

RESPONSES OF
THE FEDERAL BUREAU OF INVESTIGATION

TO QUESTIONS FOR THE RECORD
ARISING FROM A SEPTEMBER 29, 2021, HEARING

BEFORE THE
HOUSE OVERSIGHT SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL LIBERTIES
U.S. HOUSE OF REPRESENTATIVES

ENTITLED
“CONFRONTING VIOLENT WHITE SUPREMACY (PART VI): EXAMINING THE
BIDEN ADMINISTRATION’S COUNTERTERRORISM STRATEGY”

QUESTIONS FROM CHAIRMAN RASKIN

1. (U) **Since 2017, domestic terrorism investigations have nearly tripled, from 1,000 to 2,700, with cases related to violent white supremacists in that group actually having tripled. Has the Federal Bureau of Investigation (FBI) increased resources to combat this growing threat, and how will its response continue to change as it seeks to implement the Administration’s National Strategy for Countering Domestic Terrorism?**

(U) **RESPONSE:** In response to the evolving domestic terrorism threat, the FBI has re-evaluated the ranking of its threat priorities. Therefore, in FY20 the FBI elevated the Racially or Ethnically Motivated Violent Extremism (RMVE) threat to our highest threat priority. The FBI considers violent extremism motivated by any racial bias a high priority. In fact, the FBI prioritizes this threat among the most serious terrorism threats posed to the United States (US), commensurate with threats like ISIS and Homegrown Violent Extremists (HVEs). In FY22, the FBI recognized the same need when assessing the Anti-Government/Anti-Authority Violent Extremism threat, and also elevated it to our highest priority, on par with the RMVE threat. The elevation of the two threats establishes a national focus on these priorities and enables a shift in resources commensurate to the threat. The FBI continually assesses and evaluates its threat priorities to ensure resources are appropriately allocated both in Field Offices and Headquarters.

(U) In addition, the FBI remains dedicated to working with our partners on the effective implementation of the National Strategy for Countering Domestic Terrorism and continue to evolve our response to this threat. The strategy calls for us to understand and share domestic terrorism-related information in a whole-of-government effort to combat this threat. The FBI has taken a number of steps to implement the strategy:

- (U) The FBI has bolstered our analytic resources focused on the domestic terrorism threat. We continue to disseminate intelligence products to our partners to identify actionable intelligence, trends on the domestic terrorism threat, and tactics and tradecraft used by domestic violent extremists. Many of these intelligence products are produced jointly with the National Counterterrorism Center (NCTC) and the Department of Homeland Security (DHS). The FBI is a member of the Department of Justice's Domestic Terrorism Executive Committee, which provides a national-level forum for information sharing at the leadership level on domestic terrorism matters.
- (U) The FBI has worked to strengthen our two-way exchange of information with our state and local law enforcement partners, as they are often in the best position to identify important facets of this threat.
- (U) The FBI has increased its collaboration with private sector partners including in the finance, retail, trucking, shipping, and technology sectors, by providing information including threat indicators, case studies of productive partnerships, and legal and policy challenges.
- (U) The FBI has also taken specific steps related to hate crimes. We launched a National Anti-Hate Crimes Campaign involving all 56 FBI field offices to encourage reporting of hate crimes and hate incidents. Our Criminal Investigative Division has elevated criminal civil rights violations and hate crimes to our highest-level national threat priority. This makes hate crimes a focus for all of our field offices and increases resources for hate crimes investigations and prevention.

2. (U) Will the FBI again commit to providing the Subcommittee with information about how we could set up a mandatory reporting structure that would give federal law enforcement more capability to track potential domestic extremism threats within state and local police?

(U) **RESPONSE:** The FBI will leverage all tools available to combat domestic terrorism, and there are several legislative proposals that could be helpful in the fight against violent extremism. With regards to the specific question, the FBI continually works with our state and local partners through our Joint Terrorism Task Forces (JTTFs) to keep them apprised of the current terrorism threat picture. We also ensure they are well educated on the indicators of violent extremism. The FBI defers to its state, local, tribal, and territorial partners to determine what hiring stipulations they will put in place to ensure violent extremists do not enter their ranks.

- a. (U) **Can the FBI guarantee receipt of this information by December 30, 2021?**
- b. (U) **Does the FBI currently collect information on potential insider threats from other federal executive branches?**
- c. (U) **How does the FBI address instances of insider threats within its own organization?**

- d. (U) **Have any agents or employees been identified as being identified with Racially Motivated Violent Extremist (RMVE) or Militia Violent Extremist (MVE) activities? Did the FBI remove the agents from duty or enact any other punishment?**

(U) **Response:** The FBI has robust internal vetting processes for employees. For example, the FBI conducts full-scope polygraph examinations (governed by the Polygraph Program Policy Guide) of all applicants to determine if they meet the National Security and Suitability standards. In addition, FBI employees complete limited scope polygraph examinations every five years.

(U) The FBI receives information from the Section 811 (of the *Intelligence Authorization Act for Fiscal Year 1995*) Referral process for insider threats from other federal executive branch entities. The Security Executive Agent Directive (SEAD) establishes adjudicative criteria, known as Adjudicative Guidelines, for individuals with security clearances, which serve to assess one's continued eligibility to access classified national security information. Reviews of national security eligibility in the FBI are conducted by the Security Division and take into account a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. If the Security Division, after evaluating allegations of a potential insider threat, determines the information is serious enough to remove national security eligibility, a recommendation is made to the FBI Security Programs Manager to revoke the individual's FBI held clearance.

(U) In addition, the Department of Justice also has a robust Insider Threat Prevention and Detection Program (ITPDP), which was established consistent with the National Insider Threat Policy and Executive Order 13587, *Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information* (Oct. 7, 2011). The ITPDP, which is housed within the Drug Enforcement Administration, the United States Marshals Service, the FBI, and the Justice Management Division (JMD), establishes a process for deterring, detecting, and mitigating insider threats and is tailored to meet the distinct mission, needs, and systems of Department components. Under the ITPDP, the Department's insider threat centers have developed systems and procedures for the timely reporting of all insider threat incidents and concerns for appropriate action and referral to appropriate Departmental investigative organizations. The program also includes appropriate protections for legal, privacy, civil rights, and civil liberties requirements.

3. (U) **Does FBI consider “domestic terrorism” to be synonymous with “domestic violent extremism,” and, if not, what is the difference?**

(U//FOUO) **RESPONSE:** The FBI uses both the terms “domestic terrorism” and “Domestic Violent Extremism.” The term “domestic terrorism” is defined in 18 USC § 2331. The statute states that “domestic terrorism” 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 — (i) to 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; and (C) occur primarily within the territorial jurisdiction of the United States.”

(U//FOUO) Domestic Violent Extremists (DVEs) is a term that is not defined in U.S. law, but in practice can refer either to individuals who have committed an act of domestic terrorism or who are predicated subjects suspected of planning violent criminal acts who have not yet committed an act, but who are being investigated for potential federal violations in furtherance of a political or social goal. For purposes of how the FBI works a domestic terrorism investigation, it is a distinction without a difference.

(U) In May 2021, FBI and DHS jointly issued a report titled “Strategic Intelligence Assessment and Data on Domestic Terrorism.” The report, which includes a quantitative breakdown of FBI-designated significant domestic terrorism incidents in the United States from 2015 through 2019, is available at <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view>. In October 2022, the FBI and DHS published a second report covering data for 2020-2021, available at <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report-2022.pdf/view>. The October 2022 report defines a DVE as “an individual based and operating primarily within the United States or its territories without direction or inspiration from a foreign terrorist group or other foreign power who seeks to further political or social goals, wholly or in part, through unlawful acts of force or violence dangerous to human life.”

4. (U) Has coordination between state and federal agencies to ensure rights-protecting intelligence gathering related to extremist activity investigations been enhanced since the January 6 insurrection? If so, please explain.

(U) **RESPONSE:** As an organization, the FBI fully leverages our partnerships with federal, state, local, tribal, and territorial law enforcement to combat terrorist threats to the U.S. We continue to share information, and encourage the sharing of information, among our numerous partners via the FBI-led JTTFs in all of our 56 Field Offices. These relationships are critical to our ability to detect, identify, and disrupt terrorist threats.

(U) Since January 6th, the Department of Justice, including the FBI, has increased its focus on information sharing with our state, local tribal, and territorial partners, providing, at the unclassified level, more information, with more details, more quickly. This includes publishing and disseminating intelligence products — often in coordination with partner organizations, such as DHS and NCTC — that provide our partners with greater insight into the evolving threat, as well as situational awareness notifications to inform public safety and security planning efforts in advance of potential violence. We are committed to ensuring that state, local, tribal, and territorial partners receive not just warnings of specific, credible threats of violence but also, where appropriate, broader indicators and warnings that can inform our partners’ level and type of preparation for potential violence.

(U) The Department of Justice, including the FBI, is also developing new resources as part of our broader effort to boost support to state, local, tribal, and territorial law enforcement in tackling domestic terrorism, including resources that will cover relevant iconography, symbology, and

phraseology used by many domestic terrorists as well as data-driven guidance on how to recognize potential indicators of mobilization to domestic terrorism.

5. **(U) The FBI has announced that hate crime and civil rights violations have been elevated to its highest-level national threat priority.**
 - a. **(U) What does this mean in terms of resources devoted to investigating and preventing hate-based violence?**
 - b. **(U) How does the FBI incorporate hate crimes reporting into its understanding of RMVE?**
 - c. **(U) Does the FBI correlate hate crimes-related information or intelligence with domestic violent extremism or domestic terrorism when investigating cases?**
 - d. **(U) Does the FBI incorporate hate crimes into its intelligence assessments or reports relating to RMVE or MVE? Please explain.**

(U//FOUO) **RESPONSE:** The FBI works collaboratively across its programs on instances of potential hate crimes and DVE-related investigations. In instances of a potential hate crime, the FBI's Civil Rights program will open an investigation. If the investigation reveals a nexus to domestic terrorism, the FBI's Civil Rights program will work with the FBI's Domestic Terrorism program through the FBI's Domestic Terrorism-Hate Crimes Fusion Cell to determine the best path forward. This may include, but is not limited to, considering whether to designate the investigation as a domestic terrorism matter, assigning a domestic terrorism agent to the case, or developing regular communication between the two programs. In cases involving DVEs, where a potential hate crime is identified, the FBI's Domestic Terrorism program will coordinate with DOJ's Civil Rights Division and the local US Attorneys' Office (USAO) to assess the potential for a hate crimes charge. In certain instances, based on the specific context of the investigation, parallel domestic terrorism and hate crimes cases will be opened. In addition to collaborating on operations, the FBI's Counterterrorism Division (CTD) and Criminal Investigative Division (CID) regularly work together on joint intelligence production, most frequently on hate crimes, domestic terrorism, and FACE Act-related incidents and investigations, and those intelligence products are used in the overall understanding of the domestic terrorism threat from all types of DVEs.

6. **(U) In 2020, more than 70 cities in the United States with populations greater than 100,000 reported zero hate crimes to the FBI or did not report any data at all—including some police departments in cities where an FBI Field Office is located. What efforts are being made to ensure more comprehensive reporting in the future?**

(U) **RESPONSE:** On January 1, 2021, the FBI's Uniform Crime Reporting (UCR) Program transitioned to full National Incident-Based Reporting System (NIBRS) reporting. NIBRS collects more comprehensive crime data than the system it replaced, which was referred to as the Summary Reporting System, making NIBRS a more effective tool for law enforcement, policy makers, and analysts to understand crime and make more informed decisions in order to address

it. NIBRS also captures crime data that will help data users better understand the magnitude of hate crime threats. In order for law enforcement agencies (LEAs) to report hate crime to the FBI's UCR Program, said agencies must have completed the NIBRS transition process.

(U) As of May 10, 2022, approximately 63 percent of the LEAs participating in the UCR Program submitted data via NIBRS for the reporting year 2021; the populations of these agencies represent approximately 66 percent of the population covered by agencies that submitted NIBRS data to the UCR Program. All 50 states are FBI-certified to report via NIBRS, and 19 states submit 100 percent of their data via NIBRS; the other NIBRS-certified states continue to onboard agencies while submitting data for the LEAs that are NIBRS-certified. Nontransitioned LEAs within a state must meet the federal and state certification standards in order to report data via NIBRS. A limited number of LEAs submit NIBRS data through direct contributions to the FBI.

(U) The FBI's UCR Program developed the NIBRS Collection Application (NCA) to provide federal agencies the ability to comply with the Uniform Federal Crime Reporting Act of 1988. In June 2020, when deployed, the NCA was utilized by federal and tribal agencies to submit NIBRS data to the UCR Program. In April 2021, the FBI's UCR Program offered the NCA to the U.S. territories and local LEAs. As of May 10, 2022, there are 33 federal agencies, 138 tribal agencies, and 5 local LEAs using NCA to submit NIBRS data to the UCR Program.

(U) Through concentrated engagement, the FBI's UCR Program continues to message to agencies the benefits of transitioning to NIBRS and the steps necessary for an agency to transition and provides subject matter expertise. In addition, the FBI's UCR Program is engaging with its field office personnel to assist in promoting and advancing the NIBRS transition efforts within the respective areas of responsibility. Completing the NIBRS transition is essential for reporting hate crime data, because NIBRS is the only mechanism available for LEAs to provide this information. Other resources available to agencies include data integration support, technical assistance, and training, at no cost to LEAs.

(U) The FBI's UCR Program continues to develop strategies for increasing participation. During 2021, the FBI worked closely with the Department of Justice (DOJ) to address hate crimes. In March 2021, Attorney General (AG) Garland issued a memorandum titled, *Hate-Based Violence and Incidents*, which directed a 30-day expedited review to determine how DOJ can deploy all the tools at its disposal to combat hate. The FBI's Criminal Investigative Division (CID) was a participant in the review process. To meet one directive established from the AG's 30-day review, CID's Civil Rights Unit agreed to host six regional civil rights conferences in 2021 and 2022. The conferences were held in Denver, Louisville, San Francisco, Philadelphia, New Orleans, and Atlanta. During these conferences, the FBI's UCR Program conducted a presentation which focused on the importance and benefits of reporting hate crimes using NIBRS and becoming a reporting entity.

(U) In addition, the FBI's UCR Program provided FBI special agents in charge with UCR Program profiles to assist with field office outreach in their areas of responsibility. The FBI's Criminal Justice Information Services Division is in the process of visiting all 56 field offices to promote NIBRS and hate crime reporting. This information is shared with FBI staff as well as state and local law enforcement personnel in attendance.

(U) The FBI also worked closely with the DOJ to combat hate crimes and incidents, consistent with AG Garland's directive, *Improving the Department's Efforts to Combat Hate Crimes and Hate Incidents*, issued on May 27, 2021. The UCR Program is fully committed to supporting the implementation of the COVID-19 Hate Crimes Act and the Jabara-Heyer NO HATE Act (Public Law 117-13). To support the enactment of Public Law 117-13, the FBI's UCR Program offers onsite and virtual training to address reporting concerns associated with hate crime. This training includes an overview of the NIBRS and hate crimes statistics collection and a discussion of the two-tiered, decision-making process for determining bias motivation, as well as the importance and benefits of reporting NIBRS and hate crime data. This training is available to any agency requiring assistance to begin reporting via NIBRS.

(U) The FBI's UCR Program is in the process of developing a Hate Crimes Focus Group made up of personnel from the FBI and DOJ; representatives from the state UCR programs; federal, state, local, and tribal agencies; and the major law enforcement associations. Increasing participation in the FBI's UCR Program's Hate Crime Statistics Collection will be the initial focus of this group.

7. (U) **A January 13, 2021, Joint Intelligence Bulletin provides that the January 6 attack on the United States Capitol would “foster connections” between groups of varying ideologies including RMVEs and MVEs.**
 - a. (U) **What steps is the FBI taking to monitor this evolution of domestic violent extremists?**

(U) **RESPONSE:** The FBI continues to work with our federal, state, and local partners to identify and collect intelligence we can action to proactively work on disrupting all terrorist actors. Additionally, we have a cadre of intelligence analysts focused on providing indicators and warning surrounding domestic terrorism threats. These analysts work with federal, state, local, and foreign partners to position the FBI and our partners to best react operationally to the constantly evolving nature of the domestic terrorism threat. The FBI, joint with NCTC and DHS, also published the 2021 edition of the *US Violent Extremist Mobilization Indicators* booklet, which details specific observable indicators to assist bystanders in recognizing behaviors that may indicate a mobilization to violence.

- b. (U) **Has the FBI witnessed increased collaboration between RMVEs and MVEs since January 6, 2020? Please explain.**

(U) **RESPONSE:** While trends of the domestic terrorism threat continue to evolve, long-standing DVE drivers, including racism, anti-Semitism, perceived government or law enforcement overreach, socio-political conditions, legislation, COVID-19 restrictions, and other world events, combined with personal grievances, remain constant. The FBI assesses some DVEs will continue to personalize their own ideology in an attempt to justify their violent acts.

- c. (U) **Please explain how the FBI's knowledge and understanding of far-right RMVEs and MVEs has evolved since January 6.**

(U) **RESPONSE:** The FBI and our partners have been monitoring the evolution of all aspects of the DT threat, including RMVEs and MVEs. Many of the grievances that feed into RMVE and MVE radicalization and mobilization to violence that existed on January 6 are still prevalent. Overall, the threat posed by these actors has remained consistently elevated since January 6. The FBI reaffirms our commitment to focusing on threats or acts of violence or other federal criminal activity, regardless of underlying motivation or social political goal.

8. (U) **Recently leaked documents from the Oath Keepers, a far-right militia involved in the January 6 attack, indicate widespread recruitment from the ranks of law enforcement, including personnel associated with the FBI.**
 - a. (U) **How did the FBI view the threat posed by individuals affiliated with the Oath Keepers, including those with law enforcement training, prior to January 6?**
 - b. (U) **Please describe how that assessment has changed since January 6.**
 - c. (U) **Have you done any targeted work to investigate the scope of Oath Keeper affiliation within law enforcement agencies in the United States?**
 - d. (U) **What steps had you taken to address this issue previously?**

(U) **RESPONSE:** FBI has the dual mission of protecting the American people and upholding the Constitution. Along those lines, the FBI protects First Amendment rights, including the freedoms of association and assembly. As such, the FBI cannot open an investigation based solely on the exercise of First Amendment-protected rights or any specific ideology. The FBI opens an investigation when an individual threatens the use of or uses violence or engages in other activity that constitutes a federal crime. The mere affiliation with a group does not warrant opening an FBI investigation. Many groups in America form for the sole purpose of exercising their rights, and that is not a crime. That being said, if individuals use the assembly of likeminded people to recruit co-conspirators in a criminal act, then we will investigate those conspiring to break the law.

(U) The FBI continues to monitor the DVE threat and investigate terrorism-related crimes, regardless of any particular individual's employment status or potential self-affiliation with a group. We are always concerned when a person in a position of trust abuses their authority in furtherance of a violent extremist ideology.

9. (U) **Prior to the deadly January 6 attack on the Capitol, what did the FBI know about the groups and individuals that were involved in the attack?**

(U) **RESPONSE:** As has been previously stated, the FBI protects the First Amendment rights of all American citizens, including the freedoms of association and assembly. Therefore, the FBI does not actively investigate any particular domestic group. Regardless of ideology, the FBI will investigate violent, criminal acts committed by individuals intending to intimidate, influence, or coerce a civilian population or a government.

10. (U) **In your assessment, please explain how the following causes contributed to the fatal intelligence failure on January 6, 2020:**
 - a. (U) **lack of resources or training;**

- b. (U) lack of supervision or directives from Trump Administration; and**
- c. (U) bias in the FBI's prioritization.**

(U) **RESPONSE:** The FBI was outraged by what we saw happen at the Capitol on January 6. Anytime there is an attack – particularly an attack where one of our partners suffered a line of duty death, and multiple other brave law enforcement officers were injured – the FBI will take all available steps to investigate criminal conduct and bring perpetrators to justice. As we continue to investigate the events of January 6, we will remain steadfast in our dedication to protecting the American people and upholding the Constitution, while always striving to serve justice.

11. (U) What should the FBI have done differently to prevent or mitigate the damage incurred because of the January 6 attack?

(U) **RESPONSE:** The FBI continues to examine the events of January 6, and what led up to that day. While we are working to learn from our collective experiences to ensure an attack like January 6 does not happen again, we are still aggressively pursuing investigative actions to bring those individuals involved to justice.

(U) Leading up to January 6, it was a national priority for all FBI field offices to collect and report any intelligence related to the event. The FBI's CTD tasked all 56 field offices to collect information that may indicate threats to the National Capital Region and any events occurring on January 6. We were proactive in sharing various intelligence products, following our intelligence sharing processes, with our federal, state, and local partners through the JTTFs and our Washington Field Office joint interagency Command post, which was stood up in anticipation of January 6.

(U//FOUO) Additionally, throughout 2020, the FBI had been warning that DVEs posed a real threat across the country:

- (U) In 2020, we issued 12 external intelligence products to our federal, state, and local partners on threats posed by DVEs. The FBI had been assessing and warning of credible threats of violence from DVEs over the past year related to the election and the transition process, including threats against political candidates or events, the elevated threat posed by anti-government or anti-authority violent extremists, and the potential for DVEs to exploit First-Amendment protected activities, leading up to the January 6 attack.
- (U) Because we observed activity during the summer of 2020 that led us to assess there was a potential for increased violent extremist activity at lawful protests, in June 2020, we – in coordination with DHS and/or NCTC – issued two separate Joint Intelligence Bulletins (JIBs) highlighting the potential for increased violent extremist activity.
- (U) In August 2020, the FBI issued an external analytic report – a SPEAR – notifying our partners that we assessed DVE threats related to the 2020 elections would likely increase as the election approached, and we expected DVE threats to continue past the election.

- (U) In December 2020, we co-authored with DHS a product notifying law enforcement partners of the DVE threats.

(U//FOUO) The FBI continues to investigate and make arrests of the individuals who participated in January 6. Through this comprehensive investigation, we are learning impactful information that will help us evolve. For instance, we are learning about the potential planning and coordination prior to the attacks, including the use of radios and encrypted communication platforms – which makes confronting this threat even more challenging. Understanding the tactics of the individuals who perpetrated this event will only make us smarter and more effective in the future. But this is an ongoing process, and one that we welcome as we continue to learn from our collective experiences and work to prevent an attack like January 6 from happening again.

12. (U) Please describe recent changes made to the FBI Domestic Operations and Investigations Guide to prevent improper surveillance of domestic groups.

(U) **RESPONSE:** Although not because of any recent substantive changes relating to improper surveillance of domestic groups, the *Attorney General's Guidelines for Domestic FBI Operations* (AGG-DOM) and related implementing policy documents, including the *FBI Domestic Investigations and Operations Guide* (DIOG), contain long-standing guidance that prohibits the FBI from engaging in investigative activities directed at U.S. persons “solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States.” Additionally, across all of its investigative activities, the FBI must consider “such factors as the effect on privacy and civil liberties . . . and potential damage to reputation,” and use the “least intrusive method feasible” when carrying out an investigation.

13. (U) What other safeguards has the Bureau put in place to ensure that it does not inappropriately surveil individuals or groups engaging in protected First Amendment activity, including during the “assessment” stage prior to the opening of a formal investigation?

(U) **RESPONSE:** The FBI and Department of Justice have established a number of requirements and principles in policy to help ensure the FBI does not surveil individuals or groups solely because they are engaging in protected First Amendment activity.

(U) The AGG-DOM and the DIOG both require that any investigative activity conducted by the FBI must have an authorized purpose (i.e., an authorized national security, criminal, or foreign intelligence collection purpose).

- (U) “Simply stating such a purpose, however, is not sufficient to ensure compliance with this requirement. The authorized purpose must be well-founded and well-documented. In addition, the information sought and the investigative method used to obtain it must be focused in scope, time, and manner to achieve the underlying purpose. Furthermore, the Constitution sets limits on what that purpose may be. It may not be solely to monitor the exercise of constitutional rights, such as the free

exercise of speech, religion, assembly, press and petition, and, equally important, the authorized purpose may not be based solely on the race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity of an individual, group, or organization or a combination of only those factors.” (DIOG §4.1.2)

(U) The AGG-DOM and DIOG also provide additional approval rules and handling procedures for investigations involving “Sensitive Investigative Matters” (SIMs).

- (U) “The AGG-Dom classifies investigative activity that involves a religious or political organization (or an individual prominent in such an organization) or a member of the news media as a “sensitive investigative matter.” That designation recognizes the sensitivity of conduct that traditionally involves the exercise of First Amendment rights by groups, e.g., who associate for political or religious purposes or by the press.” (DIOG §4.2)

(U) In addition, the DIOG and AGG-DOM provide guidance on free speech.

- (U) “...During the course of lawful investigative activities, the FBI may lawfully collect, retain, and consider the content of constitutionally protected speech, so long as: (i) the collection is logically related to an authorized investigative purpose; (ii) the collection does not actually infringe on the ability of the speaker to deliver his or her message; and (iii) the method of collection complies with the least intrusive method policy.” (DIOG §4.2.1)

(U) The AGG-DOM and the DIOG require that FBI personnel consider whether a less intrusive investigative method may be appropriate based on the facts and circumstances.

- (U) “The AGG-Dom requires that the “least intrusive” means or method be considered and—if reasonable based upon the circumstances of the investigation—used to obtain intelligence or evidence in lieu of a more intrusive method... This principle is not intended to discourage FBI employees from seeking relevant and necessary information, but rather is intended to encourage investigators to choose the least intrusive—but still reasonable—means from the available options to obtain the information.” (DIOG §4.4)

(U) In addition to all of the privacy and civil liberty protections in the DIOG and AGG-DOM, the FBI’s Counterterrorism Division requires FBI personnel to obtain prior Chief Division Counsel (CDC) approval before opening a predicated investigation on a suspected domestic terrorist.

QUESTIONS FROM REP. RASHIDA TLAIB

(U) FBI's Disavowal of 2006 Report of White Supremacists in Law Enforcement

1. **(U) In September 2020, the House Committee on Oversight and Reform (Civil Rights and Civil Liberties Subcommittee) held a hearing on white supremacists in law enforcement and asked the FBI to update its 2006 intelligence report on the topic and testify at the hearing. The FBI disavowed the 2006 report and refused to testify, saying it had no evidence of the problem. Yet dozens of law enforcement officers participated in the January 6 riot, and several were arrested. The FBI released a February 2021 report updating the 2006 warning with contemporary evidence of the problem.**
 - a. **(U) Why did FBI managers disavow the 2006 reporting, which obviously was still accurate?**
 - b. **(U) Has the FBI disavowed or prevented public dissemination of other reports reflecting issues related to white supremacists in law enforcement? If so, please disclose such reports and the basis for such disavowal or prevention.**

(U) RESPONSE: The FBI has not produced any finished intelligence products on the possibility of law enforcement infiltration by Racially or Ethnically Motivated Violent Extremists (RMVEs) who advocate for the superiority of the white race since the 2006 product referenced in your questions. However, the FBI does assess that Domestic Violent Extremists (DVEs), including RMVEs, continue to value individuals with training and access to firearms, which can include current or former members of law enforcement and the military, as well as those who aspire to be a part of the law enforcement and military communities.

(U) Since January 6, the FBI has identified and arrested some individuals with current or former law enforcement affiliations for their participation in the attack on the U.S. Capitol. Our ability to learn from these cases helps us address our gaps and better educate our federal, state, and local law enforcement partners on the insider threat posed by DVEs. However, even with the arrests related to the U.S. Capitol, the FBI does not have information to support the assessment that these individuals are broadly representative of the hundreds of thousands of sworn law enforcement officers operating in the US across nearly 20,000 federal, state, county, and local agencies; and available FBI reporting has not revealed RMVE infiltration into law enforcement.

- c. **(U) Please describe the FBI's current programs to combat white supremacist infiltration into law enforcement.**

(U) RESPONSE: As previously mentioned, the FBI continues to monitor and investigate DVEs regardless of ideology or employment status. We are always concerned when a person in a position of trust abuses their authority in furtherance of a violent extremist ideology. The FBI maintains very strong relationships with the military and our federal, state, and local law

enforcement partners, and we work closely with all of these partners to disrupt violent extremists who currently serve.

2. **(U) The Departments of Defense and Homeland Security have recognized they have problems with their own employees' involvement in white supremacy and far-right militancy.**

- a. **(U) Has the FBI conducted a similar review?**

(U) **RESPONSE:** No, the FBI has not conducted a similar review. The FBI respectfully defers to the Departments of Defense and Homeland Security regarding the characterization for the results of their reviews.

- b. **(U) An Atlantic article based on leaked Oath Keeper membership applications indicated that two applicants claimed to be FBI employees. Has the FBI identified these employees? Has it found others who associated themselves with the Oath Keepers or other far-right militant organizations including, but not limited to, the Proud Boys or Three Percenters?**

(U) **RESPONSE:** The FBI has not confirmed any employee's memberships with these organizations.

FBI Investigations of the Proud Boys

1. **(U) The Proud Boys were among the leaders of the January 6 attack on the United States Capitol, according to FBI charging documents. Many of the Proud Boys who had previously participated in violence across the country conspired or traveled interstate, and the FBI had informants planted within the group. Proud Boys were arrested for illegal and violent activities at Make America Great Again rallies in D.C. after the elections on November 3.**

- a. **(U) Please identify all arrests of individuals affiliated with the Proud Boys made by the FBI in the six months preceding the January 6 attack. Please identify the crimes with which they were charged and the status of their cases.**

(U) **RESPONSE:** As a general practice, the FBI does not comment on the status or existence of any potential investigative matter to protect the integrity of all investigations. We note, however, that the FBI has the dual mission of protecting the American people and upholding the Constitution. Along those lines, the FBI protects First Amendment rights, including the freedoms of association and assembly. As such, the FBI cannot and will not open an investigation on an individual based solely on their affiliation with a group. The FBI cannot conduct investigative activity arbitrarily, or on groundless speculation, nor can the FBI investigate based solely on the exercise of First Amendment protected activities. Many groups in America form for the sole purpose of exercising their rights, and that is not a crime. Furthermore, the FBI focuses on the violence or other criminal activity committed by the individual, not their affiliation with a First Amendment-protected group, and we would therefore be unable to provide a definitive accounting of arrestees who are affiliated with the Proud Boys.

- b. (U) **Proud Boys have continued to participate in public violence across the country since the January 6 attack, without police intervention. Public violence in Portland, Washington State, and Los Angeles included Proud Boys who were at the Capitol riot, some who are facing charges related to January 6 and some who have not been charged. The violence, often against journalists, has not been prevented by local police. In fact, the Police Commissioner and Chief in Portland, Oregon, announced prior to a Proud Boys event that they would not police the rally, which unsurprisingly devolved into violence. Some of those committing violence at this event travelled interstate. By contrast, the Oregon U.S. Attorney's office charged dozens of activists that participated in Black Lives Matter protests in Portland in 2020.**
- i. (U) **Has the FBI arrested any individuals affiliated with the Proud Boys or other far-right militant groups for violence occurring at rallies or protests in Portland, Oregon, from January, 2020, to the present?**

(U) **RESPONSE:** The FBI uses all available lawful investigative techniques and methods to combat the domestic terrorism threat while continuing to collect, analyze, and share intelligence concerning the threat posed by violent extremists, in all their forms, who threaten the safety of Americans. With that being said, the FBI focuses on the threat of or actual use of violence or other activity that violates federal law, rather than their affiliation with a group. The FBI does not track arrest statistics based on someone's group affiliation.

(U) As an organization, the FBI fully leverages our partnerships with federal, state, local, tribal, and territorial law enforcement to combat terrorist threats to the US. We continue to share information, and encourage the sharing of information, among our numerous partners via the FBI-led JTTFs in all of our 56 Field Offices. These relationships are critical to our ability to detect, identify, and disrupt terrorist threats. This was particularly important in Portland because many of the criminal acts that occurred did not reach the federal criminal threshold. Therefore, the coordination with our state and local partners was key to ensuring individuals who violated local laws were appropriately brought to justice.

- c. (U) **In December 2020, two weeks before the January 6 attack on the U.S. Capitol, far-right militants attacked the Oregon State Legislature, including members of the Proud Boys. They fought with police, beat journalists, and damaged and broke into the building with the support of one Oregon state legislator.**
- i. (U) **Has the FBI arrested any of the individuals involved in this attack?**
- ii. (U) **Did the FBI produce any intelligence reports about the attack on the Oregon legislature and the threat these groups posed to police and legislators? Did the FBI share any such intelligence reports or**

information garnered therefrom with the Department of Justice or broader intelligence community?

- iii. (U) Local reports indicate three people who participated in the attack on the Oregon legislature also participated in the breach of the U.S. Capitol but have not been arrested. Is the FBI aware of these individuals?
- iv. (U) How many of the people arrested in connection with the Capitol attack participated in violence at previous public events? Have any of these individuals been arrested or charged with crimes related to committing violence at other public events?

(U) **RESPONSE:** In your questions, you ask if the FBI can confirm whether it has arrested or has ongoing investigations into individuals who attacked the Oregon State Legislature. As a general practice, the FBI does not comment on the status or existence of any potential investigative matter to protect the integrity of all investigations. However, I can assure you the FBI does not and will not tolerate violent extremists who use the guise of First Amendment-protected activity to engage in violent criminal activity. Consistent with our mission, the FBI holds sacred the rights of individuals to peacefully exercise their First Amendment freedoms. Regardless of their specific ideology, the FBI will actively pursue the opening of FBI investigations when an individual uses – or threatens the use of – force, violence, or coercion, in violation of federal law and in the furtherance of social or political goals. Specific to the incident in December 2020 in Oregon, there have been no federal prosecutions arising from this incident, which occurred on state property and were investigated by state and local authorities. According to press reporting, at least five individuals were arrested during the incident. Additionally, the Marion County District Attorney’s Office charged a former state official with official misconduct and criminal trespass for his alleged role in the incident, and in July 2022, the former official pleaded guilty to a misdemeanor offense of first-degree official misconduct.

The FBI and Social Media Monitoring

4. (U) Shortly after the January 6 attack, then FBI Assistant Director for Counterterrorism, Jill Sanborn, testified that the FBI does not have the authority to read public social media postings absent a criminal predicate. However, the Attorney General’s Guidelines for Domestic FBI Operations authorize agents to proactively monitor information posted publicly during assessments, which do not require particularized criminal predicate. In 2011 the FBI expanded this authority, modifying its Domestic Investigations and Operations Guide (DIOG) to allow agents to proactively surf the Internet without even opening assessments or documenting their activities. The November 5 memo from FBI Norfolk warning that an online thread was promoting “war” on the Capitol on January 6 demonstrates that agents were, in fact, monitoring social media postings.
 - a. (U) How are FBI managers trained to ensure that they appropriately understand the surveillance authorities detailed in the Attorney General’s Guidelines and approved by the FBI DIOG?

(U) **RESPONSE:** Training is a critical element of the FBI's ability to meet its mission, and the FBI has established extensive, mandatory training requirements to ensure that FBI personnel, including management, are aware of and have the skills necessary to meet their responsibilities and obligations. Social media is one of the main vectors through which domestic violent extremism, as well as homegrown violent extremism and jihadist inspired violent extremism is facilitated and amplified. The FBI does not simply patrol social media looking for problems, and we have properly authorized investigations where we look at social media as a key part of those investigations. We receive tips from social media companies, and we leverage this exchange of information to investigate whether there was a violation of federal law. The FBI can open an assessment without predication. However, the FBI cannot open an assessment arbitrarily, or on groundless speculation, nor can the FBI open an assessment solely based on the exercise of First Amendment protected activities. Furthermore, the FBI is prohibited from conducting any investigative activity without an authorized purpose and must conduct all investigations consistent with the rules in the AGG-DOM and the DIOG.