of hate crime resulting in death
- 3 counts of hate crime involving an attempt to kill
- 9 counts of obstruction of exercise of religion resulting in death
- 3 counts of obstruction of exercise of religion involving an attempt to kill and use of a dangerous weapon
- 9 counts of use of a firearm to commit murder during and in relation to a crime of violence

ROBERT BOWERS

2018

PITTSBURGH SYNAGOGUE SHOOTING**IDEOLOGY:**

- White supremacy
- Antisemitism
- Belief in the white genocide conspiracy

HYPOTHETICAL FEDERAL TERRORISM APPLICATION:**18 USC § 2331(5) (Definition):**

- Domestic Terrorism

18 USC § 2339A:

- Providing material support to terrorists

18 USC § 2332a:

- Use of weapons of mass destruction (Colt AR-15 SP1 semi-automatic rifle)

18 USC § 2332b:

- To influence or affect the conduct of government by intimidation or coercion (White supremacist violence)
- Relating to financing of terrorism

NO FEDERAL TERRORISM CHARGE**RELEVANT CHARGES (NOT FULL):**

63 federal charges, including:

- 11 counts of obstruction of free exercise of religious beliefs resulting in death
- 11 counts of hate crimes resulting in death
- 2 counts of obstruction of free exercise of religious beliefs involving an attempt to kill and use of a dangerous weapon and resulting in bodily injury
- 2 counts of hate crimes involving an attempt to kill
- 8 counts of obstruction of free exercise of religious beliefs involving an attempt to kill and use of a dangerous weapon, and resulting in bodily injury to public safety officers

WADE MICHAEL PAGE

2012

SIKH TEMPLE SHOOTING**IDEOLOGY:**

- White supremacy
- Neo-Nazism, member of Hammerskins - neo-Nazi skinhead group
- "Racial holy war..."

HYPOTHETICAL FEDERAL TERRORISM APPLICATION:**18 USC § 2331(5) (Definition):**

- Domestic Terrorism

18 USC § 2339A:

- Providing material support to terrorists

18 USC § 2332a:

- Use of weapons of mass destruction (9mm Springfield XD(M) semi-automatic pistol)

18 USC § 2332b:

- To influence or affect the conduct of government by intimidation or coercion (White supremacist violence / Neo-Nazism / race war)
- Relating to financing of terrorism

Hypothetical FTO designation for Nazism & fringe Neo-Nazi groups**18 USC § 2339B:**

- Providing material support or resources to designated foreign terrorist organizations (*Hammerskins / Neo-Nazism*).

NO FEDERAL TERRORISM CHARGE**RELEVANT CHARGES (NOT FULL):**

Wade Michael Page committed suicide.

- Oak Creek police chief John Edwards said his force treated the incident as a "domestic terrorism incident" in "the beginning stages of this investigation."
- This was "an act of terrorism, an act of hatred, a hate crime," said former U.S. Attorney General Eric Holder.

FRAZIER GLENN MILLER JR.

2014

OVERLAND PARK JEWISH COMMUNITY CENTER SHOOTING**IDEOLOGY:**

- Leader of North Carolina-based White Patriot Party
- White supremacy
- Antisemitism

HYPOTHETICAL FEDERAL TERRORISM APPLICATION:**18 USC § 2331(5) (Definition):**

- Domestic Terrorism

18 USC § 2339A:

- Providing material support to terrorists

18 USC § 2332b:

- To influence or affect the conduct of government by intimidation or coercion (White supremacist violence / White Patriot Party)
- Relating to financing of terrorism

Hypothetical FTO designation for Nazism & fringe Neo-Nazi groups**18 USC § 2339B:**

- Providing material support or resources to designated foreign terrorist organizations (White supremacist violence / White Patriot Party).

NO FEDERAL TERRORISM CHARGE**RELEVANT CHARGES (NOT FULL):**

Federal charges include:

- 1 count of capital murder
- 3 counts of attempted murder and assault and weapons charges
- Sentenced to death

PATRICK WOOD CRUSIUS

2019

EL PASO SHOOTING**IDEOLOGY:**

- 'Great Replacement' white genocide conspiracy theory
- White Supremacy
- Xenophobic
- Race war

HYPOTHETICAL FEDERAL TERRORISM APPLICATION:**18 USC § 2331(5) (Definition):**

- Domestic Terrorism

18 USC § 2339A:

- Providing material support to terrorists

18 USC § 2332a:

- Use of weapons of mass destruction (WASR-10 AK-47-style semi-automatic rifle)

18 USC § 2332b:

- To influence or affect the conduct of government by intimidation or coercion (White supremacist violence)
- Relating to financing of terrorism

Hypothetical FTO designation for Nazism & fringe Neo-Nazi groups**18 USC § 2339B:**

- Providing material support or resources to designated foreign terrorist organizations (White supremacist violence).

NO FEDERAL TERRORISM CHARGE**RELEVANT CHARGES (NOT FULL):**

90 federal charges, including:

- 22 counts of committing a hate crime resulting in death
- 22 counts of use of a firearm to commit murder
- 23 counts of a hate crime involving an attempt to kill
- 23 counts of use of a firearm during a crime

JAMES ALEX FIELDS JR.

2017

CHARLOTTESVILLE CAR ATTACK**IDEOLOGY:**

- White Supremacy
- Neo-Nazism
- Large interest in Nazism and Adolf Hitler

HYPOTHETICAL FEDERAL TERRORISM APPLICATION:**18 USC § 2331(5) (Definition):**

- Domestic Terrorism

18 USC § 2339A:

- Providing material support to terrorists

18 USC § 2332b:

- To influence or affect the conduct of government by intimidation or coercion (White supremacist violence)
- Relating to financing of terrorism

NO FEDERAL TERRORISM CHARGE**RELEVANT CHARGES (NOT FULL):**

30 federal charges, including:

- 1 count of a hate crime act resulting in the death of Heather Heyer
- 28 counts of hate crime acts causing bodily injury and involving an attempt to kill
- 1 count of racially motivated violent interference with a federally protected activity

JOHN TIMOTHY EARNEST

2019

POWAY SYNAGOGUE SHOOTING**IDEOLOGY:**

- Antisemitism
- White genocide conspiracy theory
- White supremacy

HYPOTHETICAL FEDERAL TERRORISM APPLICATION:**18 USC § 2331(5) (Definition):**

- Domestic Terrorism

18 USC § 2339A:

- Providing material support to terrorists

18 USC § 2332a:

- Use of weapons of mass destruction (Smith & Wesson M&P15 Sport II semi-automatic rifle)

18 USC § 2332b:

- To influence or affect the conduct of government by intimidation or coercion (White supremacist violence)
- Relating to financing of terrorism

Hypothetical FTO designation for Nazism & fringe Neo-Nazi groups**18 USC 2339B:**

- Providing material support or resources to designated foreign terrorist organizations (White supremacist violence).

NO FEDERAL TERRORISM CHARGE**RELEVANT CHARGES (NOT FULL):**

109 federal charges, including:

- 54 counts of obstruction of free exercise of religious beliefs using a dangerous weapon resulting in death...
- 54 counts of hate crimes under the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act
- 1 count of damage to a religious property...

JOHN TIMOTHY EARNEST

2019

POWAY SYNAGOGUE SHOOTING**IDEOLOGY:**

- Antisemitism
- White genocide conspiracy theory
- White supremacy

HYPOTHETICAL FEDERAL TERRORISM APPLICATION:**18 USC § 2331(5) (Definition):**

- Domestic Terrorism

18 USC § 2339A:

- Providing material support to terrorists

18 USC § 2332a:

- Use of weapons of mass destruction (Smith & Wesson M&P15 Sport II semi-automatic rifle)

18 USC § 2332b:

- To influence or affect the conduct of government by intimidation or coercion (White supremacist violence)
- Relating to financing of terrorism

Hypothetical FTO designation for Nazism & fringe Neo-Nazi groups**18 USC 2339B:**

- Providing material support or resources to designated foreign terrorist organizations (White supremacist violence).

NO FEDERAL TERRORISM CHARGE**RELEVANT CHARGES (NOT FULL):**

109 federal charges, including:

- 54 counts of obstruction of free exercise of religious beliefs using a dangerous weapon resulting in death...
- 54 counts of hate crimes under the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act
- 1 count of damage to a religious property...

PLOT TO KIDNAP GOVERNOR OF MICHIGAN

2020

13 MEN, TIED TO A PARAMILITARY MILITIA GROUP CALLED THE WOLVERINE WATCHMEN, ORCHESTRATED A DOMESTIC TERROR PLOT

IDEOLOGY:

- Far-right extremism

HYPOTHETICAL FEDERAL TERRORISM APPLICATION:

18 USC § 2331(5) (Definition):

- Domestic Terrorism

18 USC § 351:

- Attempts and conspiracies to assassinate, kidnap, or assault a government official.

18 USC § 2339A:

- Providing material support to terrorists

18 USC § 2332b:

- To influence or affect the conduct of government by intimidation or coercion
- Relating to financing of terrorism
- Relating to hostage taking
- Relating to killing or attempted killing of officers and employees of the United States

18 USC § 2332a:

- Use of weapons of mass destruction (1,916 rounds of pistol, rifle, and shotgun ammunition; hundreds of firearms; extended magazines; various silencers; speedloaders; and bomb-making equipment)

Hypothetical FTO designation for Nazism & fringe Neo-Nazi groups

18 USC § 2339B:

- Providing material support or resources to designated foreign terrorist organizations (Wolverine Watchmen: paramilitary alt-right group).

NO FEDERAL TERRORISM CHARGE

RELEVANT CHARGES (NOT FULL):

Federal:

- 6 arrested on federal charge of conspiracy to kidnap the governor of michigan (18 U.S.C. § 1201(c), not the 18 USC 351 terrorism charge.
- Federal prosecutors charged Fox, Croft, and Harris with conspiracy to use weapons of mass destruction (18 U.S. Code § 2332b). For the rest, the trial date is postponed to October 12, 2021.

State:

- Michigan Attorney General charged Pete Musico, Joseph Morrison, Shawn Fix, Eric Molitor, Michael Null, William Null, and Paul Bellar with state crimes, including providing material support for terrorist acts, firearm crimes, and gang membership.

CAPITOL INSURRECTION

2021

POWAY SYNAGOGUE SHOOTING

IDEOLOGY:

- Far-right extremism
- Insurrection
- Attempted abduction of elected government officials

NO FEDERAL TERRORISM CHARGE

RELEVANT CHARGES (NOT FULL):

HYPOTHETICAL FEDERAL TERRORISM APPLICATION:

18 USC § 2331(5) (Definition):

- Domestic Terrorism

18 USC § 351:

- Federal offense to kill or kidnap, or attempt to kill or kidnap, a Member of Congress, a Member-of-Congress elect, certain specified executive branch officials...

18 USC § 2332b:

- To influence or affect the conduct of government by intimidation or coercion (far-right extremism, insurrection, attempted abduction of elected government officials)
- Relating to congressional, cabinet, and Supreme Court assassination and kidnaping
- Relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon
- Relating to killing or attempted killing of officers and employees of the United States
- Relating to government property or contracts



Relevant Legislation

117TH CONGRESS

[H.R. 350/S. 963](#)

DOMESTIC TERRORISM PREVENTION ACT OF 2021 (DTPA)

prev. [H.R. 5602](#) / [S.3190](#) Domestic Terrorism Prevention Act of 2020 in 116th Congress, which passed in the House; prev. [H.R.1931](#) / [S.894](#) Domestic Terrorism Prevention Act of 2019, which was left at introduced

204 COSPONSORS

201 DEMOCRATS, INCLUDING:

Rep. Raskin (D-MD-8),
Rep. Thompson (D-MS-2),
Rep. Slotkin (D-MI-8),
Rep. Jayapal (D-WA-7),
Rep. Speier (D-CA-14),
Rep. Lieu (D-CA-33),
Rep. Schiff (D-CA-28),
Rep. Porter (D-CA-45),
Rep. Sheila Jackson Lee (D-TX-18),
Rep. Nadler (D-NY-10),
Rep. Johnson (D-GA-4)

3 REPUBLICANS, INCLUDING:

Rep. Upton (R-MI-6),
Rep. Bacon (R-NE-2),
Rep. Fitzpatrick (R-PA-1)

SPONSOR

Rep. Schneider [D-IL-10]
(Introduced 01/19/2021); Sen.
Durbin [D-IL] (Introduced
03/24/2021)

STATUS

Introduced

LATEST ACTION

House - 03/05/2021 Referred to the Subcommittee on Crime, Terrorism, and Homeland Security; Senate - 03/25/2021 Read the second time. Placed on Senate Legislative Calendar under General Orders.

COMMITTEES

House - Judiciary; Homeland Security; Armed Services

SUMMARY & KEY PROVISIONS

H.R.350/S.963 | DOMESTIC TERRORISM PREVENTION ACT OF 2021 (DTPA)

- This bill establishes new requirements to expand the availability of information on domestic terrorism, as well as the relationship between domestic terrorism and hate crimes. **It authorizes domestic terrorism components within the Department of Homeland Security (DHS), the Department of Justice (DOJ), and the Federal Bureau of Investigation (FBI) to monitor, analyze, investigate, and prosecute domestic terrorism.** The domestic terrorism components of DHS, DOJ, and the FBI must jointly report on domestic terrorism, including white-supremacist-related incidents or attempted incidents. DHS, DOJ, and the FBI must review the anti-terrorism training and resource programs of their agencies that are provided to federal, state, local, and tribal law enforcement agencies.
- It creates an interagency task force to analyze and combat white supremacist and neo-Nazi infiltration of the uniformed services and federal law enforcement agencies.
- Finally, it directs the FBI to assign a special agent or hate crimes liaison to each field office to investigate hate crimes incidents with a nexus to domestic terrorism.
 - **As of the time of writing, the bill does NOT have a DT statute**
- Domestic terrorism is defined as it is on Sec. 2331 of Title 18⁴⁰
 - the term “domestic terrorism”⁴¹ means activities that—
 - A. involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
 - B. appear to be intended—
 - iii. to intimidate or coerce a civilian population;
 - iv. to influence the policy of a government by intimidation or coercion; or

39. https://www.justice.gov/archive/opa/pr/2005/July/05_crm_380.htm

40. <https://www.law.cornell.edu/uscode/text/18/2331>

41. https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=18-USC-1828319891-1415921653&term_occur=999&term_src=title:18:part:I:chapter:113B:section:2331

- v. to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
 - C. occur primarily within the territorial jurisdiction of the United States
- **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](#))
- **Biannual Reports:** DHS, the Justice Department, and the FBI would report every six months for 10 years on **the threat of domestic terrorism by White supremacists and neo-Nazis, including their infiltration of law enforcement agencies and the military.**
 - The reports would have to be unclassified to the greatest possible extent and published on each of the agencies' websites. → *increased transparency*
- **Hate crimes**
 - DT units will consult with DOJ and FBI's respective civil rights divisions to review each hate crime reported to determine whether the incident amounts to a DT-related incident (a part of the joint biannual reports) → *issue of underreporting and lack of data in hate crimes, often arising from lack of trust in law enforcement, which itself has had WS infiltration*
- **Training to combat DT**
 - Training and resources to assist State, local, and Tribal law enforcement agencies in understanding, detecting, deterring, and investigating acts of **DT and WS and neo-Nazi infiltration of law enforcement and correction agencies.**

Notable Endorsements of H.R. 5602 (2020 version)

Civil Rights / Civil Liberties

NAACP, NAACP Legal Defense and Educational Fund, Inc.
Lawyers' Committee for Civil Rights Under Law
Southern Poverty Law Center Action Fund
Human Rights Campaign
Center for the Study of Hate & Extremism

Community Groups

The Leadership Conference on Civil and Human Rights, MPAC, Muslim Advocates, Arab American Institute, Sikh Coalition, Bend the Arc: Jewish Action

NOTE: The Leadership Conference and several other civil rights organizations have noted that they will pull their endorsement if a DT statute is added to the bill.

What's changed since [H.R. 5602](#)?

- The "Findings" section has been taken out. This section outlined recent reports that identified white supremacists and far right-wing extremists as the most significant domestic terrorism threat in the U.S. It also listed recent domestic terrorist attacks, including Oak Creek, Charlottesville, Portland (anti-Muslim attack), and Poway.

KEY FINDINGS

- Includes specific language on white supremacists and neo-Nazis (*note: neither term is included in the definitions*

- *section of the bill)* and calls for an assessment of white supremacist (WS) and neo-Nazi (NN) infiltration of Federal, State, and local law enforcement agencies
- *Can the bill benefit from delineating between hate crimes and domestic terrorism? If it does do so, does that automatically give rise to the need for a DT statute?*
- **Concerns around a DT statute:** because of the unequal application of terrorism charges and the history of law enforcement bodies targetting Muslims and communities of color, a hastily introduced DT statute will only harm American Muslim communities and other minority communities.

OTHER LEGISLATION TO MONITOR

[H.R. 1178](#)

COMMISSION ON DOMESTIC TERRORISM ACT OF 2021

22 COSPONSORS



20 DEMOCRATS

2 REPUBLICANS

SPONSOR

Rep. Speier [D-CA-14]
(Introduced 02/18/2021)

STATUS

Introduced

LATEST ACTION

House - 02/18/2021 Referred to the House Committee on Homeland Security.

COMMITTEES

House - Homeland Security

SUMMARY & KEY PROVISIONS

- To establish the National Commission on Domestic Terrorism, and for other purposes.
- The purposes of the Commission are to—
 1. examine and report upon the Federal Government’s failure to respond to and prevent domestic terrorist attacks in the United States in the past 20 years;
 2. ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding domestic terrorist attacks in the United States in the past 20 years;
 3. make a full and complete accounting of the circumstances surrounding domestic terrorist attacks that occurred in the past 20 years, and the extent of the United States preparedness for, and response to, the attacks; and
 4. investigate and report to the President, Congress, and the public on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of domestic terrorism.
- Composition of the Commission:
 - Bipartisan: “Not more than 5 members of the Commission shall be from the same political party.”
 - Members can only be nongovernmental appointees

[H.R. 1031](#)**WHITE SUPREMACY IN LAW ENFORCEMENT INFORMATION ACT
OF 2021****14 COSPONSORS*****ALL DEMOCARTS*****SPONSOR**

Rep. Torres [D-CA-35]
(Introduced 02/11/2021)

STATUS

Introduced

LATEST ACTION

House - 04/28/2021
Referred to the
Subcommittee on Crime,
Terrorism, and Homeland
Security.

COMMITTEES

House - Judiciary

**SUMMARY & KEY
PROVISIONS**

- To require the Attorney General to prepare and release an intelligence assessment on White supremacy in law enforcement, and for other purposes.

116TH CONGRESS

[H.R. 4192](#)

CONFRONTING THE THREAT OF DOMESTIC TERRORISM ACT

9 COSPONSORS



ALL DEMOCARTS, INCLUDING:

Rep. Norton (D-DC-1)
Rep. Hastings (D-FL-20)
Rep. Rose (D-NY-11)
Rep. Lynch (D-MA-8)

SPONSOR

[Rep. Schiff \[D-CA-28\]](#)
(Introduced 08/16/2019)

STATUS

Introduced

LATEST ACTION

House - 08/16/2019
Referred to the
House Committee on the
Judiciary.

COMMITTEES

House - Judiciary

SUMMARY

- This bill **applies penalties for international terrorism to certain domestic criminal offenses** when they are committed with the intent to intimidate or coerce a civilian population, influence the policy of a government, or affect the conduct of a government.

H.R. 3106**DOMESTIC AND INTERNATIONAL TERRORISM DATA ACT****58 COSPONSORS****ALL DEMOCARTS****SPONSOR**

Rep. Thompson [D-MS-2]
(Introduced 06/05/2019)

STATUS

Passed House

LATEST ACTION

Senate - 10/15/2019
Received in the Senate and
Read twice and referred
to the Committee on
Homeland Security and
Governmental Affairs.

COMMITTEES

House - Judiciary

SUMMARY & KEY PROVISIONS

- This bill establishes new requirements to **expand the availability of information on domestic terrorism and international terrorism, including the links between them.**
- Specifically, the bill requires the Department of Homeland Security (DHS), the Department of Justice, and the Federal Bureau of Investigation to submit joint reports on domestic and international terrorism.
- Additionally, the Science and Technology Directorate within DHS must report on international terrorism with a nexus to a current trend in domestic terrorism.

SUMMARY & KEY PROVISIONS, CONT'D

H.R. 3106 | DOMESTIC AND INTERNATIONAL TERRORISM DATA ACT

- “In 2018, the lives of 50 Americans were taken as a result of domestic extremist-related killings — all connected to right-wing extremism, and mostly tied to white supremacy,” House Homeland Security Chairman Bennie Thompson (D-Miss.), the bill’s sponsor, said in a news release.⁴² “There’s an urgent need for robust, centralized, and transparent Federal data to inform counterterrorism policymaking — and Americans deserve to know exactly how their government is allocating resources to understanding and confronting the scourge of domestic terrorism,” he said.
- The **Government Accountability Office** would have to audit each joint report to track changes over time, **evaluate agency compliance with privacy and civil rights protections**, and review guidance for investigating terrorist acts.
- DHS Research: The bill also would authorize an additional \$1 million each year for DHS to research domestic terrorism trends. The department would provide Congress with annual reports on:
 - **International terrorism that has ideological, financial, logistical, or other connections to domestic terrorism.**
 - **Terrorists’ use of online platforms.**
 - Strategies that foreign governments have used to counter terrorism, and the potential benefits and risks of implementing those strategies in the U.S.

42.

<https://homeland.house.gov/news/legislation/chairman-thompson-committee-democrats-introduce-legislation-to-bolster-domestic-terrorism-data-transparency-and-research>

H.R. 7345**TO COUNTER WHITE IDENTITY TERRORISM GLOBALLY, AND FOR OTHER PURPOSES****3 COSPONSORS****ALL DEMOCARTS****SPONSOR**

Rep. Deutch [D-FL-22]
(Introduced 06/25/2020)

STATUS

Introduced

LATEST ACTION

House - 06/25/2020
Referred to the Committee on Foreign Affairs, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

COMMITTEES

House - Foreign Affairs;
Judiciary

SUMMARY & KEY PROVISIONS

- This bill requires the Department of State to develop a strategy titled the Department of State Strategy for Countering White Identity Terrorism Globally, and it establishes related reporting requirements.
- Such strategy shall include (1) an assessment of the global threat from white identity terrorism abroad, (2) detailed plans for using public diplomacy to degrade and delegitimize white identity terrorist ideologues and ideology globally, and (3) an outline of how the State Department plans to use designation as a Specially Designated Global Terrorist or foreign terrorist organization to support the strategy.

H.R. 4080**COUNTERING GLOBAL WHITE SUPREMACIST TERRORISM ACT****SPONSOR**

Sen. Menendez [D-NJ]
(Introduced 06/25/2020)

STATUS

Introduced

LATEST ACTION

Senate - 06/25/2020 Read twice and referred to the Committee on Foreign Relations.

COMMITTEES

Senate - Foreign Relations

SUMMARY & KEY PROVISIONS

- This bill requires the Department of State to develop a strategy titled the Department of State Strategy for Countering White Identity Terrorism Globally, and it establishes related reporting requirements.

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