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Chair Jackson Lee, Ranking Member Biggs, and members of the Subcommittee, thank you for inviting me to testify regarding domestic terrorism in the United States. The deadly January 6, 2021 attack on the U.S. Capitol has raised attention to the persistent problem of white supremacist and far-right violence in this country. This attack, which left 5 people dead, including a U.S. Capitol police officer, was explicitly intended to prevent Congress from certifying the electoral college votes in the 2020 presidential election, and therefore clearly meets the statutory definition of domestic terrorism.¹ Two more U.S. Capitol police officers also lost their lives to suicide in the aftermath of the attack. We mourn these losses.

The failure of federal law enforcement to properly prepare for the attack on the Capitol is an indictment of the law enforcement intelligence enterprise that the Justice Department and Department of Homeland Security built since the al Qaeda attacks of September 11, 2001. The Justice Department prioritizes “international terrorism” investigations, which in practice primarily target Muslims, over “domestic terrorism” investigations, which do not. International terrorism investigations often involve aggressive monitoring and infiltration of Muslim, Arab, Middle Eastern, South Asian, and African American communities to pre-emptively identify and selectively prosecute “radicalized” individuals who might express opposition to U.S. foreign policies or support for groups the U.S. designates as foreign terrorist organizations, but have not previously attempted to commit violent acts. The federal government’s “domestic terrorism” efforts, on the other hand, investigate and prosecute only a small percentage of the violent acts actually committed by white supremacists and other far-right militants, including violence committed in public at rallies all across the country over the last four years. It is unknown how much this violence has risen compared to previous years, however, as no government entity has taken responsibility for documenting these attacks, or the fatalities that result, in an objective and comprehensive manner.

Congress Established a Robust Framework to Prosecute Domestic Terrorism

Fortunately, Congress has already done the work necessary to provide federal law enforcement with all the tools it needs to properly address white supremacist and far-right militant violence. I know because I worked successful domestic terrorism investigations as an FBI undercover agent in the 1990s, seizing illegal weapons,

solving bombings and hate crimes, and preventing future acts of violence. And these tools remain effective. Justice Department records over the last decade indicate it prosecutes twice as many domestic terrorism cases as international terrorism cases, using just one-fifth the investigative resources.² The problem is not a lack of authority. I documented the 52 federal crimes of terrorism that apply to domestic acts, and dozens of other civil rights, organized crime, violent crime, and conspiracy statutes that prosecutors regularly use in domestic terrorism cases for a 2018 Brennan Center report, “Wrong Priorities for Fighting Terrorism” (see attachment).³ The problem is that the Justice Department and FBI choose not to prioritize the investigation and prosecution of white supremacist and far-right violence as a matter of policy and practice. They do not even collect accurate data regarding such attacks.

Instead, the Justice Department and FBI use their domestic terrorism authorities most aggressively against groups that are far less violent and rarely, if ever, commit fatal attacks, such as environmentalists, animal rights activists, peace activists, anti-racism activists, and most recently, anti-fascists.⁴ The Justice Department’s failed attempt to prosecute more than 200 anti-Trump activists who were near where some windows were broken during the 2017 Disrupt J20 post-inauguration protests stands in sharp contrast to the relative handful of federal arrests arising from more than four years of far-right rioting across the country where counter-protesters, journalists, and police officers have been beaten, maced, stabbed, run over, shot, and killed.⁵ Recent reporting indicates that the Trump administration’s efforts to brand “antifa” as a terrorist threat distracted the FBI from investigations into violent attacks by white supremacists and far-right militants.⁶ Giving the Justice Department more power without increased accountability is a recipe for abuse. Unfortunately, the Justice Department and FBI have thwarted congressional and public efforts to obtain basic data regarding their use of domestic terrorism resources.

Congress Needs Accurate Data to Enact Sound Policies

Organized white supremacist violence has posed an enduring threat in the United States since its founding, but the Justice Department does not collect or publish data that measures the true nature or scope of this problem. Though white supremacist and far-right militant attacks represent just a tiny proportion of the violence that takes place in the U.S. each year, these crimes demand extra attention because they pose a persistent threat to vulnerable communities, particularly communities of color,

immigrants, LGBTQ people, women, the disabled, and religious minorities. White supremacists and far-right militants also kill law enforcement officers more often than other groups the FBI categorizes as domestic terrorists.⁷ Moreover, the organized nature of the groups that often commit this violence enables them to quickly replace any member who is arrested and incarcerated, and continue committing further acts of violence after any previous crime is successfully prosecuted.

Congress has repeatedly made clear its intent for the Justice Department to investigate and prosecute these crimes. In 1871, Congress passed what was arguably the first domestic terrorism law, the Ku Klux Klan Act.⁸ It later passed five federal hate crimes statutes to address the bias crimes that many white supremacists commit, and 52 terrorism laws that apply to domestic acts. It passed organized crime, violent crime, and conspiracy statutes that the Justice Department can and does use effectively at times, to prosecute violent white supremacist gangs. These statutes all impose substantial penalties for violations. Congress also funded 200 FBI Joint Terrorism Task Forces all across the country, which are designed to leverage state and local laws in the pursuit of terrorists, when federal prosecution, for whatever reason, is unwarranted. All the necessary tools already exist.

What the Justice Department has refused to do thus far, however, is to properly prioritize these investigations by producing a comprehensive national strategy to combat white supremacist and far-right militant violence, or even to collect accurate data about these attacks across all its programs.

Indeed, the multiple pathways Congress has provided to prosecute white supremacist and far-right militant violence inadvertently gave the Justice Department a way to obscure the true nature of the threat. If a white supremacist murders someone, the FBI could consider the crime an act of domestic terrorism, a hate crime, or simply a violent crime. If the FBI categorized it as domestic terrorism, the case would be treated as a top priority (though second in the counterterrorism program to international terrorism), and would be well-resourced and robustly investigated.

If the victim belonged to a protected class, the FBI could categorize the murder as a hate crime, a type of civil rights violation which is the bureau's fifth priority. FBI hate crime investigations typically have a narrow focus, seeking to identify evidence to prove the biased motive for the attack rather than to determine whether the

perpetrator was part of a continuing criminal enterprise. But the FBI probably wouldn't conduct an investigation because the Justice Department has a longstanding policy of deferring investigations of hate crimes to state and local law enforcement, even though some states don't have hate crime laws and many more rarely use them. Only a small percentage (14 percent in 2019) of police agencies acknowledge in federal crime reports that hate crimes occur in their jurisdiction.⁹ Crime victim surveys estimate there are approximately 230,000 violent hate crimes annually, but despite five federal hate crime statutes, the Justice Department prosecutes only about 25 defendants each year.¹⁰

A significant percentage of Justice Department prosecutions of violent white supremacists are not products of Joint Terrorism Task Force investigations or civil rights cases, but federal violent crimes task force investigations. These investigations are sometimes led by the Bureau of Alcohol, Tobacco, and Firearms or the Drug Enforcement Agency rather than the FBI. These cases receive surprisingly little attention, even though serious violent crimes are often alleged, including murders, and dozens of white supremacist gang members are arrested at a time in multi-agency raids. Twenty-four members of Aryan Circle were arrested in Texas in October, 2020, for instance, and 54 members of the New Aryan Empire were arrested in Arkansas in 2019, in just two examples.¹¹ The 2018 arrests of 40 members and associates of the United Aryan Brotherhood in Florida recovered 110 illegal firearms, including two pipe bombs and a rocket launcher.¹² These cases probably do not appear in Justice Department domestic terrorism statistics, but certainly, Congress needs this data to understand the full scope of white supremacist violence in the United States so it can establish effective policies to address it.

To be clear, these federal organized crime and violent crime prosecutions are effective tools the Justice Department can and should use to prosecute violent white supremacist and far-right militant groups. Indeed, this methodology could be effective in addressing violent crimes committed by organized groups like the Proud Boys, whose members have been arrested for acts of violence all across the country, including the attack on the U.S. Capitol. But the Justice Department needs to capture the data from these prosecutions, and the intelligence collected during these investigations, to develop a comprehensive national strategy to address this violence.

Without a national strategy, cases involving violent white supremacists and far-right militants will continue to fall through the cracks. Recent examples of far-right violence that appear to have met the statutory definition of domestic terrorism but resulted in no federal charges include the 2018 slaying of a gay Jewish man in California by a member of the violent neo-Nazi group Atomwaffen Division, the 2017 murder of a black man in New York City by a white supremacist intent on starting a race war, and the 2016 vehicular homicide of a black man in Oregon by a member of European Kindred, a white supremacist prison gang.¹³ State and local prosecutors charged these perpetrators with hate crimes and, in the New York City case, with violating a state terrorism statute. The crimes likely met the federal definition of domestic terrorism as well, as they were deadly and intended to intimidate a civilian population. These crimes did not go unpunished, however, so pursuing state charges may have been an appropriate choice in these cases. But, the Justice Department does not properly tally them as acts of domestic terrorism that need to be accounted for in a national strategy.

The failure to acknowledge the organized and interstate nature of violent far-right militant groups forfeits intelligence that could be used to prepare for and perhaps prevent future attacks. Several prominent members of the Proud Boys, for example, had been arrested by local police prior to the 2021 attack on the Capitol for engaging in violence at public events in Berkeley, California (2017), New York City (2018), Portland, Oregon (2018, 2019, and 2020); Seattle, Washington (2020); and Washington, D.C., (2020).¹⁴ It is hard to understand how federal law enforcement, including the FBI Joint Terrorism Task Forces and DHS-funded intelligence fusion centers, failed to account for these previous examples of Proud Boys' violence in preparation for the Stop the Steal rally.

Justice Department and FBI Intentionally Obscure Domestic Terrorism Data

I have to say these violent crime prosecutions *probably* do not appear in Justice Department domestic terrorism data because the Justice Department redacts the docket numbers when it discloses non-sensitive prosecutive data to the public, making it impossible to cross-check claimed statistical accomplishments against case records. The Brennan Center is currently suing the Justice Department under the Freedom of Information Act to obtain these docket numbers in terrorism prosecutions so the public can understand how the government uses its

counterterrorism authorities.¹⁵ Though the Justice Department acknowledges that it uses this data in congressional reporting, in litigation it argues the docket numbers need to remain secret because some of the defendants convicted in cases it reports as domestic terrorism prosecutions may not be terrorists. In contrast, the Department routinely releases data on cases that it considers to be international terrorism, even where the crimes charged bear no relation to terrorism.

The FBI has also thwarted congressional demands for data regarding its domestic terrorism program. In 2019, Congress passed the National Defense Authorization Act for Fiscal Year 2020, which included provisions requiring the FBI to produce data regarding how it uses its domestic terrorism resources.¹⁶ The bill required the FBI to publish data documenting the number of terrorist incidents and corresponding fatalities, and the number of investigations and prosecutions for each of the FBI's domestic terrorism categories by June 2020. This data would allow Congress to determine if the FBI was disproportionately investigating categories that produced fewer fatal attacks, but the bureau has yet to produce it. In fact, the FBI has taken actions that could further obscure whether its investigative resources are properly focused on the most violent groups.

Two years earlier, Sen. Durbin introduced the Domestic Terrorism Prevention Act of 2017, which sought data documenting the number of terrorist incidents and the number of investigations and prosecutions for each of the 11 domestic terrorism categories that the FBI maintained at the time. These included separate categories for white supremacists, anarchists, environmentalists, far-right militants, and Black Identity Extremists, and others.

Though the bill had not yet passed, Sen. Durbin requested an FBI briefing on the matter for members of the Senate Judiciary Committee. When the FBI finally provided this briefing in April of 2019, it revealed it had collapsed the white supremacist and Black Identity Extremist categories into a new Racially Motivated Violent Extremist category, and the far-right militia and the anarchist categories into a single anti-government and anti-authority violent extremist category. These groupings make little operational sense, as subjects of investigations into white supremacist violence would rarely overlap with subjects of an investigation into Black Identity Extremists, and likewise for militias and anarchists. What these reclassifications would appear to accomplish, however, as Sen. Durbin suggested in a letter to the Attorney General and

FBI director, is the obscuring data that could be used to compare the FBI resources devoted to white supremacists versus Black Identity Extremists, and to far-right militias versus anarchists, which is what his bill originally sought.¹⁷

The Justice Department has no Strategy to Address the Persistent Problem of Racism, White Supremacy, and Far-Right Militancy in Law Enforcement

For decades, the Federal Bureau of Investigation (FBI) has routinely warned its agents that the white supremacist and far-right militant groups it investigates often have active links to law enforcement, as documented in my 2020 report, “Hidden in Plain Sight.”¹⁸ Americans were shocked to learn that several police officers were among those arrested for breaching the Capitol, and many more remain under investigation.¹⁹ One of the alleged Oath Keepers arrested for criminal activity claimed in court filings to have previously been employed by the FBI, and a reporter given access to Oath Keeper membership records identified applicants claiming to be Immigration and Customs Enforcement officers, one person claiming to be a Secret Service agent and two claiming to be FBI employees.²⁰ Yet the Justice Department (DOJ) has no national strategy designed to protect the communities policed by these dangerously compromised law enforcers.

As our nation grapples with how to tackle white supremacist and far-right violence, it is past time for the Justice Department to confront and resolve the persistent problem of explicit racism in law enforcement. We cannot further empower law enforcement with new authorities if it is unwilling to police racist misconduct in the ranks.

Recommendations for A New Approach to Address White Supremacist and Far-Right Violence:

1. Reject Calls to Create a New Domestic Terrorism Crime

Congress and other stakeholders should categorically reject calls for a new federal statute that gives federal law enforcement greater authorities or resources to investigate and prosecute domestic terrorism. As detailed above, such legislation is unnecessary and would likely intensify existing discriminatory impacts of domestic

terrorism investigations and prosecutions that are targeted at groups protesting government policies rather than terrorists.

2. Strengthen Congressional Oversight of Counterterrorism Resources

Domestic terrorism and hate crime data is rife with error, often arbitrary, and based on vague and conflicting categorization schemes. Congress should require the Justice Department to revamp its data collection policies and practices to ensure that it captures the true nature and scope of white supremacist and far-right violence across all programs.²¹

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

The Justice Department needs a comprehensive national strategy to properly prioritize and sufficiently resource investigations and prosecutions of white supremacist and far-right violence, and document the true impact it has on American society. Congress should require the FBI and Justice Department to allocate domestic terrorism resources based on an objective assessment of the threat to human life posed by particular groups, with fewer resources devoted to groups that engage in property crimes rather than violence targeting people. The FBI should treat all cases where white supremacist and far-right militants engaged in deadly violence among its top investigative priorities, whether currently classified as domestic terrorism, hate crimes, or violent crimes, rather than deferring these investigations and prosecutions to state and local law enforcement.

4. Reform Police Intelligence Practices to Restore Community Trust

Minority communities are disproportionately victims of many different kinds of violence, including at the hands of law enforcement, and are often denied equal protection when they seek justice. A comprehensive strategy to protect these communities from white supremacist terrorism and hate crimes must include measures to address these disparities and to reform police practices. The Justice Department has an important role in holding law enforcement officials accountable for civil rights violations, but these cases are rarely prosecuted. Recent allegations of police cooperation with or assistance to far-right groups involved in violent protests

should be fully investigated.²² Congress should also investigate what role the FBI played in providing or failing to provide intelligence to state and local police agencies regarding the attack on the Capitol as well as the series of violent far-right riots that took place across the country beginning in 2016.

5. Develop a Restorative Justice Approach to Hate Crimes

White supremacist violence and hate crimes victimize entire communities. Taking action to address these communal injuries and promote a tolerant and inclusive society are essential elements of a strategy to counter far-right violence. A restorative approach to justice focuses on accountability for healing the harm done to victims and impacted communities as a result of criminal acts. It involves victims, offenders, and the community in search for solutions that promote repair, reconciliation, and reassurance.²³ There are many different restorative justice approaches, from victim-offender mediations, to family and community counseling, to truth and reconciliation commissions. Congress should study restorative justice approaches and develop a plan to fund and implement these methods when acts of far-right terrorism and hate crimes occur.

6. Require the Justice Department to Produce a National Strategy to Address Racism, White Supremacy, and Far-Right Militancy in Law Enforcement

The Justice Department has acknowledged that law enforcement involvement in white supremacist and far-right militia organizations poses an ongoing threat, but it has not produced a national strategy to address it. Not only has the department failed to prosecute police officers involved in patently racist violence, it has only recently begun collecting national data regarding use of force by law enforcement officials.

Congress should direct the Justice Department to:

- Immediately establish a working group to examine law enforcement associations with white supremacist and other far-right militant groups to assess the scope and nature of the problem in a report to Congress.
- Develop an evidence-based national strategy designed to protect the security and civil liberties of communities policed by law enforcement officers who are active in

white supremacist or far-right militant organizations. A national strategy will ensure U.S. attorneys and FBI offices across the country properly prioritize these investigations and harmonize their tactics to guarantee equal justice for all. The national strategy should include data and metrics to evaluate the effectiveness of the methodologies it employs.

- Require the FBI to survey its domestic terrorism investigations involving white supremacists and other overtly racist or fascist militant groups to document and report to the DOJ all indications of active links between these groups and law enforcement officials.

- Require the FBI to determine whether any law enforcement officials it investigates for civil rights violations or other criminal matters have connections to violent white supremacist organizations or other far-right militant groups, have a record of discriminatory behavior, or have a history of posting explicitly racist commentary in public or on social media platforms. This information should be provided to FBI agents assigned to domestic terrorism matters for investigative and intelligence purposes, and to federal, state, and local prosecutors to consider their inclusion on Brady lists.

- Require the FBI to report any federal, state, or local official assigned to a federal task force who is discovered during initial screenings or periodic background investigations to have active links to any white supremacist or other militant groups, to have engaged in racist behavior, or to have posted overtly racist commentary to on social media to the DOJ and to their departments. Where appropriate based on available evidence, the Justice Department should bar these officials from further participation with federal task forces and report the information to appropriate departmental heads and state and local prosecutors for potential inclusion on Brady lists.

- Analyze the data collected by the FBI in its law enforcement use of force database to evaluate each use of force complaint for indications that racial, ethnic, or political bias motivated the violence.

- Establish a formal mitigation plan to implement when evidence indicates that an identified law enforcement officer poses a public security threat or a risk of harm to

any protected class or community. Such a plan could include federal, state, or local investigations and prosecutions; civil rights lawsuits and consent decrees; reporting information identifying the officer to other federal, state, or local authorities for appropriate employment action; and placement of identified officers on Brady lists maintained by federal, state, and local prosecutors to ensure that defendants in criminal cases and plaintiffs in civil actions against these officers have appropriate impeachment evidence available.

- Congress should pass the Ending Racial and Religious Profiling Act of 2019 to ban all federal, state, and local law enforcement agencies from profiling based on actual or perceived race, ethnicity, religion, national origin, gender, gender identity, or sexual orientation. Banning racial profiling would mark a significant step toward mitigating the potential harm caused by racist officers undetected within the ranks.

- Strengthen whistleblower protections for federal law enforcement agents.

- The Domestic Terrorism Prevention Act of 2021 (H.R. 350) includes a provision that requires the FBI to assess the threat posed by white supremacist and neo-Nazi infiltration of law enforcement and the military. This assessment should be informed by data collected from FBI investigations and surveys of federal, state, and local law enforcement agencies, and from data collected for the law enforcement use of force database.

Conclusion

The Justice Department's failure to properly prioritize the investigation and prosecution of white supremacist and far-right terrorism, hate violence, and organized crime undermines the rule of law and threatens social cohesion, which ultimately undermines the nation's security. Rethinking this problem requires that Congress increase its oversight to reorient the Justice Department's policies and practices to protect all Americans from all forms of violence.

¹ 18 U.S.C. § 2331(5) the term "[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.

² See TRAC Reports, *FY 2019 Domestic Terrorism Prosecutions Twice Number as International Terrorism*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, Aug. 29, 2019, <https://trac.syr.edu/tracreports/crim/572/>; FBI Assistant Director for Counterterrorism Michael McGarrity testified that 80 percent of counterterrorism resources are devoted to international terrorism, and 20 percent to domestic terrorism. See, *Confronting the Rise of Domestic Terrorism in the Homeland—Hearing before the Committee on Homeland Security, House of Representatives*, 116th Cong. 36 (2019), <https://www.congress.gov/116/chrg/CHRG-116hhrg37474/CHRG-116hhrg37474.pdf>. It is important to note that Justice Department data produced by the Executive Office of the United States Attorneys has been repeatedly criticized as unreliable by the Government Accountability Office and the Justice Department Inspector General. See, U.S. GEN. ACCOUNTING OFFICE, BETTER MANAGEMENT OVERSIGHT AND INTERNAL CONTROLS NEEDED TO ENSURE ACCURACY OF TERRORISM-RELATED STATISTICS (Jan. 2003), <https://www.gao.gov/new.items/d03266.pdf>; OFFICE OF THE INSPECTOR GENERAL, U.S. DEP'T OF JUSTICE, FOLLOW-UP AUDIT OF THE DEPARTMENT OF JUSTICE'S INTERNAL CONTROLS OF TERRORISM-RELATED STATISTICS; THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS (Sept. 2013), <https://oig.justice.gov/reports/2013/a1334.pdf>.

³ MICHAEL GERMAN & SARA ROBINSON, BRENNAN CTR. FOR JUST., WRONG PRIORITIES ON FIGHTING TERRORISM (Oct. 2018), available at https://www.brennancenter.org/sites/default/files/publications/2018_10_DomesticTerrorism_V2%20%281%29.pdf [hereinafter “WRONG PRIORITIES ON TERROR”].

⁴ See Jack Cloherty and Jason Ryan, *FBI Spied on PETA, Greenpeace, Anti-war Protesters*, ABC NEWS, Sep. 20, 2010, <https://abcnews.go.com/News/Blotter/fbi-spied-peta-greenpeace-anti-war-activists/story?id=11682844>; George Joseph & Murtaza Hussain, *FBI Tracked an Activist Involved With Black Lives Matter as They Travelled Across the U.S., Documents Show*, INTERCEPT, Mar. 29, 2018, <https://theintercept.com/2018/03/19/black-lives-matter-fbi-surveillance/>; Will Parrish & Sam Lavin, *‘Treating Protest as Terrorism’: US Plans Crackdown on Keystone XL Activists*, GUARDIAN, Sep. 20, 2018, <https://www.theguardian.com/environment/2018/sep/20/keystone-pipeline-protest-activism-crackdown-standing-rock>; Adam Goldman, Katie Benner, and Zolan Kanno-Youngs, *How Trump’s Focus on Antifa Distracted Attention from the Far-Right Threat*, NY TIMES, Jan. 30, 2021, <https://www.nytimes.com/2021/01/30/us/politics/trump-right-wing-domestic-terrorism.html>.

⁵ See, e.g., Mike Carter & Steve Miletich, *Couple Charged With Assault in Shooting, Melee During UW Speech by Milo Yiannopoulos*, SEATTLE TIMES, Apr. 24, 2017, <https://www.seattletimes.com/seattle-news/crime/couple-charged-with-assault-in-shooting-melee-during-uw-speech-by-milo-yiannopoulos/>; David Kelsen, *7 Charged in Anaheim KKK Melee—But Stabby Klanner Not One of Them*, O.C. WKLY, Jul. 1, 2016, <https://ocweekly.com/7-charged-in-anaheim-kkk-melee-but-stabby-klanner-not-one-of-them-7305812/>; Sam Levin, *Stabbed at a Neo-Nazi Rally, Called a Criminal: How Police Targeted a Black Activist*, GUARDIAN, May 25, 2018, <https://www.theguardian.com/world/2018/may/25/neo-nazi-rally-california-stabbing-police-target-black-activist>; Frank John Tristan, *Huntington Beach Pro-Trump March Turns Into Attack on Anti-Trump Protestors*, O.C. WKLY, Mar. 26, 2017, <https://www.ocweekly.com/huntington-beach-pro-trump-march-turns-into-attack-on-anti-trump-protesters-press-7991623/>; James Queally, *Ku Klux Klan Rally in Anaheim Erupts in Violence; 3 Are Stabbed and 13 Arrested*, L.A. TIMES, Feb. 29, 2016, <http://www.latimes.com/local/lanow/la-me-ln-klan-rally-in-anaheim-erupts-in-violence-one-man-stabbed-20160227-story.html>; Frances Robles, *As White Nationalist in Charlottesville Fired, Police ‘Never Moved’*, N.Y. TIMES, Aug. 25, 2017, <https://www.nytimes.com/2017/08/25/us/charlottesville-protest-police.html>. See also Keith L. Alexander, *Federal Prosecutors Abruptly Dismiss All 39 Remaining Inauguration Day Rioting Cases*, WASH. POST, July 7, 2018, https://www.washingtonpost.com/local/public-safety/federal-prosecutors-abruptly-dismiss-all-remaining-inauguration-day-rioting-cases/2018/07/06/d7055ffe-7ee8-11e8-bb6b-clcb691f1402_story.html?utm_term=.20c01a92836b; Emily Shugerman, *120 Protests: All You Need to Know About the Nearly 200 People Facing 60 Years in Jail for Protesting Trump*, INDEPENDENT, Nov. 16, 2017, <https://www.independent.co.uk/news/world/americas/120-trump-protests-trials-jail-threat-inauguration-demonstrations-explained-a8057521.html>; Hannah Allam, *Vehicle Attacks Rise as Extremists Target Protesters*, NPR, Jun. 1, 2020, <https://www.npr.org/2020/06/21/880963592/vehicle-attacks-rise-as-extremists-target-protesters>; Azmi Haroun, *Anti-Lockdown Protesters Storm Oregon State Capitol Building, Clashing With Police Officers*, BUSINESS INSIDER, Dec. 22, 2020, <https://www.msn.com/en-us/news/us/anti-lockdown-protesters-storm-oregon-state-capitol-building-clashing-with-police-officers/ar-BBlc7TgB>.

⁶ Adam Goldman, Katie Benner, and Zolan Kanno-Youngs, *How Trump’s Focus on Antifa Distracted Attention from the Far-Right Threat*, NY TIMES, Jan. 30, 2021, <https://www.nytimes.com/2021/01/30/us/politics/trump-right-wing-domestic-terrorism.html>.

⁷ Kate Irby, *White and far-right extremists kill more cops, but FBI tracks black extremists more closely, many worry*, McCLATCHY, Jan. 24, 2018, <https://www.mcclatchydc.com/news/nation-world/national/article196423174.html>.

⁸ 42 U.S. Code § 1985.

⁹ In 2019, 15,588 law enforcement agencies participated in UCR hate crime reporting, out of approximately 18,000 law enforcement agencies nationwide. The vast majority of those participating reported zero hate crimes (86.1%). See *Hate Crimes by Jurisdiction, 2019*, FBI: UCR, <https://ucr.fbi.gov/hate-crime/2019/topic-pages/jurisdiction> (last visited Feb. 18, 2021).

¹⁰ LYNN LANGTON, PH.D. & MADELINE MASUCCI, U.S. DEP'T OF JUST., SPECIAL REPORT: HATE CRIME VICTIMIZATION, 2004–2015 2 (June 2017), available at <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>; Press Release, U.S. Dep't of Just., Justice Department Releases Update on Hate Crimes Prosecutions and Announces Launch of New Hate Crimes Website (Oct. 29, 2018), available at: <https://www.justice.gov/opa/pr/justice-department-releases-update-hate-crimes-prosecutions-and-announces-launch-new-hate>.

¹¹ Juan A. Lozano, *24 Indicted in Probe of White Supremacist Prison Gang*, ASSOCIATED PRESS, Oct. 15, 2020, <https://abcnews.go.com/US/wireStory/24-indicted-probe-white-supremacist-prison-gang-73636966>; Will Sommer, *Drug Dealing White Supremacist Gang Ordered Hits on Suspected Informants: Feds*, DAILY BEAST, Feb. 12, 2019, <https://www.thedailybeast.com/drug-dealing-arkansas-white-supremacist-gang-ordered-hits-on-suspected-informants-feds>.

¹² Isabel Rosales, *39 Suspected Gang Members Charged in Major Drug, Gun Trafficking Investigation in Pasco*, ABC ACTION NEWS, Nov. 15, 2018, <https://www.abcactionnews.com/news/region-pasco/39-suspected-gang-members-charged-in-major-drug-gun-trafficking-investigation-in-pasco>.

¹³ Sean Emery, *Blaze Bernstein Murder Case: Samuel Woodward Charged With a Hate Crime, DA Says*, O.C. REGISTER, Aug. 2, 2018, <https://www.oregionregister.com/2018/08/02/samuel-woodward-will-face-a-hate-crime-enhancement-in-the-blaze-bernstein-murder-case/>; David K. Li, *White Supremacists Pleads Guilty to Race-Hate Murder of Black Man in New York*, NBC NEWS, Jan. 23, 2019, <https://www.nbcnews.com/news/us-news/white-supremacist-pleads-guilty-race-hate-murder-black-man-new-n961731>; Aimee Green, *Russell Couterier: racial Bias Murder Conviction Could Be the First in 30 Years in Oregon*, OREGONIAN, Mar. 19, 2019, <https://www.oregonlive.com/news/2019/03/jury-finds-russell-courtier-guilty-of-murdering-black-teen-with-jeep.html>.

¹⁴ See for example, Natalie Orenstein, *Kyle “Based Stickman” Back in Jail for Violating Bail Terms*, BERKELEYSIDE, Dec. 22, 2017, <https://www.berkeleyside.com/2017/12/22/kyle-based-stickman-chapman-back-jail-violating-bail-terms>; Colin Moynihan, *2 Proud Boys Sentenced to 4 Years for Brawl With Anti-fascists at Republican Club*, NEW YORK TIMES, Oct. 22, 2019, <https://www.nytimes.com/2019/10/22/nyregion/proud-boys-antifa-sentence.html>; Aaron Mesh, *Right-wing Fighter Tusitala “Tiny” Toese Arrested at Portland Airport for 2018 Sidewalk Assault*, WILLAMETTE WEEK, Oct. 5, 2019, <https://www.wweek.com/news/courts/2019/10/05/right-wing-fighter-tusitala-tiny-toese-arrested-at-airport-for-2018-sidewalk-assault/>; Jayati Ramakrishnan, *6 Indicted on Charges Related to May Day Brawl at Portland Bar*, THE OREGONIAN, Aug. 22, 2019, <https://www.oregonlive.com/crime/2019/08/6-indicted-on-charges-related-to-may-day-brawl-at-portland-bar.html>; Tess Riski, *Right Wing Brawler Tusitala “Tiny” Toese is Wanted for Violating Probation*, WILLAMETTE WEEK, Jun. 22, 2020, <https://www.wweek.com/news/courts/2020/06/22/right-wing-brawler-tusitala-tiny-toese-is-wanted-for-violating-probation/>; *Proud Boys Member, Who Pointed Gun, Arrested in Portland*, REUTERS, Sept. 30, 2020, <https://www.reuters.com/article/us-global-race-protests-portland/proud-boys-member-who-pointed-gun-arrested-in-portland-idUSKBN26L3TQ>; Lois Beckett, *Enrique Tarrío, Leader of Right-Wing Proud Boys, Arrested Ahead of Rallies*, THE GUARDIAN, Jan. 4, 2021, <https://www.theguardian.com/world/2021/jan/04/enrique-tarrio-rightwing-proud-boys-arrested>.

¹⁵ U.S. District Court for the District of Columbia (D.D.C.): 1:18-cv-01860-RDM BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY LAW SCHOOL et al v. UNITED STATES DEPARTMENT OF JUSTICE.

¹⁶ Pub. L. 116-92 (2019).

¹⁷ SEN. RICHARD J. DURBIN, ET AL., LETTER TO ATTORNEY GENERAL WILLIAM P. BARR AND FBI DIRECTOR CHRISTOPHER WRAY, May 2, 2019, <https://www.durbin.senate.gov/imo/media/doc/Letter%20to%20AG%20Barr%20and%20Director%20Wray%20on%20violent%20white%20supremacist%20threat.%205-2-19.pdf>.

¹⁸ MICHAEL GERMAN, BRENNAN CTR. FOR JUST., HIDDEN IN PLAIN SIGHT: RACISM, WHITE SUPREMACY, AND FAR-RIGHT MILITANCY IN LAW ENFORCEMENT (Aug. 2020), available at: <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>.

¹⁹ See, Jonathan Ben-Menachem, *Cops at the Capitol*, THE APPEAL, Jan. 13, 2021 (updated Jan. 25, 2021), <https://theappeal.org/the-cops-at-the-capitol/>; Lindsay Watts, *6 Capitol Police Officers Suspended, 35 Under Investigation After Capitol Riot, Spokesperson Says*, FOX 5 DC, Feb. 18, 2021, <https://www.fox5dc.com/news/6-capitol-police-officers-suspended-35-under-investigation-after-capitol-riot-spokesperson-says>.

²⁰ See, Katie Shepherd, *The Feds Say He is an Extremist Leader Who Directed Rioters. He Also Had Top Secret Clearance and Worked for the FBI, His Lawyer Says*, WASHINGTON POST, Feb. 9, 2021, <https://www.washingtonpost.com/nation/2021/02/09/capitol-riot-oath-keeper-fbi/>; Mike Giglio, *A Pro-Trump Militant Group has Recruited Thousands of Police, Soldiers, and Veterans*, THE ATLANTIC, Nov. 2020, <https://www.theatlantic.com/magazine/archive/2020/11/right-wing-militias-civil-war/616473/>.

²¹ A 2017 Congressional Research Service report outlined why a “regular public accounting” on domestic terrorism is needed. It explained that such reporting would allow policymakers to compare domestic terrorist threats, measure them against threats posed by foreign terrorist groups, help them “assess the effectiveness of the government’s response,” and inform Congress’s “allocation of resources to specific federal counterterrorism efforts.” JEROME P. BJELOPERA, CONGRESSIONAL RESEARCH SERVICE, DOMESTIC TERRORISM: AN OVERVIEW, 59, (2017), available at <https://fas.org/sgp/crs/terror/R44921.pdf>.

²² See Sam Levin, *How a California Officer Protected Neo-Nazis and Targeted Their Victims*, GUARDIAN, Jan. 25, 2019, <https://www.theguardian.com/us-news/2019/jan/25/california-police-neo-nazis-antifa-protest>; Sam Levin, *Anti-fascists Were Stabbed at a Neo-Nazi Rally. Then Police Tried to Charge Them*, GUARDIAN, (Dec. 5, 2018), <https://www.theguardian.com/us-news/2018/dec/05/antifa-charges-california-activists-stabbing>; Katie Shepherd, *Texts Between Portland Police and Patriot Prayer Ringleader Joey Gibson Show Warm Exchange*, WILLIAMETTE WEEKLY, (Feb. 14, 2019), <https://www.wweek.com/news/courts/2019/02/14/texts-between-portland-police-and-patriot-prayer-ringleader-joe-gibson-show-warm-exchange/>; Thy Vo, *Contrary to Chief’s Claim, Anaheim Police May Have Known When Controversial Klan Rally Would Begin*, VOICE OF OC, (Apr. 18, 2017), <https://voiceofoc.org/2017/04/contrary-to-chiefs-claim-anaheim-police-may-have-known-when-controversial-klan-rally-would-begin/>.

²³ HOWARD ZEHR, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE 181 (1990).

The Justice Department has ample authority to proactively prevent acts of domestic terrorism committed by far-right groups and others through criminal investigation and prosecution. It simply chooses not to prioritize these cases as a matter of policy and practice, as described fully in two recent Brennan Center for Justice reports, *Wrong Priorities on Fighting Terrorism* and *Fighting Far-Right Violence and Hate Crimes*.¹

Statute 18 U.S.C. § 2339A criminalizes material support that facilitates the commission of any one of 57 previously enacted terrorism-related offenses, which are explicitly listed in the statute.² A review of these 57 federal crimes of terrorism reveals that 51 of them, or 89 percent, are applicable to both international and domestic terrorism. Each of these 51 offenses can be independently used to prosecute cases of domestic terrorism, providing numerous options for prosecutors to address these threats.

FIGURE 1: Predicate Offenses Listed in 18 U.S.C. § 2339A that Can Apply in Cases of Domestic Terrorism

No.	Predicate Offense Listed in 18 U.S.C. § 2339A, as Codified in the U.S. Code	Summary of Offense
1	18 U.S.C. § 32	Destruction of aircraft or aircraft facilities
2	18 U.S.C. § 37	Violence at international airports
3	18 U.S.C. § 81	Arson within special maritime and territorial jurisdiction
4	18 U.S.C. § 175	Prohibitions with respect to biological weapons
5	18 U.S.C. § 175b	Possession of a biological agent or toxin by restricted persons, including those with criminal background or mental incompetency
6	18 U.S.C. § 175c	Knowing production or transfer of the variola virus
7	18 U.S.C. § 229	Prohibitions on the development, acquiring, or transfer of any chemical weapon
8	18 U.S.C. § 351	Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault
9	18 U.S.C. § 831	Prohibited transactions involving nuclear materials
10	18 U.S.C. § 832	Participation in nuclear and weapons of mass destruction threats to the U.S.
11	18 U.S.C. § 842(m)	Import or export any plastic explosive without a detection agent
12	18 U.S.C. § 842(n)	Ship, transport, receive, possess any plastic explosive without a detection agent
13	18 U.S.C. § 844(f)	Maliciously damage, destroy by means of fire or explosive any building or other real or personal property of the U.S.
14	18 U.S.C. § 844(i)	Maliciously damage, destroy by means of fire or explosive any building or other real or personal property used in interstate or foreign commerce
15	18 U.S.C. § 930(c)	Killing any person with a firearm or other dangerous weapon in federal facilities
16	18 U.S.C. § 1030(a)(1)	Knowingly access a computer and obtain restricted information with reason to believe that it could be used to injure the U.S. or advantage a foreign nation
17	18 U.S.C. § 1030(a)(5)(A) with damage as listed in 1030(c)(4)(A)(i)(II)-(VI)	Knowingly transmit program or code that intentionally causes damage to a protected computer, where damage either causes physical injury, modification or impairment of medical treatment, threat to public health or safety or damage affects computer used in furtherance of justice, national defense, or national security
18	18 U.S.C. § 1091	Genocide, whether in time of peace or war with specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group
19	18 U.S.C. § 1114	Killing or attempting to kill any officer or employee of the U.S.
20	18 U.S.C. § 1116	Murder or manslaughter of foreign officials, official guests, or internationally protected persons
21	18 U.S.C. § 1203	Hostage taking
22	18 U.S.C. § 1361	Willful injury or depredation against any property of the U.S.
23	18 U.S.C. § 1362	Willful or malicious destruction of any of the works, property, or material of any communication line, station, or system



FIGURE 1: (CONTINUED)

24	18 U.S.C. § 1363	Willful and malicious destruction or injury of property within special maritime or territorial jurisdiction of U.S.
25	18 U.S.C. § 1366	Destruction of an energy facility
26	18 U.S.C. § 1751	Presidential and Presidential staff assassination, kidnapping, and assault
27	18 U.S.C. § 1992	Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air
28	18 U.S.C. § 2155	Destruction of national-defense materials, premises, or utilities
29	18 U.S.C. § 2156	Production of defective national-defense material, premises, or utilities
30	18 U.S.C. § 2280	Violence against maritime navigation
31	18 U.S.C. § 2280a	Violence against maritime navigation and maritime transport involving weapons of mass destruction
32	18 U.S.C. § 2281	Violence against maritime fixed platforms
33	18 U.S.C. § 2281a	Use of explosive or radioactive material or noxious substance against or on fixed platform when purpose is to intimidate a population or compel government or organization to do or abstain from an act
34	18 U.S.C. § 2332a	Use of weapons of mass destruction within the U.S.
35	18 U.S.C. § 2332b	Acts of terrorism transcending national boundaries
36	18 U.S.C. § 2332f	Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities
37	18 U.S.C. § 2332g	Missile systems designed to destroy aircraft
38	18 U.S.C. § 2332h	Radiological dispersal devices
39	18 U.S.C. § 2332i	Acts of nuclear terrorism
40	18 U.S.C. § 2339	Harboring or concealing terrorists, with respect to certain statutes
41	18 U.S.C. § 2339C	Unlawfully or willingly provide or collect funds with intention that they be used to carry out an act intended to cause death or substantial bodily injury to a civilian, when purpose is to intimidate a population or compel a government or international organization to do or abstain from an act
42	42 U.S.C. § 2122	Prohibitions governing atomic weapons
43	42 U.S.C. § 2283	Protection of nuclear inspectors
44	42 U.S.C. § 2284	Sabotage of nuclear facilities or fuel
45	49 U.S.C § 46502	Aircraft piracy
46	49 U.S.C § 46504	Assault of a flight crew member or attendant with a dangerous weapon
47	49 U.S.C § 46505(b)(3)	Placing or attempting to place an explosive or incendiary device on an aircraft
48	49 U.S.C § 46505(c)	Using dangerous weapon during flight, placing or attempting to place dangerous weapon, loaded firearm, or explosive or incendiary device during flight, with willful or reckless disregard for safety of human life
49	49 U.S.C § 46506	Application of certain criminal laws to acts on aircraft if homicide or attempted homicide is involved
50	49 U.S.C § 60123	Knowing and willful violation of a) marking requirements of pipeline facilities in the vicinity of demolition, excavation, tunneling, or construction, b) safety standards, inspection, or maintenance requirements, allowing access to records, conduct risk analysis and integrity management, c) unauthorized disposal within right-of-way of pipeline
51	49 U.S.C. § 60123(b)	Knowing and willful damaging or destroying of interstate gas pipeline facility

¹ Michael German & Sara Robinson, *Wrong Priorities on Fighting Terrorism*, Brennan Center for Justice, 2018, www.brennancenter.org/sites/default/files/publications/2018_10_DomesticTerrorism_V2%20%281%29.pdf; Michael German & Emmanuel Mauleón, *Fighting Far-Right Violence and Hate Crimes: Resetting Federal Law Enforcement Priorities*, Brennan Center for Justice, 2019, www.brennancenter.org/sites/default/files/publications/2019_06_HateCrimes_FINAL.pdf.

² Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, sec. 120005, 108 Stat. 1796, 2022-23 (codified at 18 U.S.C. § 2339A (2012)).

There are 17 statutes not included in 18 U.S.C. § 2339A's list of terrorism-related predicate offenses that were used in at least four prosecutions categorized by the Justice Department's Executive Office for U.S. Attorneys (EOUSA) as domestic terrorism cases.

FIGURE 2: List of statutes used as lead charges in four or more domestic terrorism prosecutions from FY 2013 to FY 2017 that are not listed as predicate offenses in 18 U.S.C. § 2339A

No.	U.S. Code	Summary of Statute	No. of Prosecutions Listing Statute as Lead Charge	Percentage of Total Prosecutions Listing Statute as Lead Charge
1	18 U.S.C. § 372	Conspiracy to impede or injure person holding public office	57	13.8%
2	18 U.S.C. § 875	Transmittance of interstate communication containing demand for ransom for kidnapped person, extortion, threat to kidnap, threat to injure property or reputation	43	10.4%
3	26 U.S.C. § 5861	Manufacturing, importing, or dealing in firearms without paying tax	21	5.1%
4	18 U.S.C. § 922	Importing, manufacturing, or dealing in firearms or ammunition in interstate commerce without a license	18	4.4%
5	18 U.S.C. § 871	Threats against President and successors to the Presidency	17	4.1%
6	18 U.S.C. § 115	Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member	16	3.9%
7	18 U.S.C. § 371	Conspiracy to defraud the United States	13	3.2%
8	18 U.S.C. § 876	Mailing threatening communications	11	2.7%
9	18 U.S.C. § 1038	False information and hoaxes	10	2.4%
10	18 U.S.C. § 111	Assaulting, resisting, or impeding certain officers or employees	7	1.7%
11	18 U.S.C. § 1521	Retaliating against a Federal judge or Federal law enforcement officer by false claim or slander of title	7	1.7%
12	18 U.S.C. § 1001	Falsifying, concealing, making material false statement within the jurisdiction of the executive, legislative, or judicial branch of government	4	1.0%
13	18 U.S.C. § 1343	Fraud by wire, radio, or television	4	1.0%
14	18 U.S.C. § 1951	Interference with commerce by threats or violence	4	1.0%
15	18 U.S.C. § 43	Force, violence, and threats involving animal enterprises	4	1.0%
16	18 U.S.C. § 514	False or fictitious instrument, document, obligations	4	1.0%
17	21 U.S.C. § 841	Manufacturing, distributing or dispensing a controlled substance	4	1.0%

Five federal laws are designed to combat hate crimes.¹ According to the Justice Department’s Executive Office for U.S. Attorneys (EOUSA) data analyzed by the Transactional Records Access Clearinghouse (TRAC), the Justice Department filed 78 prosecutions from FY 2013 to FY 2017 under the two hate crime categories in the EOUSA’s Legal Information Office Network System (LIONS).² Of these 78 prosecutions, 56 involved defendants whose lead charges were violations of one of the five federal hate crimes statutes, outlined in Figure 3.

FIGURE 3: Federal Hate Crimes Laws

No.	U.S. Code	Title of Statute	Summary of Statute	No. of Times was Lead Charge in LIONS Hate Crimes Program Areas from FY 2013 to FY 2017
1	18 U.S.C. § 249	The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009	Criminalizes willful case of bodily injury using a dangerous weapon because of the victim’s actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability	36
2	42 U.S.C. § 3631	Criminal Interference with Right to Fair Housing	Criminalizes the use or threat to use force to interfere with housing rights because of the victim’s race, color, religion, sex, disability, familial status, or national origin	0
3	18 U.S.C. § 247	Damage to Religious Property, Church Arson Prevention Act	Criminalizes the intentional defacement, damage, or destruction of religious real property because of the religion or because of the race, color, or ethnic characteristics of the people associated with the property. Also criminalizes obstruction of any person in their free exercise of religious beliefs	3
4	18 U.S.C. § 245	Violent Interference with Federally Protected Rights	Criminalizes the use of force or willful interference in a person’s participation in a federally protected activity like public education, employment, jury service, among others, because of their race, color, religion, or national origin	5
5	18 U.S.C. § 241	Conspiracy Against Rights	Criminalizes conspiracy to injure, threaten, or intimidate a person in the free exercise or enjoyment of any right or privilege secured under the Constitution or laws of the United States	12

¹ *Hate Crimes Laws*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/crt/hate-crime-laws>.

² According to TRAC, the DOJ filed prosecutions in 90 total cases from 2013 to 2017. Following a review, seven cases were excluded because it seems DOJ had classified them under the wrong LIONS program area. Five additional cases were excluded because they were listed as being prosecuted under “other U.S. Code Section,” without providing information about the particular statute under which the defendants were charged. See TRAC Data, FY 2013 to FY 2017 for Program Areas “05F Civil Rights – Racial Violence, including Hate Crimes” and “05H – Civil Rights – Hate Crimes Arising out of Terrorist Attacks on US,” available at <http://trac.syr.edu>.

In addition to the five federal hate crime statutes listed in Figure 3, the Department of Justice often charges offenses under other statutes to prosecute hate crimes. Nine other federal statutes were the lead charges in the remaining 22 prosecutions filed from FY 2013 to FY 2017 under the two Legal Information Office Network System (LIONS) hate crimes categories.¹ These statutes are listed in Figure 4, which also includes the number of times that the particular statute was a lead charge during that five-year period.

FIGURE 4: Federal statutes not included in the five federal hate crimes laws identified by the Justice Department that were used to prosecute hate crime incidents from FY 2013 to FY 2017

No.	U.S. Code	Summary of Statute	No. of Times Was Lead Charge in LIONS Hate Crimes Program Areas from FY 2013 to FY 2017
1	18 U.S.C. § 371	Conspiracy to defraud the United States	4
2	22 U.S.C. § 2778	Control of arms exports and imports	4
3	18 U.S.C. § 1951	Interference with commerce by threats or violence	3
4	18 U.S.C. § 875	Transmittance of interstate communication containing demand for ransom for kidnapped person, extortion, threat to kidnap, threat to injure property or reputation	3
5	8 U.S.C. § 1325	Improper entry by alien	2
6	18 U.S.C. § 844	Importing, manufacturing, dealing, transporting, distributing explosive materials or withholding information or making fictitious statements regarding explosive materials	2
7	18 U.S.C. § 922	Importing, manufacturing, or dealing in firearms or ammunition in interstate commerce without a license	2
8	18 U.S.C. § 2261A	Stalking	1
9	18 U.S.C. § 876	Mailing threatening communications	1

¹ TRAC Data, FY 2013 to FY 2017 for Program Areas “05F Civil Rights – Racial Violence, including Hate Crimes” and “05H – Civil Rights – Hate Crimes Arising out of Terrorist Attacks on US,” available at <http://trac.syr.edu>.

Conspiracy statutes provide substantial recourse to charge individuals before they successfully complete a hate crime or terrorist attack. Conspiracy liability attaches when a person agrees to accomplish unlawful ends and takes any overt act in furtherance of the scheme. This gives investigators and prosecutors the ability to charge these individuals long before a plot reaches fruition.¹ According to Executive Office for U.S. Attorneys (EOUSA) data collected by the Transactional Records Access Clearinghouse (TRAC), the Justice Department used three conspiracy statutes as lead charges to prosecute dozens of hate crimes and domestic terrorism cases between FY 2013 and FY 2017.²

FIGURE 5: Conspiracy statutes listed as the lead charge in domestic terrorism and hate crimes cases from FY 2013 to FY 2017

No.	U.S. Code	Summary of Statute	No. of Prosecutions Listing Statute as Lead Charge
1	18 U.S.C. § 241	Conspiracy to injure, threaten, or intimidate a person in free exercise or enjoyment of any right or privilege secured under Constitution or U.S. laws	12
2	18 U.S.C. § 371	Conspiracy to defraud the United States	17
3	18 U.S.C. § 372	Conspiracy to impede or injure person holding public office	57

¹ See *Williamson v. United States*, 207 U.S. 425 (1908); *Frohwerk v. United States*, 249 U.S. 204 (1919); *Blumenthal v. United States*, 332 U.S. 539 (1947); *United States v. Gallishaw*, 428 F.2d 760 (2d Cir. 1970); *United States v. Rosenblatt*, 554 F.2d 36 (2d Cir. 1977); see also Robert M. Chesney, *Beyond Conspiracy? Anticipatory Prosecution and the Challenge of Unaffiliated Terrorism*, 80 S. Cal. L. Rev. 425, 428, 448–49, 451 (2007).

² See TRAC Data, FY 2013 to FY 2017 for Program Areas “072 Domestic Terrorism,” “05F Civil Rights – Racial Violence, including Hate Crimes,” and “05H Civil Rights – Hate Crimes Arising out of Terrorist Attacks on US,” by lead charge, available at <http://trac.syr.edu>.