

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

January 10, 2020

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: January 15, 2020, “A Persistent and Evolving Threat: An Examination of the Financing of Domestic Terrorism and Extremism”

The Subcommittee on National Security, International Development and Monetary Policy will hold a hearing entitled, “A Persistent and Evolving Threat: An Examination of the Financing of Domestic Terrorism and Extremism.” on Wednesday, January 15th at 10:00 a.m. in room 2128 of the Rayburn House Office Building. This will be a one-panel hearing with the following witnesses:

- **The Honorable Jared Maples**, Director, Office of Homeland Security and Preparedness, State of New Jersey
- **Rena Miller**, Specialist in Financial Economics, Congressional Research Service
- **George Selim**, Senior Vice President for Programs, Anti-Defamation League
- **Lecia Brooks**, Chief Workplace Transformation Officer, Southern Poverty Law Center
- **Mary B. McCord**, Legal Director, Institute for Constitutional Advocacy and Protection, Georgetown Law

Purpose

This hearing will examine domestic terrorism, how financial institutions (FIs) and law enforcement officials track the financing of domestic terrorist groups and individual terrorists today; the challenges posed in achieving a more robust financial tracking regime for this purpose; and the models and approaches that might be useful to countering domestic terrorist financing.

Domestic Terrorists

While definitions vary across statutes, agencies, and research organizations, the Federal Bureau of Investigation (FBI) defines domestic terrorists as individuals or groups who commit violent criminal acts in furtherance of ideological goals stemming from domestic influences¹. Most FBI cases classified as domestic terrorism fall into one of four categories: racially motivated violent extremism, anti-government/anti-authority extremism, animal rights/environmental extremism, and anti-abortion extremism.² Regardless of the underlying ideology, for the FBI to investigate,

¹ “Terrorism” FBI Website, last accessed Jan 7, 2020 <https://www.fbi.gov/investigate/terrorism>

² Testimony of FBI Assistant Director, Counterterrorism Division Michael C. McGarrity, “Confronting the Rise of Domestic Terrorism in the Homeland” May 8, 2019 <https://www.fbi.gov/news/testimony/confronting-the-rise-of-domestic-terrorism-in-the-homeland>

there must be activity intended to advance a political or social goal. Further, this activity, wholly or in part, must involve force, coercion, or violence in violation of federal law (see Appendix A).

This is distinct from international terrorism committed in the United States, which includes investigations into members of designated foreign terrorist organizations (FTOs³) and state-sponsors of terrorism⁴ where bad actors may have received direction, training, finances, and other material support⁵ from the terrorist group of which they are a member. For the FBI, the definition of international terrorism also includes homegrown violent extremists (HVEs) who are individuals inside the United States who were radicalized here at home – often natural-born citizens but can include anyone who has largely been a resident in the U.S. – and whose bad acts are inspired, but not individually directed by, by these FTOs (see Appendix A).⁶

According to the FBI, there has been a sharp rise in domestic terrorism incidents. In testimony before House Committee in May 2019, the FBI Assistant Director of the Counterterrorism Division, Michael C. McGarrity, said that:

There have been more arrests and deaths in the United States caused by domestic terrorists than international terrorists in recent years...Racially-motivated violent extremists are responsible for the majority of lethal attacks and fatalities perpetrated by domestic terrorists since 2000.⁷

The then-acting Secretary of the Department of Homeland Security (DHS) similarly stated that domestic terrorism has evolved to become a greater threat in the US than international terrorism, noting that “racially based violent extremism, particularly violent white supremacy, is an abhorrent affront to the nation.”⁸ The Anti-Defamation League’s (ADL) Center on Extremism (COE) determined that, “In 2018, domestic extremists killed at least 50 people in the U.S., a sharp increase from the 37 extremist- related murders documented in 2017 [and] the fourth-deadliest year on record for domestic extremist-related killings since 1970.”⁹

Federal Authorities to Counter International and Domestic Terrorism

When international terrorism is suspected and where HVEs might act on their radicalization, the FBI and others can work proactively to pursue information about prospective offenses. There are several authorized resources available to counter international terrorism, including powers from the USA PATRIOT Act, such as electronic surveillance, delayed notification of search warrants,

³ “Foreign Terrorist Organization (FTO)” Congressional Research Service, Jan 15, 2019 <https://fas.org/sgp/crs/terror/IF10613.pdf>

⁴ “State Sponsors of Acts of International Terrorism—Legislative Parameters: In Brief” Congressional Research Service, Nov 30, 2018 <https://fas.org/sgp/crs/terror/R43835.pdf>

⁵ “Terrorist Material Support: An Overview of 18U.S.C. §2339A and §2339B” Charles Doyle, Congressional Research Service, Dec 8, 2016 <https://fas.org/sgp/crs/natsec/R41333.pdf>

⁶ “FBI, This Week: Booklet Helps Public Identify Homegrown Violent Extremists” FBI.gov, Sept 27, 2019 <https://www.fbi.gov/audio-repository/ftw-podcast-hve-indicators-booklet-092719.mp3/view>

⁷ See footnote 2

⁸ “DHS Chief: Domestic Terrorism Is A Greater Threat Than International Terrorism” Cristina Cabrera, Talking Points Memo, Aug 11, 2019 <https://talkingpointsmemo.com/news/mcaleenan-domestic-terrorism-greater-threat-international>

⁹ “Murder and Extremism in the United States in 2018” Anti-Defamation League, Jan 2019 <https://www.adl.org/media/12480/download>

and orders to obtain business and bank records through Foreign Intelligence Surveillance Act (FISA) Courts.¹⁰

Conversely, for domestic terrorism cases, there is no federal statute to prosecute such a crime, even if deemed by federal authorities to be acts of terrorism. Thus, bad actors like the 2017 white-supremacist Charlottesville attacker¹¹ and the racist 2015 Charleston shooter¹² who targeted African-American churchgoers were not charged with terrorism but rather firearms, attempted murder, and federal hate-crime charges, in addition to state criminal charges.¹³ Since domestic terrorism is not a federal crime, law enforcement is also restricted from pursuing proactive investigations, potentially missing information about those who have been radicalized to commit violence. For example, if a group of U.S. citizens is hosting a concert to raise funds for Al Qaeda, federal authorities can take immediate action to investigate those providing illegal, material support to an FTO. If those same Americans are raising funds to support a white supremacist or sovereign-citizen organization, federal authorities cannot investigate the groups unless there is evidence that force, coercion or violence is being planned or has occurred. For the former example, law enforcement can expend resources to uncover the plots, personnel, and finances, ahead of the bad act. For the latter, however, First Amendment protections of the citizens' civil liberties and privacy prevent prospective law-enforcement examination.

Further, although ties have been confirmed between domestic extremist groups like Identity Evropa (a sponsor of the violent "Unite the Right" rally in Charlottesville)¹⁴ and foreign counterparts like Generation Identity, there is no mechanism to designate domestic organizations that engage in the exchange of funding or the sharing of tactics, techniques, and procedures.¹⁵ As a result, despite this established nexus between foreign and domestic extremist groups, domestic terrorism groups do not receive the same level of scrutiny for their funding and ideological ties as designated FTOs, meaning that law enforcement and FIs might not pursue these cases until after a terrorist act occurs.¹⁶

Financing of Domestic Terrorism and Extremism

Similarly, these definitions affect how and when FIs look for evidence of these bad acts. After the attacks of September 11, 2011, Congress required FIs to ensure that money launderers and terrorists were not abusing their institutions or the financial system. This means that banks, money service businesses, and other FIs¹⁷ must "know their customers" and monitor transactions to seek

¹⁰ "The USA PATRIOT Act: Preserving Life and Liberty" Justice Department website, last accessed Jan 7, 2020 <https://www.justice.gov/archive/ll/highlights.htm>

¹¹ "Driver in deadly car attack at Charlottesville white nationalist rally pleads guilty to federal hate crimes" David K. Li, NBCnews.com, Mar 27, 2019 <https://www.nbcnews.com/news/us-news/driver-deadly-car-attack-charlottesville-white-nationalist-rally-pleads-guilty-n987961>

¹² "Dylann Roof convicted on all 33 charges in Charleston church massacre" Tess Owen, Vice, Dec 15, 2016 https://www.vice.com/en_us/article/paz79n/dylann-roof-convicted-on-all-33-charges-in-charleston-church-massacre

¹³ FBI Hate Crime Statistics, Federal Bureau of Investigation, FBI website, last accessed Jan 7, 2020 <https://www.fbi.gov/services/cjis/ucr/hate-crime>

¹⁴ See footnote 11

¹⁵ Keatinge, T., Keen, F., & Izenman, K. "Fundraising for Right-Wing Extremist Movements" The RUSI Journal, May 30, 2019.

¹⁶ "Statement Prepared for the U.S. Senate Committee on Homeland Security and Governmental Affairs" Clint Watts, September 25, 2019 <https://www.fpri.org/article/2019/09/countering-domestic-terrorism-examining-the-evolving-threat/>

¹⁷ "Appendix D: Statutory Definition of Financial Institution" FFIEC website, Last accessed Jan 7, 2020 <https://bsaaml.ffiec.gov/manual/Appendices/04>

out activity like money laundering or terrorism financing. Since domestic terrorism is not technically a crime and because hate crimes do not fall under the categories outlined in the Bank Secrecy Act, FIs are not expected to direct their programs at these challenges. While FIs train to understand and identify customers that may be human traffickers or supporters of international terror finance networks, they do not focus on identifying customers engaged in violent anti-Semitism or support for right-wing extremist groups.

Even if these transactions and customers were scrutinized, they might still go undetected as suspicious due to the relatively low-dollar profiles of most domestic terrorism incidents and the fact that many of these attacks involve legal financial transactions (see Appendix A). Additionally, the Anti-Defamation League's (ADL) study, "Funding Hate," found that many white supremacists have limited access to personal finances and are self-funded.¹⁸ Some even raise extra cash by selling white supremacist paraphernalia (e.g., tattoos, literature, music), but those finance avenues are beginning to be blocked on certain online marketplaces, like eBay, iTunes, and Spotify.¹⁹

From an FI perspective, the self-funding of lone-actor domestic terrorists makes it difficult to develop methods to identify suspicious activity related to domestic extremism and recognize related bad actors. It is also difficult for FIs to easily distinguish between the legal purchase of a firearm for non-violent, non-extremist purposes and the legal purchase of a firearm for the purposes of committing an act of domestic terrorism; in fact, since purchases are not itemized on the documentation transmitted to a customer's FI, neither a bank nor a payment processor would have notice of the content of a customer's firearm purchase.

Non-violent extremism is often the first step in the process of radicalization that ends in terrorism.²⁰ The financing of such extremism typically includes the creation and distribution of propaganda, the organization of events such as concerts and marches, and the maintenance of websites. From an FI's perspective, however, these non-violent extremist activities are functionally indistinguishable from their non-violent, non-extremist counterparts. Due to voluntary industry standards, domestic violent extremist organizations are mostly prevented from accessing many payment platforms (e.g., Visa, PayPal).²¹ The perpetrator must instead solicit funds from sympathizers through the sale of illicit merchandise or in the form of "membership dues," "donations" provided through "well-concealed cash," personal checks, or money orders.²² One notable exception, Amazon, does not prevent white supremacist organizations and individuals from publishing their pamphlets through its self-publishing service and allows hate music to be sold on its marketplace.²³

Government agencies and civil liberties groups cite First Amendment concerns about outlawing and surveilling extremist groups based on ideology. The Department of Justice has stated in

¹⁸ "Funding Hate: How White Supremacists Raise Their Money" ADL <https://www.adl.org/resources/reports/funding-hate-how-white-supremacists-raise-their-money#self-funding>

¹⁹ Ibid

²⁰ "Countering Violent Extremism and Risk Reduction" James Khalil and Martine Zeuthen, RUSI, Jun 2016 https://rusi.org/sites/default/files/20160608_cve_and_rr.combined.online4.pdf

²¹ "Funding Hate: How White Supremacists Raise Their Money" ADL <https://www.adl.org/resources/reports/funding-hate-how-white-supremacists-raise-their-money#self-funding>

²² Ibid

²³ Ibid

Congressional testimony that, “we probably would not want...something that is similar to what we have on the international side, which is designating foreign terrorist organizations...picking out particular groups that you say you disagree with their views...is going to be highly problematic, in a way that’s not when you’re designating Al Qaeda or ISIS or an international organization.”²⁴ The ACLU has issued formal statements objecting to current legislation, asserting that an expanded terrorism statute would undermine and violate equal protection, due process, and First Amendment rights.²⁵ Nor do FIs which, if the statutory definition of terrorism were to include domestic groups and ideals (e.g., virulent anti-immigrant sentiment), might require more invasive exploration of customers’ personal affiliations to look for a domestic-terror nexus.

Legislation

- **H.R. 5132:** Rep. Wexton (D-VA) has introduced H.R.5132, “The Gun Violence Prevention Through Financial Intelligence Act.” This bill would require the Financial Crimes Enforcement Network (FinCEN) to issue an advisory to FIs about how lone actors and other perpetrators of domestic terrorism procure firearms and firearm accessories.
- **Discussion Draft:** Rep. Gottheimer (D-NJ) has introduced a discussion draft of the “Freezing Assets of Suspected Terrorists and Enemy Recruits Act.” It would direct federal law enforcement agencies to notify the FinCEN of an arrest of an individual under suspicion of participating in domestic terrorism or providing material support for terrorism. FinCEN would then order any appropriate financial institution to freeze that individual's assets. The bill also sets forth provisions for contesting a freeze, unfreezing assets, and disposing of assets in the event of a conviction. Further, the FBI would establish a national clearinghouse of incidents of homegrown "lone actor" terrorism, domestic terrorism, and the provision of material support to terrorists. The clearinghouse would maintain information for purposes of cross-referencing and assisting investigations of law enforcement agencies.
- **Discussion Draft:** This draft bill would direct the GAO to study the funding of domestic terrorism. GAO would examine the efficacy, gaps, and best practices of foreign and domestic public- and private-sector efforts to combat domestic terrorism and extremism.

²⁴ “7 key questions about the threat of domestic terrorism in America” Mike Levine, August 6, 2019, ABC News, <https://abcnews.go.com/Politics/key-questions-threat-domestic-terrorism-america/story?id=64811291>

²⁵ “ACLU Statement Opposing H.R. 4192, Confronting the Threat of Domestic Terrorism Act” September 3, 2019, ACLU.org, Last accessed on Jan. 10, 2020 <https://www.aclu.org/letter/aclu-statement-opposing-hr-4192-confronting-threat-domestic-terrorism-act>

Appendix A

Examples of domestic terrorism following FBI criteria include:

- The July 2019 murders at California’s Gilroy Garlic Festival;²⁶
- The December 2019 murders at the JC Kosher Supermarket in New Jersey;²⁷
- The neo-Nazi who halted an Amtrak train in 2017 so he could attack “black people;²⁸”
- The Florida man who mailed pipe bombs in October 2018 to individuals associated with the Democratic party;²⁹ and,
- The August 2019 anti-immigrant, anti-Hispanic attack at an El Paso Walmart.³⁰

Examples of homegrown violent extremism under the FBI criteria for international terrorism include:

- The 2015 ISIS-inspired San Bernardino attack;³¹
- The 2017 ISIS-inspired truck attack that killed eight people in New York City;³²
- The Al-Qaeda-inspired 2013 Boston Marathon bombings;³³ and,
- The Hezbollah “sleeper agent” who was recently sentenced for scouting attack sites in New York City³⁴.

Examples violent extremism involving the legal purchase of firearms include:

- The massacre at Mother Emanuel AME church in Charleston, South Carolina in 2015;³⁵
- The shooting at the Tree of Life Synagogue in Pittsburgh, Pennsylvania in 2018;³⁶ and,
- The shooting at the kosher supermarket in New Jersey in 2019.³⁷

²⁶ “FBI Opens Domestic Terrorism Investigation into Gilroy Festival Shooting” Merrit Kennedy, NPR.com, Aug 6, 2019 <https://www.npr.org/2019/08/06/748788149/fbi-opens-domestic-terrorism-investigation-into-gilroy-festival-shooting>

²⁷ “FBI investigating New Jersey kosher grocery rampage as domestic terrorism” Maria Caspani, Reuters, Dec 12, 2019 <https://www.reuters.com/article/us-new-jersey-shooting/fbi-investigating-new-jersey-kosher-grocery-rampage-as-domestic-terrorism-idUSKBN1YG28G>

²⁸ “Alleged White Supremacist Is Charged with Terrorism After Stopping Amtrak Train” Bill Chappell, NPR, Jan 5, 2018 <https://www.npr.org/sections/thetwo-way/2018/01/05/575960858/alleged-white-supremacist-is-charged-with-terrorism-after-stopping-amtrak-train>

²⁹ “Florida Man Sentenced in Manhattan Federal Court to 20 Years in Prison for Mailing 16 Improvised Explosive Devices in Connection with October 2018 Domestic Terrorist Attack” U.S. Department of Justice press release, Aug 6, 2019 <https://www.justice.gov/opa/pr/florida-man-sentenced-manhattan-federal-court-20-years-prison-mailing-16-improvised-explosive>

³⁰ “Officials call El Paso shooting a domestic terrorism case, weigh hate crime charges” Robert Moore and Mark Berman, Washington Post, August 4, 2019 <https://www.washingtonpost.com/nation/2019/08/04/investigators-search-answers-after-gunman-kills-el-paso/>

³¹ “One year after the San Bernardino attack, police offer a possible motive as questions still linger” Mark Berman, Washington Post, Dec 2, 2015 <https://www.washingtonpost.com/news/post-nation/wp/2016/12/02/one-year-after-san-bernardino-police-offer-a-possible-motive-as-questions-still-linger/>

³² “Sayfullo Saipov Charged with Terrorism and Murder in Aid of Racketeering in Connection with Lower Manhattan Truck Attack” Department of Justice press release, Nov 21, 2017 <https://www.justice.gov/opa/pr/sayfullo-saipov-charged-terrorism-and-murder-aid-racketeering-connection-lower-manhattan>

³³ “Boston Marathon Terror Attack Fast Facts” CNN, Apr 9, 2019 <http://www.cnn.com/2013/06/03/us/boston-marathon-terror-attack-fast-facts/index.html>

³⁴ “Hezbollah member gets 40 years for scouting possible sites for terrorist attacks in New York” Shayna Jacobs, Washington Post, Dec 3, 2019 https://www.washingtonpost.com/national-security/hezbollah-member-gets-40-years-for-scouting-possible-sites-for-terrorist-attacks-in-new-york/2019/12/03/f4031c68-1613-11ea-a659-7d69641c6ff7_story.html

³⁵ See footnote 12

³⁶ “Tree of Life massacre: A year later, US Jewish communities still facing ‘significant threats’” Jorge L. Ortiz, USA Today, Oct 27, 2019 <https://www.usatoday.com/story/news/nation/2019/10/27/tree-life-year-after-pittsburgh-attack-u-s-jews-threatened/2451390001/>

³⁷ The suspects in the December 2019 shooting at a Jersey City kosher deli legally obtained two of the five firearms used. Investigations into the other three firearms are on-going. See <https://www.washingtonpost.com/nation/2019/12/15/probe-jersey-city-shooting-leads-fbi-arrest-pawn-shop-owner-weapons-charges/>