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DOMESTIC TERRORISM PREVENTION ACT OF 2022

APRIL --, 2022.—Ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

VIEWS

[To accompany H.R. 350]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 350) to authorize dedicated domestic terrorism offices within the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation to analyze and monitor domestic terrorist activity and require the Federal Government to take steps to prevent domestic terrorism, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all that follows after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Domestic Terrorism Prevention Act of 2022”.

**SEC. 2. DEFINITIONS.**

In this Act—

(1) the term “Director” means the Director of the Federal Bureau of Investigation;

(2) the term “domestic terrorism” has the meaning given the term in section 2331 of title 18, United States Code, except that it does not include acts perpetrated by individuals associated with or inspired by—

(A) a foreign person or organization designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189);

(B) an individual or organization designated under Executive Order 13224 (50 U.S.C. 1701 note); or

(C) a state sponsor of terrorism as determined by the Secretary of State under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 4605), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371);

(3) the term “Domestic Terrorism Executive Committee” means the committee within the Department of Justice tasked with assessing and sharing information about ongoing domestic terrorism threats;

(4) the term “hate crime incident” means an act described in section 241, 245, 247, or 249 of title 18, United States Code, or in section 901 of the Civil Rights Act of 1968 (42 U.S.C. 3631);

(5) the term “Secretary” means the Secretary of Homeland Security; and

(6) the term “uniformed services” has the meaning given the term in section 101(a) of title 10, United States Code.

**SEC. 3. OFFICES TO COMBAT DOMESTIC TERRORISM.**

(a) **AUTHORIZATION OF OFFICES TO MONITOR, ANALYZE, INVESTIGATE, AND PROSECUTE DOMESTIC TERRORISM.—**

(1) **DOMESTIC TERRORISM UNIT.—**There is authorized a Domestic Terrorism Unit in the Office of Intelligence and Analysis of the Department of Homeland Security, which shall be responsible for monitoring and analyzing domestic terrorism activity.

(2) **DOMESTIC TERRORISM OFFICE.—**There is authorized a Domestic Terrorism Office in the Counterterrorism Section of the National Security Division of the Department of Justice—

(A) which shall be responsible for investigating and prosecuting incidents of domestic terrorism;

(B) which shall be headed by the Domestic Terrorism Counsel; and

(C) which shall coordinate with the Civil Rights Division on domestic terrorism matters that may also be hate crime incidents.

(3) **DOMESTIC TERRORISM SECTION OF THE FBI.—**There is authorized a Domestic Terrorism Section within the Counterterrorism Division of the Federal Bureau of Investigation, which shall be responsible for investigating domestic terrorism activity.

(4) **STAFFING.—**The Secretary, the Attorney General, and the Director shall each ensure that each office authorized under this section in their respective agencies shall—

(A) have an adequate number of employees to perform the required duties;

(B) have not less than one employee dedicated to ensuring compliance with civil rights and civil liberties laws and regulations; and

(C) require that all employees undergo annual anti-bias training.

(5) **SUNSET.—**The offices authorized under this subsection shall terminate on the date that is 10 years after the date of enactment of this Act.

(b) **JOINT REPORT ON DOMESTIC TERRORISM.—**

(1) **BIANNUAL REPORT REQUIRED.—**Not later than 180 days after the date of enactment of this Act, and each 6 months thereafter for the 10-year period beginning on the date of enactment of this Act, the Secretary of Homeland Security, the Attorney General, and the Director of the Federal Bureau of Investigation shall submit a joint report authored by the domestic terrorism offices authorized under paragraphs (1), (2), and (3) of subsection (a) to—

(A) the Committee on the Judiciary, the Committee on Homeland Security and Governmental Affairs, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on the Judiciary, the Committee on Homeland Security, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) **CONTENTS.—**Each report submitted under paragraph (1) shall include—

(A) an assessment of the domestic terrorism threat posed by White supremacists and neo-Nazis, including White supremacist and neo-Nazi infiltration of Federal, State, and local law enforcement agencies and the uniformed services; and

(B)(i) in the first report, an analysis of incidents or attempted incidents of domestic terrorism that have occurred in the United States since January 1, 2012, including any White-supremacist-related incidents or attempted incidents; and

(ii) in each subsequent report, an analysis of incidents or attempted incidents of domestic terrorism that occurred in the United States during the preceding 6 months, including any White-supremacist-related incidents or attempted incidents; and

(C) a quantitative analysis of domestic terrorism for the preceding 6 months, including—

(i) the number of—

(I) domestic terrorism related assessments initiated by the Federal Bureau of Investigation, including the number of assessments from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism;

(II) domestic terrorism-related preliminary investigations initiated by the Federal Bureau of Investigation, including the number of preliminary investigations from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, and how many preliminary investigations resulted from assessments;

(III) domestic terrorism-related full investigations initiated by the Federal Bureau of Investigation, including the number of full investigations from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, and how many full investigations resulted from preliminary investigations and assessments;

(IV) domestic terrorism-related incidents, including the number of incidents from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, the number of deaths and injuries resulting from each incident, and a detailed explanation of each incident;

(V) Federal domestic terrorism-related arrests, including the number of arrests from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, and a detailed explanation of each arrest;

(VI) Federal domestic terrorism-related indictments, including the number of indictments from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, and a detailed explanation of each indictment;

(VII) Federal domestic terrorism-related prosecutions, including the number of incidents from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, and a detailed explanation of each prosecution;

(VIII) Federal domestic terrorism-related convictions, including the number of convictions from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism, and a detailed explanation of each conviction; and

(IX) Federal domestic terrorism-related weapons recoveries, including the number of each type of weapon and the number of weapons from each classification and subcategory, with a specific classification or subcategory for those related to White supremacism; and

(ii) an explanation of each individual case that progressed through more than 1 of the stages described under clause (i)—

(I) including the specific classification or subcategory for each case; and

(II) not including personally identifiable information not otherwise releasable to the public.

(3) HATE CRIMES.—In compiling a joint report under this subsection, the domestic terrorism offices authorized under paragraphs (1), (2), and (3) of subsection (a) shall, in consultation with the Civil Rights Division of the Department of Justice and the Civil Rights Unit of the Federal Bureau of Investigation, review each Federal hate crime charge and conviction during the preceding 6 months to determine whether the incident also constitutes a domestic terrorism-related incident.

(4) CLASSIFICATION AND PUBLIC RELEASE.—Each report submitted under paragraph (1) shall be—

(A) unclassified, to the greatest extent possible, with a classified annex only if necessary; and

(B) in the case of the unclassified portion of the report, posted on the public websites of the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation.

(5) NONDUPLICATION.—If two or more provisions of this subsection or any other law impose requirements on an agency to report or analyze information on domestic terrorism that are substantially similar, the agency may produce one report that complies with each such requirement as fully as possible.

(c) DOMESTIC TERRORISM EXECUTIVE COMMITTEE.—There is authorized a Domestic Terrorism Executive Committee, which shall meet on a regular basis, and not less regularly than 4 times each year, to coordinate with United States Attorneys and other key public safety officials across the country to promote information sharing and ensure an effective, responsive, and organized joint effort to combat domestic terrorism.

(d) FOCUS ON GREATEST THREATS.—The domestic terrorism offices authorized under paragraphs (1), (2), and (3) of subsection (a) shall focus their limited resources on the most significant domestic terrorism threats, as determined by the number of domestic terrorism-related incidents from each category and subclassification in the joint report for the preceding 6 months required under subsection (b).

#### SEC. 4. TRAINING TO COMBAT DOMESTIC TERRORISM.

(a) REQUIRED TRAINING AND RESOURCES.—The Secretary, the Attorney General, and the Director shall review the anti-terrorism training and resource programs of their respective agencies that are provided to Federal, State, local, and Tribal law enforcement agencies, including the State and Local Anti-Terrorism Program that is funded by the Bureau of Justice Assistance of the Department of Justice, and ensure that such programs include training and resources to assist State, local, and Tribal law enforcement agencies in understanding, detecting, deterring, and investigating acts of domestic terrorism and White supremacist and neo-Nazi infiltration of law enforcement and corrections agencies. The Attorney General shall make training available to Department prosecutors and to Assistant United States Attorneys on countering and prosecuting domestic terrorism. The domestic-terrorism training shall focus on the most significant domestic terrorism threats, as determined by the quantitative analysis in the joint report required under section 3(b).

(b) REQUIREMENT.—Any individual who provides domestic terrorism training required under this section shall have—

(1) expertise in domestic terrorism; and

(2) relevant academic, law enforcement, or other community-based experience in matters related to domestic terrorism.

(c) REPORT.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act and twice each year thereafter, the Secretary, the Attorney General, and the Director shall each submit a biannual report to the committees of Congress described in section 3(b)(1) on the domestic terrorism training implemented by their respective agencies under this section, which shall include copies of all training materials used and the names and qualifications of the individuals who provide the training.

(2) CLASSIFICATION AND PUBLIC RELEASE.—Each report submitted under paragraph (1) shall—

(A) be unclassified, to the greatest extent possible, with a classified annex only if necessary;

(B) in the case of the unclassified portion of each report, be posted on the public website of the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation; and

(C) include the number of Federal incidents, investigations, arrests, indictments, prosecutions, and convictions with respect to a false report of domestic terrorism or hate crime incident.

#### SEC. 5. INTERAGENCY TASK FORCE.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, the Director, the Secretary, and the Secretary of Defense shall establish an interagency task force to analyze and combat White supremacist and neo-Nazi infiltration of the uniformed services and Federal law enforcement agencies.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the interagency task force is established under subsection (a), the Attorney General, the Secretary, and the Secretary of Defense shall submit a joint report on the findings of the task force and the response of the Attorney General, the Secretary, and the Secretary of Defense to such findings, to—

- (A) the Committee on the Judiciary of the Senate;
- (B) the Committee on Homeland Security and Governmental Affairs of the Senate;
- (C) the Select Committee on Intelligence of the Senate;
- (D) the Committee on Armed Services of the Senate;
- (E) the Committee on the Judiciary of the House of Representatives;
- (F) the Committee on Homeland Security of the House of Representatives;
- (G) the Permanent Select Committee on Intelligence of the House of Representatives; and
- (H) the Committee on Armed Services of the House of Representatives.

(2) CLASSIFICATION AND PUBLIC RELEASE.—The report submitted under paragraph (1) shall be—

- (A) submitted in unclassified form, to the greatest extent possible, with a classified annex only if necessary; and
- (B) in the case of the unclassified portion of the report, posted on the public website of the Department of Defense, the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation.

**SEC. 6. FEDERAL SUPPORT FOR ADDRESSING HATE CRIME INCIDENTS WITH A NEXUS TO DOMESTIC TERRORISM.**

(a) COMMUNITY RELATIONS SERVICE.—The Community Relations Service of the Department of Justice, authorized under section 1001(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000g), may offer the support of the Service to communities where the Department of Justice has brought charges in a hate crime incident that has a nexus to domestic terrorism.

(b) FEDERAL BUREAU OF INVESTIGATION.—Section 249 of title 18, United States Code, is amended by adding at the end the following:

“(f) FEDERAL BUREAU OF INVESTIGATION.—The Attorney General, acting through the Director of the Federal Bureau of Investigation, shall assign a special agent or hate crimes liaison to each field office of the Federal Bureau of Investigation to investigate hate crimes incidents with a nexus to domestic terrorism (as such term is defined in section 2 of the Domestic Terrorism Prevention Act of 2020).”.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Department of Justice, the Federal Bureau of Investigation, the Department of Homeland Security, and the Department of Defense such sums as may be necessary to carry out this Act.

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## PURPOSE AND SUMMARY

Federal law enforcement agencies have reported that domestic violent extremists pose a steady and evolving threat of violence to our communities and especially to minority institutions. As threats and attacks have moved from one community to the next, the underlying drivers for domestic violent extremism—anti-government sentiment, racism, and anti-Semitism—have remained constant.<sup>1</sup> H.R. 350, the “Domestic Terrorism Prevention Act of 2022” (DTPA), authorizes the creation of three offices, one each within the Department of Homeland Security (DHS), the Department of Justice (DOJ), and the Federal Bureau of Investigation (FBI), to monitor, investigate and prosecute cases of domestic terrorism. The newly created offices would provide joint biannual reports to Congress assessing the state of domestic terrorism threats, with a specific focus on white supremacists. In preparing the reports, the offices would review hate crime incidents to determine if

<sup>1</sup> See *Confronting the Rise in Anti-Semitic Domestic Terrorism*, Statement Before the House Committee on Homeland Security, Subcommittee on Intelligence and Counterterrorism, 116th Cong. (2019) (statement of Jill Sanborn) <https://www.fbi.gov/news/testimony/confronting-the-rise-in-anti-semitic-domestic-terrorism>.

those incidents also constituted domestic terrorism. Based on the data collected, DTPA requires the newly created offices to focus their resources on the most significant threats, as described in detail to Congress in the joint biannual report.

DTPA also codifies the Domestic Terrorism Executive Committee, which would coordinate with United States Attorneys and other public safety officials to promote information sharing and ensure an effective, responsive, and organized joint effort to combat domestic terrorism. The legislation requires DOJ, FBI, and DHS to provide training and resources to assist state, local, and tribal law enforcement agencies in understanding, detecting, deterring, and investigating acts of domestic terrorism and white supremacy. Finally, DTPA directs DHS, DOJ, FBI, and the Department of Defense (DoD) to establish an interagency task force to combat white supremacist infiltration of the uniformed services and federal law enforcement.

## **BACKGROUND AND NEED FOR THE LEGISLATION**

### **I. Hate Crime & Domestic Terrorism Statistics**

Attacks on minority institutions and individuals continue to pose an alarming threat to communities across the country. In 2020 (the most recent year for which data is available), the FBI Uniform Crime Reporting Program recorded 8,263 hate crime incidents involving 11,129 offenses.<sup>2</sup> Of these, 62% were motivated by racial or ethnic bias, 20% were motivated by bias against a person's sexual orientation, 13% were motivated by the victim's religion, 3% were motivated by gender identity, 1% were motivated by disability, and 1% were motivated by gender.<sup>3</sup> Incidents motivated by race, ethnicity, or ancestry increased by more than 30% compared to 2019, comprising over 1,200

<sup>2</sup> FBI, Dep't of Justice, *2020 Hate Crimes Statistics*, <https://www.justice.gov/hatecrimes/hate-crime-statistics>.

<sup>3</sup> *Id.*

more such incidents in 2020 than 2019.<sup>4</sup> Similarly, an analysis by the Center for Strategic and International Studies showed domestic terrorism in 2020 was at the highest level of any year the organization has analyzed, dating back to 1994.<sup>5</sup> According to CSIS, since 2015, right-wing extremists have been involved in 267 plots or completed attacks and 91 fatalities.<sup>6</sup> Just under half of these fatalities were in connection with an attack that involved white supremacy.<sup>7</sup> Domestic terrorism has touched numerous communities in recent years, and victims have included people of many ethnicities, faiths, sexual orientations, gender identities, and immigration statuses.<sup>8</sup> Communities across the country have suffered the fear and loss of these attacks and these harms are likely to continue if left unaddressed.

## **II. History and Drivers of Domestic Violent Extremism**

From its earliest days, this Nation has struggled with questions of racial equality. As ratified by the states, the Constitution contained three provisions—the three-fifths rule, the fugitive slave provision, and limits on the prohibition of the slave trade—which directly addressed slavery and supported the continued bondage of African Americans.<sup>9</sup> The post-Civil War Reconstruction Amendments extended civil and legal protections to formerly enslaved people but fell well short of providing equality for those recently freed. The legal changes ushered in after the Civil War did little to change the cultural and economic limitations that permeated American culture and led to a backlash by former slave patrol and Confederate soldiers who aimed to reestablish white ruling

<sup>4</sup> *Id.*

<sup>5</sup> Robert O'Harrow Jr., Andrew Ba Tran and Derek Hawkins, *The rise of domestic extremism in America*, Wash. Post (Apr. 12, 2021) <https://www.washingtonpost.com/investigations/interactive/2021/domestic-terrorism-data/>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See U.S. Const. art. I, § 2, cl. 3 *repealed by* U.S. Const. amend. XIV, § 2 (providing that slaves counted as 3/5 persons); U.S. Const. art. I, § 9, cl. 1, *repealed by* U.S. Const. amend. XIII, § 1 (providing no power to ban slavery); U.S. Const. art. IV, § 2, *repealed by* U.S. Const. amend. XIII (providing that free states could not protect slaves); U.S. Const. art. V (providing no Constitutional amendment be permitted to ban slavery until 1808).



authority.<sup>10</sup> Founded only months after the end of the Civil War, the Ku Klux Klan adopted a creed of white supremacy, with local chapters terrorizing, murdering, and oppressing recently freed slaves. After Congress ended Reconstruction, southern state and local governments took back local control from governments supported by federal occupying troops and soon enacted “Jim Crow” laws that legalized discriminatory policies, entrenching white supremacy into law. Shortly thereafter, *de jure* segregation received the imprimatur of the Supreme Court with the decision in *Plessy v. Ferguson* in 1886.<sup>11</sup>

During this same period, there were efforts to vilify Chinese immigrants who were an instrumental part of the workforce in the American west, especially for railroad construction, but began to be viewed as labor competition for white workers and blamed for depressed wages in a slowed post-Civil War economy.<sup>12</sup> The animosity was not limited to economic arguments. Anti-Chinese advocates argued that excluding Chinese immigration was necessary to maintain moral and cultural standards, and even that they were a threat to America’s racial composition.<sup>13</sup> This anti-immigrant sentiment was codified in discriminatory government action in a series of treaties and the Chinese Exclusion Act of 1882.<sup>14</sup> The Act was not repealed until 1943, with the passage of the Magnuson Act, and served as a precursor to quota systems for immigrants of other nationalities.<sup>15</sup>

Immigration from southern and eastern Europe further fueled the second incarnation of the Ku Klux Klan. In the 1920s, the Ku Klux Klan reemerged with the same anti-Black message that defined

<sup>10</sup> Southern Poverty Law Center, *Ku Klux Klan: A History of Racism* (Feb. 28, 2011), <https://www.splcenter.org/20110228/ku-klux-klan-history-racism>.

<sup>11</sup> *See Plessy v. Ferguson*, 163 U.S. 537 (1896).

<sup>12</sup> State Dep’t, Office of the Historian, *Chinese Immigration and the Chinese Exclusion Acts*, <https://history.state.gov/milestones/1866-1898/chinese-immigration> (accessed Feb. 11, 2022).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Yuning Wu, *Chinese Exclusion Act*, Britannica, <https://www.britannica.com/topic/Chinese-Exclusion-Act> (accessed Fe. 11, 2022).

its previous incarnation and added anti-Jewish and anti-Catholic messages to its hateful rhetoric. Through the 1920s and 1930s, the Ku Klux Klan expanded its political reach, electing members to high office and pushing for the enactment of discriminatory laws. All the while, elements of the Klan continued to harass and murder African Americans in the southern and border states. According to the Equal Justice Initiative (EJI), over 4,084 racially motivated lynchings occurred in twelve Southern states between 1887 (the end of Reconstruction) and 1950.<sup>16</sup> EJI has also documented more than 300 racially motivated lynchings in other states during the same period.<sup>17</sup>

In the shadow of the Civil Rights movement, the Ku Klux Klan once again gained prominence in the 1960s. Klan members harassed civil rights marchers and Freedom Riders, murdered civil rights workers, and bombed Black churches. The most infamous Klan bombing took place on September 15, 1963, when four Klan-affiliated men planted dynamite beneath the steps of the 16th Street Baptist Church, killing four young Black girls. By 1975, the Ku Klux Klan had bombed almost 70 buildings in Georgia and Alabama, burned 30 Black churches in Mississippi, and murdered 10 people in Alabama.<sup>18</sup>

More recent attacks echo this violent history. In the 1990s, dozens of Black churches throughout the South were burned down in confirmed and suspected arsons, including four churches within a six-mile radius in Louisiana that were set on fire on the anniversary of the 1960 Greensboro, North Carolina lunch counter sit-in.<sup>19</sup> In 2008, within hours of the election of President Barack Obama, a Black church still under construction was set on fire in Springfield, Massachusetts.<sup>20</sup> In

<sup>16</sup> See Equal Justice Initiative, *Lynching in America: Confronting the Legacy of Racial Terror*, <https://lynchinginamerica.eji.org/report/> (last visited Feb. 13, 2021).

<sup>17</sup> See *id.*

<sup>18</sup> See Southern Poverty Law Center, *Ku Klux Klan: A History of Racism*, *supra* n.2.

<sup>19</sup> Associated Press, List of Burned Black Churches, Wash. Post (Jun. 20, 1996), <https://www.washingtonpost.com/wp-srv/national/longterm/churches/list.htm>; *Violent History: Attacks on Black Churches*, N.Y. Times (Jun. 18, 2015) <https://www.nytimes.com/interactive/2015/06/18/us/19blackchurch.html>.

<sup>20</sup> *Violent History: Attacks on Black Churches*, N.Y. Times (Jun. 18, 2015) <https://www.nytimes.com/interactive/2015/06/18/us/19blackchurch.html>.

2015, a white supremacist killed nine African Americans praying at Emanuel African Methodist Episcopal Church, including Reverend and South Carolina State Senator Clementa Pinckney.<sup>21</sup> The church has been a center for Black organizing since 1822, when Black churches were outlawed, and Rev. Dr. Martin Luther King Jr. spoke at the church in 1962.<sup>22</sup>

Like the Ku Klux Klan, modern white nationalist groups espouse anti-government, anti-Semitic, and anti-immigrant views, in addition to views of racial superiority. As a result, many communities across the nation have faced horrific attacks. In 2012, a white supremacist and former member of the Army killed six people at a Sikh temple in Oak Creek, Wisconsin.<sup>23</sup> (A seventh victim, a Sikh priest, Baba Punjab Singh, died from complications from his injuries in 2020.)<sup>24</sup> In 2018, a man who had posted numerous anti-Semitic statements online entered the Tree of Life Congregation in Pittsburgh, Pennsylvania and killed 11 people, including a 97-year-old woman, during a Saturday morning prayer service.<sup>25</sup> It was the deadliest attack on Jewish Americans in U.S. history.<sup>26</sup> In 2019, a shooter killed 23 people in El Paso, Texas in the largest terrorist attack targeting Hispanics in modern U.S. history.<sup>27</sup> More than 700 anti-Muslim activities, from violence to discriminatory legislative efforts, were counted from 2012 to 2018.<sup>28</sup> Dozens of incidents of

<sup>21</sup> Nick Corasaniti, Richard Pérez-Peña and Lizette Alvarez, Church Massacre Suspect Held as Charleston Grieves, N.Y. Times (Jun. 18, 2015) <https://www.nytimes.com/2015/06/19/us/charleston-church-shooting.html>.

<sup>22</sup> Jonathan Weisman, Killings Add Painful Page to Storied History of Charleston Church, N.Y. Times (Jun. 18, 2015), <https://www.nytimes.com/2015/06/19/us/charleston-killings-evoke-history-of-violence-against-black-churches.html>.

<sup>23</sup> Erica Goode and Serge F. Kovaleski, *Wisconsin Killer Fed and Was Fueled by Hate-Driven Music*, N.Y. Times (Aug. 6, 2012), <https://www.nytimes.com/2012/08/07/us/army-veteran-identified-as-suspect-in-wisconsin-shooting.html?pagewanted=all>.

<sup>24</sup> *Sikh priest who was left partially paralyzed after 2012 Sikh Temple shooting in Oak Creek has died*, TMJ4 (Mar. 3 2020) <https://www.tmj4.com/news/local-news/sikh-priest-who-was-left-partially-paralyzed-after-2012-sikh-temple-shooting-in-oak-creek-has-died>.

<sup>25</sup> Avi Selk, Tim Craig, Shawn Boburg and Andrew Ba Tran, *'They showed his photo, and my stomach just dropped': Neighbors recall synagogue massacre suspect as a loner*, Wash. Post (Oct. 28, 2018) <https://www.washingtonpost.com/nation/2018/10/28/victims-expected-be-named-after-killed-deadliest-attack-jews-us-history/>.

<sup>26</sup> *Id.*

<sup>27</sup> Cedar Attansio, *El Paso Walmart shooting victim dies, death toll now 23*, Seattle Times (Apr. 26, 2020), <https://www.seattletimes.com/business/el-paso-shooting-victim-dies-months-later-death-toll-now-23/>.

<sup>28</sup> New America, *Anti-Muslim Activities in the United States 2012-2018* (2019) <https://www.newamerica.org/in-depth/anti-muslim-activity/>.

vandalism or violence have been directed at mosques.<sup>29</sup> On January 15, 2022, a British national entered the Congregation Beth Israel synagogue in Colleyville, Texas, and took four people hostage.<sup>30</sup>

Recent attacks on historically Black colleges and universities (HBCUs) have also revived and perpetuated a history of identity-based intimidation. In February 2022, at the start of Black History Month, more than a dozen HBCUs across the country were subjected to bomb threats.<sup>31</sup> Rahman Johnson, who teaches at Edward Waters University in Jacksonville, Florida, said the threats made him feel “as though I was back living in the time of my grandmother.”<sup>32</sup> Indeed, these recent threats echo decades of attacks on HBCUs, including two bombings at Florida A&M University in 1999; eruptions of deadly violence in response to student protests at South Carolina State College, North Carolina A&T, and Jackson State College from 1968-70; and deadly racial violence in the community around Clark College, now part of Clark Atlanta University, in 1906.<sup>33</sup>

Recent attacks have also targeted civil rights protests. In 2017, nonviolent antiracist counter-protesters assembled in response to the “Unite the Right” rally organized in Charlottesville, Virginia by groups that espouse white supremacist ideology.<sup>34</sup> After local law enforcement declared an unlawful assembly and worked to clear a park, a “Unite the Right” attendee got in his car and drove into the crowd, killing Heather Heyer and injuring 30 others.<sup>35</sup> He was convicted of federal hate

<sup>29</sup> ACLU, *Nationwide Anti-Mosque Activity* (Jan. 2022), <https://www.aclu.org/issues/national-security/discriminatory-profiling/nationwide-anti-mosque-activity>.

<sup>30</sup> Giulia Heyward, Azi Paybarah & Eileen Sullivan, *11 Hours of Fear, Negotiation and Finally, Relief*, N.Y. Times (Jan 16, 2022), <https://www.nytimes.com/2022/01/16/us/malik-faisal-akram-texas-synagogue-hostage.html?searchResultPosition=9>.

<sup>31</sup> Mike Jordan, *HBCU bomb threats: ‘I shouldn’t have to live in fear when I’m going to get an education’*, The Guardian (Feb. 5, 2022), <https://www.theguardian.com/world/2022/feb/05/hbcu-bomb-threats-fear-education-hate-crimes>.

<sup>32</sup> *Id.*

<sup>33</sup> Clarissa Brooks, *8 HBCUs Received Bomb Threats for the Second Time in 2022*, Teen Vogue (Feb. 7, 2022) <https://www.teenvogue.com/story/hbcu-bomb-threats-feb-2022>.

<sup>34</sup> Dep’t of Justice, *Ohio Man Sentenced to Life in Prison for Federal Hate Crimes Related to August 2017 Car Attack at Rally in Charlottesville, Virginia*, (Jun. 28, 2019) <https://www.justice.gov/opa/pr/ohio-man-sentenced-life-prison-federal-hate-crimes-related-august-2017-car-attack-rally>.

<sup>35</sup> *Id.*

crimes in the incident, which the FBI also characterized as domestic terrorism.<sup>36</sup>

At a 2019 House hearing on “Confronting the Rise of Domestic Terrorism in the Homeland,” an FBI official testified regarding the increasing threat of domestic terrorism and the mechanisms that the FBI and other agencies employ to combat this issue. Michael McGarrity, Assistant Director for the Counterterrorism Division of the FBI, stated that “racially-motivated violent extremists are responsible for the majority of lethal attacks and fatalities perpetrated by domestic terrorists since 2000.”<sup>37</sup> FBI Director Christopher Wray has repeatedly echoed the same sentiment. In his remarks to the Senate Homeland Security Committee, Director Wray declared that “2019 was the deadliest year for domestic extremist violence since the Oklahoma City Bombing in 1995.”<sup>38</sup> According to Director Wray, the FBI arrested 107 individuals during fiscal year 2019 in connection with domestic terrorism investigations, which was “close to the same number on the international terrorism front.”<sup>39</sup> However, Assistant Director McGarrity also noted the disparity in resource allocation, testifying that “in the field [agents] that work domestic terrorism, [comprise] about 20 percent, and we have about 80 percent working international terrorism.”<sup>40</sup>

In February 2020, Assistant Director of the Counterterrorism Division of the FBI, Jill Sanborn, testified that, “Domestic violent extremists pose a steady and evolving threat of violence and economic harm to the United States. Trends may shift, but the underlying drivers for domestic

<sup>36</sup> *Id.*

<sup>37</sup> *Confronting the Rise of Domestic Terrorism in the Homeland before the Comm. on Homeland Sec.*, 116th Cong. (2019) (statement of Michael McGarrity, Assistant Director, Counterterrorism Division, FBI).

<sup>38</sup> *Threats to the Homeland Before the S. Homeland Security & Gov. Aff. Comm.*, 116th Cong. (2019) (statement of Christopher Wray, FBI Director).

<sup>39</sup> *Id.*; prior to this testimony, FBI Assistant Director for Counterterrorism Michael McGarrity testified before the Committee on Homeland Security that the FBI was investigating 850 domestic terrorism cases— and of those, about 40 percent involved racially motivated extremism, mostly white supremacist extremism. *Confronting the Rise of Domestic Terrorism in the Homeland before the Comm. on Homeland Sec.*, 116th Cong. (2019) (statement of Michael McGarrity, FBI Assistant Director),

<https://homeland.house.gov/activities/hearings/confronting-the-rise-of-domestic-terrorism-in-the-homeland>.

<sup>40</sup> *Confronting the Rise of Domestic Terrorism in the Homeland before the Comm. on Homeland Sec.*, 116th Cong. (May 2019) (response of Michael McGarrity, Assistant Director, Counterterrorism Division, FBI to Ms. Clarke).

<sup>40</sup> *Id.*

violent extremism—which includes socio-political conditions, racism, and anti-Semitism, just to name a few—remain constant.”<sup>41</sup> Just two weeks later, the COVID-19 pandemic radically changed American life, leading to increased economic hardship, personal loss, anti-Asian animus, and fear. The pandemic created new opportunities for the spread of misinformation and the potential to increase the underlying factors that contribute to domestic terrorism.

### **III. White Supremacy in the Military and Law Enforcement**

#### **A. White Supremacy in the Military**

Servicemember participation in white supremacist organizations dates back to a time well before 1948, when President Truman ordered the integration of the military branches.<sup>42</sup> The Ku Klux Klan openly recruited members of the military through the 1980s.<sup>43</sup> In 1986, the Department of Defense began efforts to stem servicemembers’ participation in white supremacist organizations when Defense Secretary Caspar Weinberger ordered military personnel to reject these organizations.<sup>44</sup> Commanders inconsistently applied the 1986 directive, thus allowing some white supremacists to continue to serve.<sup>45</sup> After the 1995 Oklahoma City bombing, the Department of Defense explicitly banned servicemembers from participating in white supremacist organizations.<sup>46</sup> This policy largely remains in place.

Recent attacks by former servicemembers have brought renewed attention to the military’s response to white supremacists within its ranks. In November 2015, Frazier Miller was sentenced to

<sup>41</sup> Confronting the Rise in Anti-Semitic Domestic Terrorism, Statement Before the House Committee on Homeland Security, Subcommittee on Intelligence and Counterterrorism, 116th Cong. (2019) (statement of Jill Sanborn) <https://www.fbi.gov/news/testimony/confronting-the-rise-in-anti-semitic-domestic-terrorism>.

<sup>42</sup> Exec. Order No. 9981, 3 C.F.R. § 772 (1941-1948).

<sup>43</sup> Dave Philipps, *White Supremacism in the U.S. Military, Explained*, N.Y. Times, (Feb. 27, 2019), at A22.

<sup>44</sup> U.S. Dep’t of Def., Dir. 1325.6, Guidelines for Handling Dissident and Protest Activities Among Members of The Armed Forces (12 Sept 1969) (change 2) (Sept. 8, 1986) (on file with DoD).

<sup>45</sup> See e.g., Phil Stewart & Missy Ryan, *Wisconsin Shooting Suspect Discharged from Army in 1998*, Reuters (Aug. 6, 2012), <https://www.reuters.com/article/us-usa-wisconsin-shooting-army-idUSBRE87K04Y20120821>

<sup>46</sup> U.S. Dep’t of Def., Dir. 1325.6, Guidelines for Handling Dissident and Protest Activities Among Members of The Armed Forces (Oct. 1, 1996), [https://biotech.law.lsu.edu/blaw/dodd/corres/pdf/d13256\\_100196/d13256p.pdf](https://biotech.law.lsu.edu/blaw/dodd/corres/pdf/d13256_100196/d13256p.pdf).

death on murder charges after he killed three people during an April 13, 2014, attack on a Jewish community center in Overland Park, Kansas.<sup>47</sup> Miller served 20 years in the U.S. Army, including 13 years as a Green Beret, and later went on to found a chapter of the Ku Klux Klan.<sup>48</sup> Wade Michael Page, an Army veteran and an avowed white supremacist, killed six Sikh worshipers in a 2012 attack of the gurdwara (Sikh temple) in Oak Creek, Wisconsin, and was reportedly radicalized while enlisted in the Army.<sup>49</sup>

In 2017, a number of then-current and former servicemembers were linked to the Atomwaffen Division, a violent white supremacist group.<sup>50</sup> An analysis of court documents, attorney statements, and service records showed that over 80 individuals charged in connection with the January 6, 2021 insurrection have military ties, including five who were in the military on the day of the attack.<sup>51</sup> One Marine Corps veteran and retired New York Police Department officer was indicted on multiple counts for actions on January 6, including assaulting a police officer with a metal flagpole with a U.S. Marine Corps flag attached to it.<sup>52</sup> Yet, in 2018, the Department of Defense (DoD) reported to Congress that only 18 servicemembers have been discharged for extremist activity in the prior five years.<sup>53</sup> A 2019 poll of servicemembers by the *Military Times* found that more than one-third of active-duty troops and more than half of servicemembers of color said that they have witnessed examples of white nationalism or ideologically-driven racism within the ranks.<sup>54</sup>

<sup>47</sup> Steven Yaccino & Dan Barry, *Bullets, Blood and Then Cry of 'Heil Hitler'*, N.Y. Times (Apr. 14, 2014), at A1.

<sup>48</sup> *Id.*

<sup>49</sup> Erica Goode & Serge F. Kovalski, *Wisconsin Killer Fed and Was Fueled by Hate-Driven Music*, N.Y. Times (Aug. 6, 2012), <https://www.nytimes.com/2012/08/07/us/army-veteran-identified-as-suspect-in-wisconsin-shooting.html>; Marilyn Elias, *Sikh Temple Killer Wade Michael Page Radicalized in Army*, S. Poverty L. Ctr. (Nov. 11, 2012), <https://www.splcenter.org/fighting-hate/intelligence-report/2012/sikh-temple-killer-wade-michael-page-radicalized-army>.

<sup>50</sup> A.C. Thompson, et al., *Ranks of Notorious Hate Group Include Active-Duty Military*, ProPublica (May 3, 2018), <https://www.propublica.org/article/atomwaffen-division-hate-group-active-duty-military>.

<sup>51</sup> Eleanor Watson & Robert Legare, *Over 80 of those charged in the January 6 investigation have ties to the military*, CBS News (Dec. 15, 2021), <https://www.cbsnews.com/news/capitol-riot-january-6-military-ties/>.

<sup>52</sup> *Id.*

<sup>53</sup> Philipps, *supra* note 43.

<sup>54</sup> Leo Shane III, *Signs of White Supremacy, Extremism Up Again in Poll of Active-Duty Troops*, Military Times (Feb. 6, 2020), <https://www.militarytimes.com/news/pentagon-congress/2020/02/06/signs-of-white-supremacy-extremism-up->

On February 11, 2020, the House Subcommittee on Military Personnel held a hearing on white supremacy in the U.S Armed Forces. Employees of the Department of Defense and various branches of the Armed Services, as well as researchers specializing on military extremism testified about the rise in white supremacist ideology among both active and retired servicemen and women.<sup>55</sup> During the hearing, DoD representatives from the criminal investigations divisions of the represented military branches acknowledged that their respective agencies do not seek investigations into military personnel who are members of or who share the ideologies of extremist groups. They testified that investigations are opened only when instances of activity or active participation (fundraising, attending rallies, having tattoos, etc.) in these white supremacist or extremist ideologies are identified.<sup>56</sup> Even in those circumstances, when the DoD confirms active participation, removal from military service is not required.<sup>57</sup> In 2019, Cory Reeves, an airman in the U.S. Air Force, was identified as an active fundraiser for the white nationalist group Identity Evropa. Although Reeves was initially only demoted for his white supremacist activities, an Air Force administrative discharge board recommended his discharge from service in February of 2020.<sup>58</sup> The Marine Corps has faced issues as well, dishonorably discharging a number of Marines who have been found espousing white supremacist beliefs over the past few years, including an individual who had praised Nazis.<sup>59</sup>

again-in-poll-of-active-duty-troops/.

<sup>55</sup> *Alarming Incidents of White Supremacy in the Military—How to Stop It? Before H. Armed Serv. Subcomm. on Military Personnel*, 116th Cong. (2020), <https://armedservices.house.gov/2020/2/subcommittee-on-military-personnel-hearing-alarming-incidents-of-white-supremacy-in-the-military-how-to-stop-it>.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Stephen Losey, *EOD Marine Separated for Ties to White Supremacist Groups*, Air Force Times (Apr. 19, 2018), <https://www.marinecorpstimes.com/news/your-marine-corps/2018/04/19/eod-marine-separated-for-ties-to-white-supremacist-groups/>.

<sup>59</sup> Stephen Losey, *Board Recommends Discharge of Airman with White Nationalist Ties*, Air Force Times (Feb. 24, 2020), <https://www.airforcetimes.com/news/your-air-force/2020/02/24/board-recommends-discharge-of-airman-with-white-nationalist-ties/>. Shawn Snow, *Another Marine is Being Investigated for Neo-Nazi Ties Amid Military Concerns About White Supremacy*, Marine Times (Feb. 26, 2019), <https://www.marinecorpstimes.com/news/your-marine-corps/2019/02/26/another-marine-is-being-investigated-for-neo-nazi-ties-amid-concerns-about-white-supremacy-in-the-ranks/>.



## B. White Supremacy in Law Enforcement

White supremacists have long sought to infiltrate law enforcement agencies.<sup>60</sup> According to a leaked document drafted by the FBI Counter Terrorism Division, infiltration by members of white supremacist groups continues to pose a threat to law enforcement agencies around the country.<sup>61</sup> Currently, there is no federal database that tracks attempts by white supremacists to infiltrate law enforcement agencies. In the absence of formal tracking, several organizations and media outlets published investigative findings on law enforcement officers who have engaged in racist, nationalist, or white supremacist activity.<sup>62</sup> These efforts have uncovered hundreds of white supremacists who are currently employed or are retired law enforcement and have prompted agencies across the nation to open internal inquiries into officer conduct, in some instances leading to termination of employment.<sup>63</sup> In the wake of the January 6 insurrection, an Associated Press survey found that 31 off-duty police officers from 12 states were under investigation for their involvement with the attack.<sup>64</sup> At least three have been charged.<sup>65</sup>

## IV. Role of the Federal Government

<sup>60</sup> Vida B. Johnson, *The Epidemic of White Supremacist Police*, *The Appeal* (Aug. 7, 2017), <https://theappeal.org/the-epidemic-of-white-supremacist-police-4992cb7ad97a/>.

<sup>61</sup> Michelle Fox, *Texas Officers Fired for Membership in KKK*, *ABC News* (Jan. 7, 2006), <https://abcnews.go.com/US/story?id=93046&page=1>; See Vida B. Johnson, *The Epidemic of White Supremacist Police*; See Vida B. Johnson, *KKK in The PD*; Alice Sperti, *The FBI Has Quietly Investigated White Supremacist Infiltration of Law Enforcement*, *The Intercept* (Jan. 31, 2017), <https://theintercept.com/2017/01/31/the-fbi-has-quietly-investigated-white-supremacist-infiltration-of-law-enforcement/>.

<sup>62</sup> Will Carless & Michael Corey, *To Protect and Slur*, *Reveal News* (June 14, 2019), <https://www.revealnews.org/article/inside-hate-groups-on-facebook-police-officers-trade-racist-memes-conspiracy-theories-and-islamophobia/>; Emily Hoerner & Rick Tulsy, *Cops Across The US Have Been Exposed Posting Racist and Violent Things On Facebook. Here's the Proof.*, *BuzzFeed News* (June 1, 2019), <https://www.buzzfeednews.com/article/emilyhoerner/police-facebook-racist-violent-posts-comments-philadelphia>.

<sup>63</sup> See Will Carless & Michael Corey, *To Protect and Slur*; Hatewatch Staff, *City of Anniston Fires Police Officer for Membership in Hate Group*, *ACLU* (June 19, 2015), <https://www.splcenter.org/hatewatch/2015/06/18/city-anniston-fires-police-officer-membership-hate-group>.

<sup>64</sup> Martha Bellisle & Jake Bleiberg, *US police weigh officer discipline after rally, Capitol riot*, *AP News* (Jan. 24, 2021) <https://apnews.com/article/us-police-capitol-riot-980545361a10fff982676d42b79b84ab>.

<sup>65</sup> *Id.*

## A. Department of Justice

The DOJ was created in the post-Civil War era, motivated, at least in part, by Congress's intent to enforce the Reconstruction Amendments and to have an entity within the Executive Branch to serve as a "champion" of civil rights.<sup>66</sup> To this day, DOJ serves as the nation's chief law enforcement organization and carries out the United States' efforts to protect civil rights through various divisions, sections, and offices. The FBI's Criminal Investigative Division (CID) investigates cases involving a variety of criminal statutes that make it illegal to interfere with any person who is participating in a federally protected activity, such as public education, employment, jury service, travel, or the enjoyment of public accommodations, or helping another person to do so, based on their race or perceived race.<sup>67</sup> CID also investigates crimes allegedly committed because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person, where the crime occurred within a federal jurisdiction.<sup>68</sup> Following the passage of the Civil Rights Act of 1957, DOJ created the Civil Rights Division (CRT).<sup>69</sup> Along with individual U.S. Attorneys' Offices, the Criminal Section of CRT prosecutes hate crimes investigated by CID, and has prosecuted a number of high profile hate crimes, including prosecutions following the Tree of Life Synagogue massacre, the mass shooting in El Paso, and the Victoria Mosque arson.<sup>70</sup>

The Department's prosecution of terrorism has changed substantially in the last 20 years.

<sup>66</sup> Seth P. Waxman, *Twins at Birth: Civil Rights and the Role of the Solicitor General*, 75 Ind. L.J. 1297, 1297, 1300-01 (2000) (footnote omitted).

<sup>67</sup> See 18 U.S.C. § 245 (2018).

<sup>68</sup> 18 U.S.C. § 249 (2018).

<sup>69</sup> Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634 (1957).

<sup>70</sup> U.S. DOJ, Justice News, *Additional Charges Filed in Tree of Life Synagogue Shooting* (Jan. 29, 2019), <https://www.justice.gov/opa/pr/additional-charges-filed-tree-life-synagogue-shooting>; U.S. Dept. of Justice, Justice News, *Texas Man Charged with Federal Hate Crimes and Firearm Offenses Related to August 3, 2019, Mass-Shooting in El Paso* (Feb. 6, 2020), <https://www.justice.gov/opa/pr/texas-man-charged-federal-hate-crimes-and-firearm-offenses-related-august-3-2019-mass>; U.S. Dept. of Justice, Justice News, *Texas Man Sentenced to Almost 25 Years for Hate Crime in Burning Down Mosque in Victoria, Texas* (Oct. 17, 2018), <https://www.justice.gov/opa/pr/texas-man-sentenced-almost-25-years-hate-crime-burning-down-mosque-victoria-texas>.

Before the attacks on September 11, 2001, the United States generally distinguished international and domestic terrorism matters by the type of alleged perpetrator. The FBI labeled foreign-born or foreign-based terrorists as “international terrorists,” while federal authorities considered acts of domestic terror as a subset of criminal behavior.<sup>71</sup> Following this most lethal terrorist attack in American history, Congress enacted the USA PATRIOT Act of 2001, which constituted a dramatic shift in law enforcement authority.<sup>72</sup> Title VIII of the Act changed the definition of domestic terrorism, added crimes to the list of terrorism offenses, and criminalized cyberterrorism. In 2005, the FBI established the National Security Branch (NSB), which merged its Counterterrorism Division, Counterintelligence Division, Directorate of Intelligence, Weapons of Mass Destruction Directorate, and Terrorist Screening Center. Only a year later, the DOJ created the National Security Division (NSD), which similarly brought together prosecution-focused counterterrorism operations and Foreign Intelligence Surveillance Act (FISA) litigation sections. The NSB and NSD form the vanguard of the Nation’s efforts to prevent and prosecute terrorism.

In 2005, the FBI stopped releasing an annual report, *Terrorism*, which provided insight on both domestic and international terrorist threats from the mid-1980s through the 2000s.<sup>73</sup> The cessation of publication of the report left a dearth of clearly tracked information. In February 2019, House Homeland Security Committee Chairman, Bennie Thompson (D-MS), and House Judiciary Committee Chairman, Jerrold Nadler (D-NY), sent a letter to FBI Director Wray, inquiring about the discontinuation of this reporting.<sup>74</sup> In a March 27, 2019 response, Director Wray cited “resource

<sup>71</sup> National Consortium for the Study of Terrorism and Responses to Terrorism, *Patterns of Intervention in Federal Terrorism Cases* 8 (August 2011), [https://www.dhs.gov/sites/default/files/publications/OPSR\\_TP\\_Countermeasures-Patterns-Intervention-Federal-Terrorism-Cases\\_Aug2011-508.pdf](https://www.dhs.gov/sites/default/files/publications/OPSR_TP_Countermeasures-Patterns-Intervention-Federal-Terrorism-Cases_Aug2011-508.pdf).

<sup>72</sup> USA PATRIOT ACT, Pub. L. No. 107-56, 115 Stat. 272 (2001).

<sup>73</sup> FBI, *Terrorism 2002/2005*, <https://www.fbi.gov/stats-services/publications/terrorism-2002-2005> (last visited Feb. 26, 2020).

<sup>74</sup> Letter from Chairman Bennie Thompson, H. Comm. on Homeland Security, & Chairman Jerrold Nadler, H. Comm. on the Judiciary, to FBI Director Christopher Wray (Feb. 14, 2019) (on file with H. Comm. on the Judiciary Democratic

allocation issues” as the reason for its discontinuation.<sup>75</sup>

In 2019, FBI Director Christopher Wray, noted that terrorism, including domestic terrorism, remains the FBI’s primary focus.<sup>76</sup> Director Wray noted that white supremacists constitute the largest share of domestic terrorists and that white supremacists represent “a serious persistent threat” to the country.<sup>77</sup> According to Director Wray, the FBI arrested 107 individuals during fiscal year 2019 in connection with domestic terrorism investigations, which was “close to the same number on the international terrorism front.”<sup>78</sup> At any given time, the FBI has “about 900 [open] domestic terrorism investigations,” a “huge chunk” of which “involve racially motivated violent extremists.”<sup>79</sup> Of these, the most lethal “over the last few years” have involved white supremacists.<sup>80</sup>

In April 2019, the FBI notified Congressional staff that it was modifying how it categorized hate crime incidents. In his testimony before the House Judiciary Committee in February 2020, Director Wray confirmed that the FBI has collapsed the previous nine categories it used to identify hate crime incidents into four categories.<sup>81</sup> The new categories are: (1) racially-motivated violent extremism; (2) anti-government/anti-establishment extremism; (3) animal rights and environmental extremism; and (4) abortion extremism. Director Wray also described an additional category, “other

staff).

<sup>75</sup> Letter from FBI Director Christopher Wray to Chairman Jerrold Nadler, H. Comm. on the Judiciary (Mar. 27, 2019) (on file with H. Comm. on the Judiciary Democratic staff).

<sup>76</sup> *Threats to the Homeland Before the S. Homeland Security & Gov. Aff. Comm.*, 116th Cong. (2019) (statement of Christopher Wray, FBI Director).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* Prior to this testimony, FBI Assistant Director for Counterterrorism Michael McGarrity testified before the Committee on Homeland Security that the FBI was investigating 850 domestic terrorism cases— and of those, about 40 percent involved racially motivated extremism, mostly white supremacist extremism. *Confronting the Rise of Domestic Terrorism in the Homeland before the Comm. on Homeland Sec.*, 116th Cong. (2019) (statement of Michael McGarrity, FBI Assistant Director).

<https://homeland.house.gov/activities/hearings/confronting-the-rise-of-domestic-terrorism-in-the-homeland>.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Oversight of the Federal Bureau of Investigation Before the H. Jud. Comm.*, 116th Cong. (2020) (statement of Christopher Wray, FBI Director).

domestic terrorism,” which would encompass, for instance, attempted mail bombings.<sup>82</sup>

In January 2022, Assistant Attorney General for National Security Matthew G. Olsen announced that DOJ would establish a Domestic Terrorism Unit within the National Security Division to ensure domestic terrorism cases are handled properly and to coordinate efforts across DOJ and across the country.<sup>83</sup> Assistant Attorney General Olsen said the new unit will work closely with other DOJ components, especially the Civil Rights Division.<sup>84</sup>

## **B. Department of Homeland Security**

The September 11th attacks also ushered in a dramatic reorganization of the federal law enforcement structure and reshuffled terrorism-related responsibilities. The Homeland Security Act of 2002 created the Department of Homeland Security (DHS).<sup>85</sup> Despite DHS’s overarching mission, not all DHS components have programs or resources focused on domestic terrorism or hate crimes. Three DHS components, however, play important roles in collecting data and preventing domestic terrorism. The Office of Intelligence and Analysis collects and analyzes law enforcement information from public and private entities and disseminates domestic terrorism information to relevant law enforcement actors. The U.S. Coast Guard also collects and analyzes terrorism-related information along with counterintelligence operations.

In recent years, there have been several changes in DHS’s efforts to partner with communities to prevent violent extremism. In 2015, DHS established the Office for Community Partnerships (OCP) to advise local communities at targeted briefings, exercises, and workshops on preventing domestic terrorism from taking root.<sup>86</sup> OCP engaged faith leaders, local government officials, and

<sup>82</sup> *Id.*

<sup>83</sup> Assistant Attorney General Matthew G. Olsen Delivers Opening Remarks Before U.S. Senate Committee on the Judiciary (Jan. 11, 2022), <https://www.justice.gov/opa/speech/assistant-attorney-general-matthew-g-olsen-delivers-opening-remarks-us-senate-committee>.

<sup>84</sup> *Id.*

<sup>85</sup> The Homeland Security Act (HSA) of 2002, Pub. L. No. 107–296, 116 Stat. 2135.

<sup>86</sup> Statement by Secretary Jeh C. Johnson on DHS’s New Office for Community Partnerships (Sept. 28, 2015)

community leaders to address the root causes of the terror. OCP administered the Countering Violent Extremism grant program which was replaced with the Targeted Violence and Terrorism Prevention (TVTP) Grant Program in 2017.<sup>87</sup> In 2021, the Office for Targeted Violence and Terrorism Prevention was replaced with the Center for Prevention Programs and Partnerships (CP3) which now administers the TVTP grant program.<sup>88</sup> TVTP provides funding for state, local, tribal, and territorial governments, nonprofits, and institutions of higher education with funds to establish or enhance capabilities to prevent targeted violence and terrorism.

### **C. Office of the Director of National Intelligence**

The Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 established the National Counterterrorism Center (NCTC), which is part of the Office of the Director of National Intelligence (ODNI). NCTC inherited responsibility for integrating analysis and coordinating information sharing and developing strategic terrorism planning for the President. As currently structured, the NCTC assesses domestic and foreign terrorism information and aims to provide bias-free recommendations.<sup>89</sup> As one of its primary missions, the NCTC coordinates the information it collects and analyzes with agencies within the intelligence community, as well as law enforcement and defense agencies. As the central repository for terrorism-related data, NCTC serves as the focal point for information on suspected terrorists and their capabilities. In that capacity, NCTC operates the “Terrorist Identities Datamart Environment,” the central classified repository for all known or suspected international terrorists and their networks.<sup>90</sup>

<https://www.dhs.gov/news/2015/09/28/statement-secretary-jeh-c-johnson-dhss-new-office-community-partnerships>.

<sup>87</sup> OCP has since been dissolved, though DHS now has an Office of Partnership and Engagement as well as the Center for Prevention Programs and Partnerships.

<sup>88</sup> Dep’t of Homeland Security, Center for Prevention Programs and Partnerships, <https://www.dhs.gov/CP3>.

<sup>89</sup> Director of Nat’l Intelligence, National Counterterrorism Center, *Today’s NCTC* (Aug. 2017), [https://www.dni.gov/files/NCTC/documents/features\\_documents/NCTC-Primer\\_FINAL.pdf](https://www.dni.gov/files/NCTC/documents/features_documents/NCTC-Primer_FINAL.pdf).

<sup>90</sup> Director of Nat’l Intelligence, National Counterterrorism Center, *Terrorist Identities Datamart Environment* (2017), [https://www.dni.gov/files/NCTC/documents/features\\_documents/TIDEfactsheet10FEB2017.pdf](https://www.dni.gov/files/NCTC/documents/features_documents/TIDEfactsheet10FEB2017.pdf).

## V. Legal Authorities Relating to Domestic Terrorism

Federal law defines domestic terrorism as involving acts that are “dangerous to human life that are a violation of the criminal laws of the United States or of any State; appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily within the territorial jurisdiction of the United States.”<sup>91</sup>

While domestic terrorism is defined in federal law, the definition does not accompany an associated crime or prohibitive behavior. Rather, absent an explicit crime prohibiting domestic terrorism, federal authorities charge terrorism acts, whether domestic or international in nature, under two laws that prohibit terrorism-related acts. The first statute, which passed in 1994, criminalizes material support of one of 57 underlying terrorism-related crimes.<sup>92</sup>

Of 57 predicate terrorism offenses referenced in Section 2339A of Title 18 of the United States Code, federal prosecutors may use 51 of the offenses to charge an incident of domestic terrorism.<sup>93</sup> The underlying predicate terrorism crimes include: maliciously damaging, destroying by means of fire or explosive any building or personal property used in interstate or foreign commerce;<sup>94</sup> hostage taking;<sup>95</sup> or willful or malicious destruction of any of the works, property, or material of any communication line, station, or system.<sup>96</sup> While the vast majority of those charged under § 2339A have been internationally based, DOJ has charged at least four individuals for domestic crimes under these statutes.<sup>97</sup> The FBI also uses a second statute, 18 U.S.C. § 2339B, to investigate international

<sup>91</sup> 18 U.S.C. § 2331(5) (2018).

<sup>92</sup> 18 U.S.C. § 2339A (2018); 18 U.S.C. § 2332b(g) (2018).

<sup>93</sup> Michael German & Sara Robinson, *Wrong Priorities on Fighting Terrorism*, Brennan Ctr. 5 (Oct. 31, 2018), <https://www.brennancenter.org/publication/wrong-priorities-fighting-terrorism>.

<sup>94</sup> 18 U.S.C. § 844(i) (2018).

<sup>95</sup> 18 U.S.C. § 1203 (2018).

<sup>96</sup> 18 U.S.C. § 1362 (2018).

<sup>97</sup> See German & Robinson, *supra* note 15, at 8.

terrorism. Despite the international focus of section 2339B, DOJ has also charged domestically based United States citizens under this statute.<sup>98</sup>

Section 5602 of the National Defense Authorization Act for Fiscal Year 2020, signed into law by President Trump in January 2020, included domestic terrorism reporting requirements authored by Representative Bennie Thompson.<sup>99</sup> The 2020 NDAA provisions require the FBI and DHS, along with the Director of National Intelligence, to jointly track, manage and report on instances of domestic terrorism in the United States.<sup>100</sup> The three agencies must produce an initial report within 180 days of the bill's enactment that includes a full analysis of any completed or attempted instances of domestic terrorism.<sup>101</sup> Subsequent reports required pursuant to the NDAA must be submitted annually and must include information on training that these agencies provide to state and federal law enforcement agencies.<sup>102</sup> Notably, the NDAA amendments make clear that these documents and reports shall, to the extent possible, be unclassified and publicly available.<sup>103</sup>

## HEARINGS

For the purposes of clause 3(c)(6)(A) of House Rule XIII, the following hearings were used to consider H.R. 350:

On February 24, 2021, the Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on “The Rise of Domestic Terrorism in America.” The Subcommittee heard testimony from:

- Wade Henderson, Interim President and CEO, The Leadership Conference on Civil and Human Rights

<sup>98</sup> *See id.*

<sup>99</sup> National Defense Authorization Act for Fiscal Year 2020, S.1790, 116th Cong. § 5602 (2019).

<sup>100</sup> *See id.* at §5602.a-b.

<sup>101</sup> *See id.* at §5602.a-b, e.

<sup>102</sup> *See id.* at §5602.d (yearly publication for 5 years).

<sup>103</sup> *See id.* at §5602.e.



- Michael German, Brennan Center for Justice
- Malcolm Nance, Founder and Executive Director, Terror Asymmetries Project
- Andy Ngo, Editor-at-Large, The Post Millennial

The hearing explored the rise in domestic terrorism and federal law enforcement’s failure to adequately address related acts of violence.

On February 17, 2022, the Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on “The Rise in Violence Against Minority Institutions.” The Subcommittee heard testimony from:

- Dr. Seth G. Jones, Senior Vice President, Harold Brown Chair, and Director of the International Security Program and Transnational Threats Project, Center for Strategic and International Studies
- Dr. David K. Wilson, President, Morgan State University
- Rabbi Charlie Cytron-Walker, Colleyville, Texas
- Pardeep Singh Kaleka, Executive Director, Interfaith Conference of Greater Milwaukee
- Margaret Huang, President and CEO, Southern Poverty Law Center
- Dr. Demetrick Pennie, Retired Police Sergeant, Dallas Police Department
- Brandon Tatum, Former Tucson Police Officer, Founder and CEO, The Officer Tatum

This hearing continued the Subcommittee’s inquiry into domestic terrorism and investigated the rise in violence directed against minority institutions across the nation, particularly attacks on historically Black colleges and universities, synagogues, and other minority institutions.

### **COMMITTEE CONSIDERATION**

On April 6, 2022, the Committee met in open session and ordered the bill, H.R. 350,

favorably reported with an amendment in the nature of a substitute and one additional amendment, by a rollcall vote of 21 to 17, a quorum being present.

### **COMMITTEE VOTES**

In compliance with clause 3(b) of House Rule XIII, the following rollcall votes occurred during the Committee's consideration of H.R. 350:

1. An amendment by Mr. Biggs to prohibit any funds authorized to be appropriated by the Act to be used by the FBI to create or utilize a threat tag of "EDUOFFICIALS" or any similar threat tag with respect to parents voicing an opinion about the upbringing and education of their children was defeated by a rollcall vote of 18 to 24. The vote was as follows:

COMMITTEE ON THE JUDICIARY

House of Representatives

117<sup>th</sup> Congress

Amendment # 2 (ANS) to HR 350 offered by Rep. Biggs

PASSED  
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)			
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)	✓	✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)		✓	
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)	✓		
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)	✓		
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)	✓		
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)			
	AYES	NOS	PRES.
TOTAL	18	24	

2. An amendment by Mr. Bishop to require reporting of the number of parents tagged with the “EDUOFFICIALS” threat tag or any similar threat tag applied to parents voicing an opinion about the upbringing and education of their children was defeated by a rollcall vote of 17 to 23. The vote was as follows:

COMMITTEE ON THE JUDICIARY

House of Representatives

117<sup>th</sup> Congress

Amendment # 3 (AM) to HR 350 offered by Rep. Bishop

PASSED  
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)	✓	✓	
Hank Johnson (GA-04)	✓	✓	
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)			
Mary Gay Scanlon (PA-05)			
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)		✓	
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)	✓		
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)	✓		
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)	✓		
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)			
	AYES	NOS	PRES.
TOTAL	17	23	

3. An amendment by Mr. Steube to add Antifa, Black Lives Matter, and radicalized social justice organizations to provisions of the bill that require a threat assessment and report on the threat posed by white supremacists and neo-Nazis, that require training to combat domestic terrorism, and that establish an interagency task force to analyze and combat white supremacist and neo-Nazi infiltration of the uniformed services and federal law enforcement agencies was defeated by a rollcall vote of 15 to 23. The vote was as follows:

COMMITTEE ON THE JUDICIARY

House of Representatives

117<sup>th</sup> Congress

Amendment # 4 (ANJ) to HR 350 offered by Rep. Steube

PASSED  
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)			
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)			
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)		✓	
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES.
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)			
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)	✓		
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)	✓		
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES.
TOTAL	15	23	

4. An amendment by Mr. Biggs to prohibit any funds authorized to be appropriated by the Act to be used to monitor, analyze, investigate, or prosecute any individual who has declined the administration of a vaccine to COVID-19 or expressed opposition to such administration was defeated by a rollcall vote of 17 to 21. The vote was as follows:



COMMITTEE ON THE JUDICIARY

House of Representatives

117<sup>th</sup> Congress

Amendment # 5 (AMC) to HR 350 offered by Rep. Biggs

PASSED  
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)			
Mary Gay Scanlon (PA-05)			
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)			
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES.
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)			
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)	✓		
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)	✓		
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES.
TOTAL	17	21	

5. An amendment by Mr. Biggs to prohibit any funds authorized to be appropriated by the Act to be used to monitor, analyze, investigate, or prosecute any individual solely because that individual declined the administration of a vaccine to COVID-19 or expressed opposition to such administration was defeated by a rollcall vote of 16 to 19. The vote was as follows:

COMMITTEE ON THE JUDICIARY

House of Representatives

117<sup>th</sup> Congress

Amendment # **7 (AN)** to **HR 350** offered by Rep. **Biggs**

PASSED  
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)			
Mary Gay Scanlon (PA-05)			
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)			
Mondaire Jones (NY-17)			
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)			
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)			
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)			
Scott Fitzgerald (WI-05)	✓		
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES.
TOTAL	16	19	

6. A motion to report H.R. 350, as amended, was agreed to by a rollcall vote of 21 to 17. The vote was as follows:

COMMITTEE ON THE JUDICIARY

House of Representatives  
117<sup>th</sup> Congress

Final Passage on: H. R. 350

PASSED  
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)	✓		
Karen Bass (CA-37)	✓		
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Veronica Escobar (TX-16)			
Mondaire Jones (NY-17)	✓		
Deborah Ross (NC-02)	✓		
Cori Bush (MO-01)			
	AYES	NOS	PRES.
Jim Jordan (OH-04)		✓	
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Darrell Issa (CA-50)		✓	
Ken Buck (CO-04)		✓	
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Greg Steube (FL-17)			
Tom Tiffany (WI-07)		✓	
Thomas Massie (KY-04)		✓	
Chip Roy (TX-21)		✓	
Dan Bishop (NC-09)		✓	
Michelle Fischbach (MN-07)		✓	
Victoria Spartz (IN-05)			
Scott Fitzgerald (WI-05)		✓	
Cliff Bentz (OR-02)		✓	
Burgess Owens (UT-04)		✓	
	AYES	NOS	PRES.
TOTAL	21	17	

## **COMMITTEE OVERSIGHT FINDINGS**

In compliance with clause 3(c)(1) of House Rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House Rule X, are incorporated in the descriptive portions of this report.

## **COMMITTEE ESTIMATE OF BUDGETARY EFFECTS**

Pursuant to clause 3(d)(1) of House Rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## **NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE**

Pursuant to clause 3(c)(2) of House Rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House Rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of Congressional Budget Office a budgetary analysis and a cost estimate of this bill.

## **DUPLICATION OF FEDERAL PROGRAMS**

Pursuant to clause 3(c)(5) of House Rule XIII, no provision of H.R. 350 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

## **PERFORMANCE GOALS AND OBJECTIVES**

The Committee states that pursuant to clause 3(c)(4) of House Rule XIII, H.R. 350 would improve the federal government's ability to monitor, investigate, and prosecute incidents of domestic

terrorism. Additionally, the bill requires the Department of Defense and the Attorney General to assess and report to Congress on the prevalence of white supremacist ideology in the military and federal law enforcement.

### **ADVISORY ON EARMARKS**

In accordance with clause 9 of House Rule XXI, H.R. 350 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of House Rule XXI.

### **SECTION-BY-SECTION ANALYSIS**

The following discussion describes the bill as reported by the Committee.

*Sec. 1. Short Title.* Section 1 of the bill contains the short title, the “Domestic Terrorism Prevention Act of 2022.”

*Sec. 2. Definitions.* Section 2 of the bill defines several terms, including “domestic terrorism,” which has the meaning given in section 2331 of Title 18: “activities that” (1) “involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;” (2) “appear to be intended... to intimidate or coerce a civilian population... to influence the policy of a government by intimidation or coercion... or to affect the conduct of a government by mass destruction, assassination, or kidnapping;” and (3) “occur primarily within the territorial jurisdiction of the United States.” The bill excludes those acts perpetrated by individuals associated with or inspired by foreign terrorist organizations.

*Sec. 3. Offices to Combat Domestic Terrorism.* Section 3 of the bill authorizes, for ten years, domestic terrorism offices within the Office of Intelligence and Analysis of DHS, the Counterterrorism Section of the National Security Division of DOJ, and the Counterterrorism

Division of the FBI. Collectively, the offices are responsible for monitoring, analyzing, investigating, and prosecuting domestic terrorism. The Secretary of Homeland Security, the Attorney General, and the FBI Director must each ensure that the authorized offices are adequately staffed to perform their required duties, including at least one staffer dedicated to ensuring compliance with civil rights and civil liberties laws and regulations. All staff must undergo annual anti-bias training. The Domestic Terrorism Office in the National Security Division of DOJ must coordinate with the Civil Rights Division on domestic terrorism matters that may also be hate crimes.

This section also requires these offices to issue biannual reports to the House and Senate Judiciary, Homeland Security, and Intelligence Committees that assess the domestic terrorism threat posed by white supremacists and neo-Nazis (including white supremacist and neo-Nazi infiltration of Federal, State, and local law enforcement agencies and the uniformed services); analyze domestic terrorism incidents that occurred in the previous six months; and provide transparency through a quantitative analysis of domestic terrorism-related assessments, investigations, incidents, arrests, indictments, prosecutions, convictions, and weapons recoveries, as well as an explanation of each individual case that progressed through more than one of those stages. The report shall not include personally identifiable information not otherwise releasable to the public.

This section provides that the first of these joint reports goes back more than six months to examine past incidents.

This section clarifies that federal hate crime incidents that resulted in a charge and conviction must be reviewed to determine whether they also constitute a domestic terrorism-related incident.

The joint reports must be unclassified to the greatest extent possible, with a classified annex only if necessary. The unclassified portion of the joint report must be made available to the public online.



The reports shall include the number of federal incidents, investigations, arrests, indictments, prosecutions, and convictions with respect to a false report of domestic terrorism or hate crime incident.

If any reporting requirement is duplicative of another reporting provision already in law, the agencies may produce one report that complies with each such requirement as fully as possible.

Additionally, this section codifies the Domestic Terrorism Executive Committee, which must meet at least four times per year to coordinate with United States Attorneys and other public safety officials to promote information sharing and ensure an effective, responsive, and organized joint effort to combat domestic terrorism.

Finally, this section requires the DHS, DOJ, and FBI domestic terrorism offices to focus their limited resources on the most significant domestic terrorism threats, as determined by the number of domestic-terrorism-related incidents included in the joint report.

*Sec. 4. Training to Combat Domestic Terrorism.* Section 4 of the bill requires the Secretary of Homeland Security, the Attorney General, and the FBI Director to review the anti-terrorism training and resource programs that are provided by their respective agencies to Federal, State, local, and tribal law enforcement agencies (including the State and Local Anti-Terrorism Program, funded by DOJ's Bureau of Justice Assistance) and ensure that such programs include training and resources to assist law enforcement agencies in understanding, detecting, deterring, and investigating acts of domestic terrorism and white supremacist and neo-Nazi infiltration of law enforcement and corrections agencies. The Attorney General shall make training available to Department prosecutors and to Assistant United States Attorneys on countering and prosecuting domestic terrorism.

The training must focus on the most significant domestic terrorism threats, as determined by the joint report, and individuals providing the training must have expertise in domestic terrorism and

relevant academic, law enforcement, or other community-based experience. Additionally, the Secretary of Homeland Security, the Attorney General, and the FBI Director must each submit a biannual report to the House and Senate Judiciary, Homeland Security, and Intelligence Committees on the training implemented by their respective agencies, including copies of all training materials used and the names and qualifications of the individuals who provide the training. The reports must be unclassified to the greatest extent possible, with a classified annex only if necessary. The unclassified portion of the reports must be made available to the public online.

*Sec. 5. Interagency Task Force.* Section 5 of the bill directs, within 180 days, the Secretary of Homeland Security, the Attorney General, and the FBI Director, along with the Secretary of Defense, to establish an interagency task force to combat white supremacist and neo-Nazi infiltration of the uniformed services and federal law enforcement. The task force must report on its findings and response to the House and Senate Judiciary, Homeland Security, Intelligence, and Armed Services Committees within a year of its establishment. The report must be unclassified to the greatest extent possible, with a classified annex only if necessary. The unclassified portion of the report must be made available to the public online.

*Sec. 6. Federal Support for Addressing Hate Crime Incidents with a Nexus to Domestic Terrorism.* Section 6 of the bill provides the DOJ's Community Relations Service the ability to offer support to communities where DOJ has brought charges in a hate crime incident that has a nexus to domestic terrorism and directs the FBI to assign a special agent or hate crimes liaison to each FBI field office to investigate hate crime incidents with a nexus to domestic terrorism.

*Sec. 7. Authorization of Appropriations.* Section 7 of the bill authorizes such sums as necessary to be appropriated to DHS, DOJ, the FBI, and DoD to carry out these requirements.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

**TITLE 18, UNITED STATES CODE**

\* \* \* \* \*

**PART I—CRIMES**

\* \* \* \* \*

**CHAPTER 13—CIVIL RIGHTS**

\* \* \* \* \*

**§ 249. Hate crime acts**

(a) IN GENERAL.—

(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.—Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

(i) death results from the offense; or

(ii) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.—

(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person—

(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

## 2

(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

(I) death results from the offense; or

(II) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(B) CIRCUMSTANCES DESCRIBED.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

(I) across a State line or national border; or

(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, dangerous weapon, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

(iv) the conduct described in subparagraph (A)—

(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

(II) otherwise affects interstate or foreign commerce.

(3) OFFENSES OCCURRING IN THE SPECIAL MARITIME OR TERRITORIAL JURISDICTION OF THE UNITED STATES.—Whoever, within the special maritime or territorial jurisdiction of the United States, engages in conduct described in paragraph (1) or in paragraph (2)(A) (without regard to whether that conduct occurred in a circumstance described in paragraph (2)(B)) shall be subject to the same penalties as prescribed in those paragraphs.

(4) GUIDELINES.—All prosecutions conducted by the United States under this section shall be undertaken pursuant to guidelines issued by the Attorney General, or the designee of the Attorney General, to be included in the United States Attorneys' Manual that shall establish neutral and objective criteria for determining whether a crime was committed because of the actual or perceived status of any person.

(5) LYNCHING.—Whoever conspires to commit any offense under paragraph (1), (2), or (3) shall, if death or serious bodily injury (as defined in section 2246 of this title) results from the offense, be imprisoned for not more than 30 years, fined in accordance with this title, or both.

(6) OTHER CONSPIRACIES.—Whoever conspires to commit any offense under paragraph (1), (2), or (3) shall, if death or

serious bodily injury (as defined in section 2246 of this title) results from the offense, or if the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, be imprisoned for not more than 30 years, fined in accordance with this title, or both.

(b) CERTIFICATION REQUIREMENT.—

(1) IN GENERAL.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or a designee, that—

(A) the State does not have jurisdiction;

(B) the State has requested that the Federal Government assume jurisdiction;

(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or

(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(c) DEFINITIONS.—In this section—

(1) the term “bodily injury” has the meaning given such term in section 1365(h)(4) of this title, but does not include solely emotional or psychological harm to the victim;

(2) the term “explosive or incendiary device” has the meaning given such term in section 232 of this title;

(3) the term “firearm” has the meaning given such term in section 921(a) of this title;

(4) the term “gender identity” means actual or perceived gender-related characteristics; and

(5) the term “State” includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.

(d) STATUTE OF LIMITATIONS.—

(1) OFFENSES NOT RESULTING IN DEATH.—Except as provided in paragraph (2), no person shall be prosecuted, tried, or punished for any offense under this section unless the indictment for such offense is found, or the information for such offense is instituted, not later than 7 years after the date on which the offense was committed.

(2) DEATH RESULTING OFFENSES.—An indictment or information alleging that an offense under this section resulted in death may be found or instituted at any time without limitation.

(e) SUPERVISED RELEASE.—If a court includes, as a part of a sentence of imprisonment imposed for a violation of subsection (a), a requirement that the defendant be placed on a term of supervised release after imprisonment under section 3583, the court may order, as an explicit condition of supervised release, that the de-

defendant undertake educational classes or community service directly related to the community harmed by the defendant's offense.

*(f) FEDERAL BUREAU OF INVESTIGATION.—The Attorney General, acting through the Director of the Federal Bureau of Investigation, shall assign a special agent or hate crimes liaison to each field office of the Federal Bureau of Investigation to investigate hate crimes incidents with a nexus to domestic terrorism (as such term is defined in section 2 of the Domestic Terrorism Prevention Act of 2020).*

\* \* \* \* \*

## COMMITTEE CORRESPONDENCE



**One Hundred Seventeenth Congress  
Committee on Homeland Security  
U.S. House of Representatives  
Washington, DC 20515**

April 18, 2022

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
2138 Rayburn House Office Building  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Nadler:

I am writing to you concerning H.R. 350, the “Domestic Terrorism Prevent Act of 2022.” There are certain provisions in the legislation that fall within the rule X jurisdiction of the Committee on Homeland Security.

In the interest of permitting your committee to proceed expeditiously to floor consideration of this important bill, I am willing to waive this committee’s formal consideration of the provisions that fall within its jurisdiction. I do so with the understanding that, by waiving consideration of the bill, the Committee on Homeland Security does not waive any future jurisdictional claim over the subject matters contained in the bill which fall within its rule X jurisdiction. I request that you urge the Speaker to name members of this committee to any conference committee which is named to consider such provisions.

Please place this letter in the committee report on H.R. 350 and the *Congressional Record* during consideration of the measure on the House floor. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

Sincerely,

A handwritten signature in blue ink that reads "Bennie G. Thompson".

Bennie G. Thompson  
Chairman  
Committee on Homeland Security



ONE HUNDRED SEVENTEENTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

judiciary.house.gov

April 19, 2022

The Honorable Bennie G. Thompson  
Chairman  
Committee on Homeland Security  
U.S. House of Representatives  
H2-176 Ford House Office Building  
Washington, DC 20515

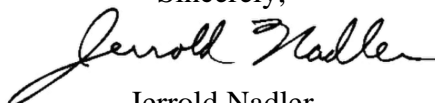
Dear Chairman Thompson:

I am writing to you concerning H.R.350, the “Domestic Terrorism Prevention Act.”

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Homeland Security. I acknowledge that your Committee will not formally consider H.R. 350 and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in H.R. 350 which fall within your Committee’s Rule X jurisdiction.

I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,



Jerrold Nadler  
Chairman

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary  
The Honorable Jason Smith, Parliamentarian  
The Honorable John Katko, Ranking Member, Committee on Homeland Security

## H.R. 350, the “Domestic Terrorism Prevention Act of 2021”

April 20, 2022

### MINORITY VIEWS

H.R. 350, the “Domestic Terrorism Prevention Act of 2021,” is unnecessary legislation that would expand government and create new federal resources for addressing domestic terrorism and hate crimes. The authorities in this bill will become dangerous in the hands of the Biden Administration, which has repeatedly demonstrated a willingness to target Americans for their political beliefs and misuse existing domestic terrorism resources.

The federal government already includes several agencies that investigate, prosecute, and interrupt domestic terrorism. This bill creates new components in various agencies, mandates a reporting requirement every six months, and directs federal law enforcement to focus domestic terrorism resources based on the views of particular groups, rather than on the risk to public safety. Using domestic terrorism resources in a specific way may not be as troubling if not for the current Administration’s record of abusing existing authorities by, for example, labeling parents concerned for the education of their children as domestic terrorists. H.R. 350 would, at a very minimum, chill the First Amendment rights of many Americans.

#### **H.R. 350 Duplicates Existing Resources and Responsibilities in the Federal Government**

H.R. 350 creates new offices within the Department of Homeland Security (DHS), the Department of Justice (DOJ), and the Federal Bureau of Investigation (FBI) to combat domestic terrorism. However, each of these agencies already have offices dedicated to combating domestic terrorism.

The FBI and DOJ play the main role in investigating and prosecuting domestic terrorism. FBI’s Joint Terrorism Task Forces (JTTFs) serve as the FBI’s “front line of defense” to combat terrorist threats.<sup>1</sup> JTTFs investigate leads, gather evidence, make arrests, and provide security for special events in order to prevent and respond to terrorist threats.<sup>2</sup> The DOJ also relies on its National Security Division (NSD), created in 2006, “to integrate, coordinate, and advance the Department’s counterterrorism and other national security work worldwide.”<sup>3</sup> NSD’s Counterterrorism Section handles domestic terrorism and other matters.<sup>4</sup> Additionally, the FBI’s Domestic Terrorism-Hate Crimes Fusion Cell utilizes the resources of the FBI’s Counterterrorism and Criminal Investigative Divisions to address the threats of domestic terrorism and hate crimes.<sup>5</sup>

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<sup>1</sup> *Federal Bureau of Investigation*, Joint Terrorism Task Forces, <https://www.fbi.gov/investigate/terrorism/joint-terrorism-task-forces>.

<sup>2</sup> *Id.*

<sup>3</sup> *Confronting the Rise of Domestic Terrorism in the Homeland: Hearing before the H. Comm. on Homeland Sec.*, 116th Cong. (2019) (statement of Brad Wiegmann, Deputy Assistant Att’y. Gen., U.S. Dep’t of Justice).

<sup>4</sup> *Id.*

<sup>5</sup> *Confronting White Supremacy (Part II): Adequacy of the Federal Response; Hearing Before the H. Comm. on Oversight and Reform*. 116th Cong. (2019).

DHS utilizes various resources and entities to protect the homeland from terrorist threats. Under the Trump Administration, DHS established the Office for Targeted Violence and Terrorism Prevention to focus on preventing international and domestic acts of terrorism, including incidents of racially motivated violence.<sup>6</sup>

### **The Biden Administration Has Misused Existing Domestic Terrorism Resources**

The Biden Administration is already misusing counterterrorism resources. H.R. 350 would give additional authorities to federal efforts to target law-abiding Americans who exercise their First Amendment rights to question government policy—such as parents concerned about their children’s education—rather than violent extremist groups like Antifa.

In January 2022, Matt Olsen, Assistant Attorney General for the National Security Division testified at a Senate Judiciary Committee hearing titled, “The Domestic Terrorism Threat One Year After Jan. 6.”<sup>7</sup> At the hearing, Olsen announced a new domestic terrorism unit within the National Security Division to respond to what the Biden Administration characterizes as an increase in violent domestic terrorism.<sup>8</sup> Olsen testified that the unit would focus on those “motivated by racial or ethnic animus” and those who “hold anti-government or anti-authority views.”<sup>9</sup>

The same week as the Senate testimony announcing this new unit, President Biden accused those who disagree with the federal takeover of state elections of being racists, and he told the tech companies to sensor more “misinformation.”<sup>10</sup> Taking these two actions into account, it is not too much of a stretch to believe that the Biden Administration could use allies in the tech industry and federal law enforcement to silence or punish political opponents.

In fact, it has happened before with existing federal counterterrorism resources. In a memorandum dated October 4, 2021, Attorney General Garland directed the FBI and all U.S. Attorneys’ Offices to address the “disturbing spike in harassment, intimidation, and threats of violence” at school board meetings.<sup>11</sup> Although the Attorney General’s memorandum did not specifically mention “domestic terrorism,” the memorandum mentioned “threats” against public officials.<sup>12</sup> The DOJ’s press release accompanying the memorandum noted the involvement of the National Security Division, and a whistleblower has alerted the Committee that the FBI’s Counterterrorism Division has been responsible for implementing the Attorney General’s

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<sup>6</sup> Press Release, U.S. Dep’t of Homeland Sec., Acting Secretary McAleenan Announces Establishment of DHS Office for Targeted Violence and Terrorism Prevention (Apr. 19, 2019).

<sup>7</sup> *The Domestic Terrorism Threat One Year After Jan. 6: Before the S. Comm. on the Judiciary*, 117<sup>th</sup> Cong. (2022) (statement of Matt Olsen, Assistant Atty Gen. for the National Security Division).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Memorandum from Atty Gen. Merrick Garland, U.S. Dep’t of Justice, Partnership Among Federal, State, Local, Tribal, And Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff (Oct. 4, 2021).

<sup>12</sup> Letter from Ms. Viola M. Garcia, President, Nat’l School Board Assoc. & Mr. Chip Slaven, Chief Exec. Officer, Nat’l School Board Assoc., to President Joseph R. Biden, White House (Sept. 29, 2021).

directive. The National School Board Association (NSBA) letter that triggered the Attorney General’s memorandum equated parents with domestic terrorists and urged the Biden Administration to use federal authorities, including the Patriot Act, to target parents.<sup>13</sup> If threats are conveyed by a parent or anyone else toward a public official at a school board meeting, those situations are best handled by state and local authorities.<sup>14</sup> Parents exercising their fundamental right to direct their children’s education are not something that the FBI or any other federal agency needs to monitor with a greater urgency than actual terrorism.

In addition, on February 7, 2022, DHS issued a National Terrorism Advisory Bulletin warning that the United States remains in a heightened threat and citing so-called “mis- dis- and mal-information” as a source of the increased threat environment.<sup>15</sup> According to DHS, the purpose of allegedly misleading narratives and conspiracy theories is to increase societal friction and undermine public trust in governmental institutions.<sup>16</sup> DHS cited as two examples “online proliferation of false or misleading narratives regarding unsubstantiated widespread election fraud and COVID-19.”<sup>17</sup> Although DHS admitted that “conditions underlying the heightened threat landscape have not significantly changed over the last year,” it cited “the proliferation of false or misleading narratives, which sow discord or undermine public trust in U.S. government institutions” as one factor for why threat environment remains elevated.<sup>18</sup> This bulletin is further evidence of how the Biden Administration has used existing counterterrorism resources as a tool to target and silence citizens who disagree with government actions.

### **H.R. 350 fails to address real threats**

H.R. 350 largely ignores domestic terrorism threats from the left despite the significant violence that left-wing extremists committed over the last several years. In summer 2020, violent left-wing anarchist extremists used George Floyd’s death as justification to cause violence and destruction across the country. Dubbed anti-fascists, or “Antifa,” these radical extremists openly espoused violence against American citizens and government officials and vandalized federal buildings and property. Anarchist groups like Antifa vandalize property, riot, set fires, and perpetuate small-scale bombings and usually target symbols of Western civilization that they perceive to be the root causes of societal ills.<sup>19</sup> Former Attorney General William Barr “made clear” that Antifa and other extremist groups were “involved in instigating and participating in violent activity.”<sup>20</sup> FBI Director Christopher Wray added that Antifa is “exploiting the situation to pursue violent extremist agendas . . . .”<sup>21</sup>

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<sup>13</sup> Letter from Ms. Viola M. Garcia, President, Nat’l School Board Assoc. & Mr. Chip Slaven, Chief Exec. Officer, Nat’l School Board Assoc., to President Joseph R. Biden, White House (Sept. 29, 2021).

<sup>14</sup> *Merrick Garland’s Federal Offense*, WALL ST. J. (Oct. 6, 2021).

<sup>15</sup> Dept. of Homeland Security, National Terrorism Advisory System, (Feb 7, 2022, 2:00 pm ET),

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See generally Philip Bump, *The Justice Department’s rhetoric focuses on antifa. Its Indictments don’t.*, THE WASH. POST (June 4, 2020).

<sup>21</sup> *Id.*

H.R. 350 attempts to create a problem where none exists by requiring investigations into law enforcement and the armed services for rampant white supremacists or white nationalist sympathies. Committee Democrats suggest that there are instances in which members of the armed services have shown sympathies toward white supremacists or white nationalist groups.<sup>22</sup> However, according to the majority's own information, the various branches of the military have addressed the Democrat-offered examples of extremism.<sup>23</sup> As articulated by the Democrats, every member of the military who showed an interest or actual participation in a white supremacist or white nationalist group has faced discipline.<sup>24</sup> The relevant branch either demoted the individual, discharged them, or otherwise disciplined the sympathizer.<sup>25</sup> Further, the Democrats concede that the armed services have taken steps to address these concerns going back to the 1980s.<sup>26</sup>

### **Republican Amendments Rejected by the Democrat Majority Would Have Improved the Legislation**

During the Committee's business meeting to consider H.R. 350, Republicans offered several amendments that would have improved the legislation. Chairman Nadler and the Democrat majority accepted a minor additional reporting requirement but refused to include any other substantive proposal from Republicans.

Representative Biggs and Bishop offered an amendment that would have prohibited taxpayer dollars from being used by the FBI to use or create threat tags against parents voicing an opinion about the upbringing and education of their children. Committee Democrats rejected the amendment.

Representative Steube offered an amendment that would have included Antifa, Black Lives Matter and radicalized social justice organizations, along with white supremacists and neo-Nazi groups, in the domestic terrorism reporting requirement, training requirement and the interagency taskforce investigating internal domestic terrorism threats to law enforcement and the uniform services. Committee Democrats rejected the amendment.

Representative Biggs offered an amendment that would have prohibited taxpayer dollars from being used to monitor, analyze, investigate, or prosecute *any* individual who have declined the administration of the vaccine to COVID-19 or expressed opposition to such administration. After a dispute over the wording of the amendment, Committee Democrats rejected the amendment. Representative Biggs then offered an amendment that would address the concerns raised by Democrats about the wording—using a phrase specifically suggested by Representative Ross. In this iteration of the amendment no appropriated funds would be authorized to monitor, analyze, investigate, or prosecute any individual *solely* because that individual declined the

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<sup>22</sup> Memorandum from the Hon. Jerrod Nadler, Chairman, Committee on the Judiciary to Members of the House Judiciary Committee. 8 (March 15, 2022)

<sup>23</sup> *Id.* at 7-9.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 7.

administration of a vaccine to COVID-19 or expressed opposition to such administration. Committee Democrats again rejected this amendment.

### **Conclusion**

H.R. 350 continues the pattern of House Democrats feigning selective outrage at political violence—highlighting and obsessing about certain violence while ignoring and minimizing left-wing violence. Republicans, on the other hand, have been consistent in denouncing all forms of political violence. The fact is that all domestic terrorism should be investigated, prosecuted, and interrupted. Law enforcement should be given the flexibility to decide which threats receive priority based upon the totality of the circumstances—not which motivating philosophies are the most disfavored by the Biden Administration.



**Jim Jordan**  
**Ranking Member**