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**RESPONSES OF
THE DEPARTMENT OF JUSTICE**

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

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

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

1. Since the National Strategy to Counter Domestic Terrorism (Strategy) was released in June 2021, what steps has the Department of Justice (DOJ) taken to implement the efforts outlined in the Strategy? Where has DOJ fallen short in its ongoing implementation efforts?

RESPONSE:

The Department’s efforts to combat domestic terrorism are a key component of the recently released National Strategy for Countering Domestic Terrorism. The National Strategy adopts a whole-of-government approach to preventing domestic terrorism and reducing the factors that fuel it. The National Strategy recognizes that, to find sustainable solutions, we must not only disrupt and deter terrorist activities, but also address the root causes of violence. It rests on four essential pillars: (1) understanding and sharing domestic terrorism-related information; (2) preventing recruitment and mobilization to violence; (3) disrupting and deterring domestic terrorism activity; and (4) confronting long-term contributors to this problem. The National Strategy emphasizes that activity protected under the First Amendment, including speech espousing an extremist ideology, is not unlawful and that any steps to counter domestic terrorism must therefore be focused on acts or true threats of violence, so as to safeguard Americans’ civil rights and civil liberties. We have already taken concrete steps to implement the National Strategy:

- The Department has issued binding guidance to ensure that investigations and prosecutions with a nexus to domestic violent extremism are reported to the National Security Division for better tracking and to ensure coordination and consistency across the Department in the handling of those matters.
- The Department, through the FBI, has increased collaboration and information sharing with law enforcement and private sector partners, including regular engagement with the technology sector to share developments on counterterrorism threat streams, and partners in the finance, retail, trucking, and shipping sectors to provide information to those

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organizations including threat indicators, legal and policy challenges, and case studies of productive partnerships.

- The Department's Domestic Terrorism Executive Committee ("DTEC") provides a national-level forum for information sharing at the leadership level on domestic terrorism matters. Originally created in the aftermath of the 1995 Oklahoma City bombing, the DTEC includes representatives from the U.S. Attorney's Offices, the National Security Division, other divisions of Main Justice, the FBI, the Department of Homeland Security, and other law enforcement agencies.
- The Department's grant-making components are dedicating additional resources to helping states, localities, and others focus on the domestic terrorism threat. These efforts have included: adding hate crimes and domestic violent extremism as areas of special consideration in Community Policing Development Microgrants Programs, which fund the development of community policing strategies; revitalizing the curriculum of the State and Local Anti-Terrorism Training Program to enhance terrorism related training; and funding research to improve our understanding of the process of radicalizing to terrorism, reintegration of offenders incarcerated for terrorism-related offenses, and terrorism prevention programs. Further resources include toolkits and training and technical assistance to communities who support domestic terrorism victims through augmented emergency planning or responses to these events, and grants to help these victims in the aftermath of incidents.
- The Department has also recently announced several initiatives aimed at preventing or more effectively responding to hate crimes, some of which also qualify as acts of domestic terrorism. For example, the Attorney General has appointed a Hate Crimes Coordinator to centralize the Department's efforts to combat hate crimes; the FBI has launched a National Anti-Hate Crimes Campaign involving all 56 FBI field offices to encourage reporting of hate crimes and hate incidents; through its Criminal Investigative Division, the FBI has recently elevated hate crimes and criminal civil rights violations to its highest-level national threat priority, which increases resources for hate crimes prevention and investigations and makes hate crimes a focus for all of the FBI's field offices; and the Department launched a nationwide initiative to combat unlawful acts of hate (the United Against Hate Initiative) through which all 94 U.S. Attorneys' offices will host community engagement and outreach programs to address and prevent unlawful acts of hate.

2. Designations within domestic extremist and terrorist categories include Racially Motivated Violent Extremists (RMVEs) and Militia Violent Extremists (MVEs). The reconfiguration of these definitions in 2017 creates confusion in the overall picture of domestic terrorist threats to the nation. RMVE would seemingly include "Black Identity Extremists" along with white supremacy extremists in the same category, and MVE would include diametrically opposed groups such as left-wing Antifa and right-wing Oath Keepers, Three Percenters, and Proud Boys. Additionally, a January 13, 2021, Joint Intelligence Bulletin provides that the January 6 attack on the United States Capitol would "foster connections" between groups of varying ideologies.

- a. Given the evolution of domestic violent extremist (DVE) ideologies, and the confusion caused by correlating oppositional extremist groups together under a single category, has DOJ

considered, or is DOJ considering, updating the categories of extremism to better reflect the threat landscape facing the nation?

RESPONSE:

Regardless of an individual's specific ideology, the FBI will actively pursue the opening of FBI investigations when an individual uses – or threatens the use of – force, violence, or coercion, in violation of federal law and in furtherance of social or political goals. When an individual commits or threatens force or violence, the FBI follows logical investigative steps to determine if the acts were ideologically motivated. Regardless of an individual's ideology, the case is worked and coordinated with the Department of Justice for applicable charges that fit the nature of the violation.

b. Please provide a quantitative breakdown by year of investigations initiated involving each DVE category maintained by DOJ.

c. Please provide a quantitative breakdown of investigations initiated involving RMVEs from 2017 to the present, by year and by subcategory. Please also identify every subcategory within the RMVE designation. If possible, please identify any known groups or organizations (e.g., Proud Boys, Three Percenters, Oath Keepers, and other organizations) with which individuals under investigation may be affiliated and the number of individuals who are affiliated with one or more of the organizations and the number of affiliations under investigation.

RESPONSE:

In response to sub-questions b and c, in May 2021, FBI and DHS jointly submitted to the relevant Congressional committees a report titled "Strategic Intelligence Assessment and Data on Domestic Terrorism." The report provides a strategic intelligence assessment on domestic terrorism and a detailed discussion of the procedures and methods used to address threats posed by domestic terrorism. The report also contains a quantitative breakdown of FBI-designated significant domestic terrorism incidents in the United States from 2015 through 2019, including a description of each incident and a DVE categorization of each incident. The May 2021 report is available at <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view>. In October 2022, the FBI and DHS published a second report covering data for the years 2020-2021. The October 2022 report is available at <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report-2022.pdf/view>.

d. Please provide a breakdown of the resources DOJ and/or the FBI is devoting to investigate matters within every subcategory of the RMVE designation.

RESPONSE:

The FBI continually assesses and evaluates its threat priorities to ensure resources are appropriately allocated both in Field Offices and Headquarters, and it is important to note the FBI does not allocate its resources solely on the organizational category of a case. In response to the evolving domestic terrorism threat, the FBI has re-evaluated the ranking of its threat priorities. Therefore, in FY20 the FBI elevated the Racially or Ethnically Motivated Violent Extremism (RMVE) threat to its highest

threat priority. The FBI considers violent extremism motivated by any racial bias a high priority. In fact, the FBI prioritizes this threat among the most serious terrorism threats posed to the United States (U.S.), commensurate with threats like ISIS and Homegrown Violent Extremists (HVEs). In FY22, the FBI recognized the same need when assessing the Anti-Government/Anti-Authority Violent Extremism threat, and also elevated it to our highest priority, on par with the RMVE threat. The elevation of the two threats establishes a national focus on these priorities and enables a shift in resources commensurate to the threat.

e. Please provide a quantitative breakdown of investigations initiated involving MVEs from 2017 to the present, by year and by subcategory. Please also identify every subcategory within the MVE designation. If possible, please identify any known groups or organizations with which individuals under investigation may be affiliated and the number of groups or organizations under investigation.

RESPONSE:

As explained in the joint reports referenced above in response to question 2(c), the FBI and DHS have identified multiple categories of DVE threats. These threat categories include RMVEs, Animal Rights/Environmental Violent Extremists, Abortion-Related Violent Extremists, Anti-Government/Anti-Authority Violent Extremists (AGAAVEs), and Other Domestic Terrorism Threats. The AGAAVE threat category includes three subcategories: Militia Violent Extremists, Anarchist Violent Extremists, and Sovereign Citizen Violent Extremists. As mentioned above, the joint reports contain a quantitative breakdown of FBI-designated significant domestic terrorism incidents in the United States from 2015 through 2021.

f. Please also provide a breakdown of the resources DOJ and/or the FBI is devoting to investigate matters within every subcategory of the MVE designation.

RESPONSE:

As previously mentioned, the FBI allocates its resources commensurate to the threat, which is constantly evolving, and continually works to assess and evaluate current threat priorities. The FBI follows the facts and evidence during an investigation, and as more information comes to light through investigative activity, it may be important to adjust the case's categorization. Thus, the FBI does not allocate its resources solely on the organizational category of a case and does not track resources dedicated to specific subcategories of the DVE threat.

g. Does DOJ currently have the resources necessary to investigate threats posed by RMVEs and MVEs?

RESPONSE:

DOJ and FBI are working every day to investigate the threats posed by violent extremism and other forms of terrorism. We leverage all available tools to combat terrorism, and we work closely with our state, local, tribal, and territorial (SLTT) law enforcement partners to actively address the threat. We will work within the budget process if we identify a need for more resources. However, we note that one

major obstacle in our investigations is not resource-based but rather encryption-based: Because of the use of encrypted applications, it's becoming more and more difficult for law enforcement to identify and disrupt today's increasingly insular actor, even with a lawful warrant or court order.

h. What steps is DOJ taking to better communicate with and train its state, local, and tribal law enforcement partners about the interconnected nature of far-right violence?

RESPONSE:

Coordination and communication with state and local partners, including information sharing, training, and transparency are all very important to successful efforts to counter the DVE threat. Both the Antiterrorism Advisory Council and Joint Terrorism Task Forces (JTTFs) bring together not just the federal officials from the different federal agencies in communities across the country, but also state, local, and tribal officials who may be working to address the same threats. Very often, state and local law enforcement have the first contact with some domestic violent extremists and are the first line of defense. We have already increased our focus on information sharing with those partners, providing, at the unclassified level, more information, with more details, more quickly. This includes publishing and disseminating intelligence products that provide our partners with greater insight into the evolving threat, as well as situational awareness notifications to inform public safety and security planning efforts in advance of potential violence. We are committed to ensuring that state, local, tribal, and territorial partners receive not just warnings of specific, credible threats of violence but also, where appropriate, broader indicators and warnings that can inform our partners' level and type of preparation for potential violence.

We are also developing new resources as part of our broader effort to boost support to state, local, tribal, and territorial law enforcement in tackling domestic terrorism, including resources that will cover relevant iconography, symbology, and phraseology used by many domestic terrorists as well as data-driven guidance on how to recognize potential indicators of mobilization to domestic terrorism.

In addition, the establishment of a new Domestic Terrorism Unit within the Counterterrorism Section of DOJ's National Security Division signals the Department's commitment to the development of a more robust and collaborative training program on DVE issues with our state, local, tribal and territorial partners. The Domestic Terrorism Unit has several functions, including prosecuting and coordinating domestic terrorism cases; developing training and policies on domestic terrorism matters; and supporting the work of the Department in implementing a whole-of-government strategy on countering domestic terrorism.

3. Recent reports indicate that some states, including Texas and Montana, have granted authorization to the Constitutional Sheriffs and Peace Officers of America (CSPOA) to conduct law enforcement continuing education trainings.¹ CSPOA was founded by Richard Mack, a member of the Oath Keepers Board of Directors. The organization is based on the errant and anti-constitutional principle that "[t]he vertical separation of powers in the Constitution makes it clear that the power of the sheriff even supersedes the powers of the President." Does DOJ maintain information relating to organizations that are accredited or authorized by states to conduct continuing education for law enforcement personnel?

RESPONSE:

DOJ's Community Oriented Policing Services (COPS) Office does not maintain information relating to organizations that are accredited or authorized by states to conduct continuing education for law enforcement personnel. However, the national training programs that COPS currently sponsors are all certified by one or more state Police Officer Standards and Training (POST) organizations.

The FBI can only open an investigation when there is a potential federal criminal violation. The FBI opens a domestic terrorism case when the individual threatens the use of, or commits a violent act in furtherance of, a violent extremist ideology in violation of federal law. Many groups in America form for the sole purpose of exercising their Constitutional rights, and that is not a crime. That being said, if individuals use the assembly of likeminded people to recruit co-conspirators in a criminal act, then the FBI will investigate those conspiring to break the law. The FBI does not dictate or maintain records about organizations who may provide training to state or local police without any investigatory interest. The FBI works with our SLTT partners through the Joint Terrorism Task Forces (JTTFs) to ensure our partners have the most updated information on the terrorism threat.

a. Is DOJ aware whether CSPOA or other anti-government, white supremacist, or militia extremist groups are certified to conduct continuing education for law enforcement personnel?

RESPONSE:

The COPS Office does not have information on local law enforcement training certifications. The majority of national training providers with which COPS works either work directly with the state POSTs or seek certification through the International Association of Directors of Law Enforcement Standards and Training (IADLEST) National Certification Program. A scan of the currently certified trainings through the IADLEST program does not include any curricula provided by CSPOA.

b. How would the provision of training by groups like CSPOA impact DOJ's attempts to conduct oversight over a given police department? Could such training precipitate a pattern and practice investigation into the department?

RESPONSE:

The Civil Rights Division enforces the civil prohibition on a "pattern or practice" of policing that violates the Constitution or other federal laws. Pattern-or-practice cases begin with investigations of allegations of systemic police misconduct. An allegation that a particular group conducts education for state or local law enforcement does not by itself establish systemic police conduct or violations of the Constitution.

c. Is DOJ aware of whether any grant funding provided by the Department is utilized by state, local, or tribal law enforcement organizations to pay for continuing education conducted by organizations affiliated with anti-government, MRVE, or MVE groups?

RESPONSE:

The COPS Office is not aware of any such use. For the COPS' de-escalation training grant program (the only one where individual agencies receive funding that they can use to contract for

training), COPS requires the awardees to submit information on any contracted training provider to their grant manager for review prior to engaging in the training. COPS has encouraged all to work with nationally certified vendors whenever possible and look into basic public information about vendors

d. If DOJ is unaware of whether any grant funding is paid to organizations affiliated with anti-government, MRVE, or MVE groups, what reporting requirements would be necessary to ensure that federal tax dollars are not going to domestic violent extremist related organizations?

RESPONSE:

To ensure that grant funding is spent appropriately, we believe that funding a national training provider for law enforcement would be more efficient and effective than instituting additional reporting requirements. The Department uses this approach for other types of training as well. When we fund a national training provider, we can ensure the provider and the curriculum are thoroughly vetted. Then, the training is made available free of charge to law enforcement agencies, who can be assured that the DOJ has reviewed and approved the training information and materials. Principles of economy of scale generally make this model of training delivery cost-effective to the government as well. For example, through our active shooter training program, we can train over 20,000 first responders annually with a suite of certified and vetted curricula, without charging participating agencies tuition fees or travel costs, and we can be confident in the consistency of information being provided to those first responders. Additionally, financial awards made to entities for training purposes can be provided through cooperative agreements rather than grants, which allows for substantial involvement and oversight by the Department.

4. Recently released documents reflect that numerous active-duty law enforcement officers and military personnel contacted the Oath Keepers seeking information or attempting to join the organization. Several federal law enforcement personnel were reported to be members, including at least two FBI agents. Numerous Oath Keepers were arrested for their involvement in the January 6 attack, and they are considered an MVE group.

a. Has DOJ created a standardized approach or best practice to detect insider threats among federal law enforcement agencies? If not, does DOJ intend to develop programs or best practices to identify insider threats?

RESPONSE:

DOJ has robust internal vetting processes for employees. For instance, the FBI conducts full-scope polygraph examinations of all applicants to determine if they meet the National Security and Suitability standards. These exams are governed by the Polygraph Program Policy Guide and serve as a tool for security and suitability vetting of the FBI workforce. Additionally, limited scope polygraph examinations are administered every five years to FBI employees.

The Department also has a robust Insider Threat Prevention and Detection Program (ITPDP), which was established consistent with the National Insider Threat Policy and Executive Order 13587, "Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information" (Oct. 7, 2011). The ITPDP establishes a process for deterring, detecting, and mitigating insider threats and is tailored to meet the distinct needs, mission, and systems of

individual components of the Department. The program also includes appropriate protections for legal, privacy, civil rights, and civil liberties requirements.

b. Has DOJ created a standardized approach or best practice to help its state and local law enforcement partners identify insider threats? If not, does DOJ intend to develop programs or best practices to identify insider threats?

RESPONSE:

The Department encourages its state, local, tribal and territorial partners to report any federal criminal activity. The Department engages regularly with these partners on domestic violent extremism issues, including how to identify and disrupt DVE threats.

c. Please describe what kind of information would be helpful for DOJ to receive as part of a mandatory reporting structure that would require local law enforcement agencies to provide information about extremist behavior by their officers.

RESPONSE:

The Department will leverage all tools available to combat domestic terrorism, and there are several legislative proposals that could be helpful in the fight against violent extremism. With regards to the specific question, the FBI continually works with our state and local partners through our JTTFs to keep them apprised of the current terrorism threat picture. We also ensure they are well educated on the indicators of violent extremism. The Department, including the FBI, has worked to strengthen our two-way exchange of information with our state and local law enforcement partners, as they are often in the best position to identify important facets of the DVE threat.

d. Does DOJ maintain a centralized clearinghouse to monitor and share information related to identified insider threats?

RESPONSE:

The Department's Insider Threat Prevention and Detection Program (ITPDP) is a centralized, enterprise-level program that coordinates among four component-based insider threat centers—housed within the Drug Enforcement Administration, the United States Marshals Service, the FBI, and the Justice Management Division (JMD)—to monitor, collect, audit, and analyze data about employees and contractors for insider threat detection and mitigation. JMD operates a center that covers the other components of the Department that do not operate their own insider threat center. Relevant information defined in Departmental insider threat standards and guidance and stored with the Departmental components is available to the operation centers. Under the ITPDP, the Department's insider threat centers have developed procedures and systems for the timely reporting of all insider threat incidents and concerns for appropriate action and referral to appropriate Departmental investigative organizations.

e. What actions is DOJ taking to determine whether the individuals identified in the released documents constitute insider threats to the United States?

RESPONSE:

While the Department cannot comment on any individuals, DOJ has a robust internal vetting process for employees. For instance, every new applicant to the FBI is thoroughly vetted by the FBI's Security Division, which conducts a comprehensive Background Investigation in accordance with applicable Executive Orders and ODNI guidelines.

5. Does DOJ consider “domestic terrorism” to be synonymous with “domestic violent extremism,” and, if not, what is the difference?

RESPONSE:

The term “domestic terrorism” has a specific statutory meaning. It is defined at 18 U.S.C. § 2331 as meaning: “activities that – (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (b) appear to be intended – (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping; and (C) occur primarily within the territorial jurisdiction of the United States.” The definition focuses on the apparent effect of the action being to impact broader populations or the government.

In the FBI's terminology, the term “domestic violent extremism” generally refers to those who commit violent criminal acts in furtherance of ideological goals stemming from domestic influences—as opposed to foreign ones. The FBI distinguishes “domestic violent extremism” from “homegrown violent extremism.” Director Wray has described “homegrown violent extremism” as referring to those who are inspired by Foreign Terrorist Organizations but not receiving direction from them.

6. In April 2020, hundreds of protestors, some carrying rifles, attempted to enter the floor of the Michigan legislative chamber but were held back by a line of state police and capitol staff. Additionally, criminal plots against Michigan Governor Gretchen Whitmer and Ohio Governor Mike DeWine were foiled later in June 2020.

a. Did DOJ prepare any intelligence reports in relation to these events that provided warning or insight into the January 6 attack on the United States Capitol?

b. If so, did the intelligence reports create any actionable steps that DOJ could have shared with law enforcement partners to prevent the January 6 attack, and did DOJ share such information?

RESPONSE:

The FBI routinely shares intelligence products with its federal, state, and local partners. Throughout 2020, the FBI issued multiple external intelligence products to federal, state, and local partners with an assessment and warning of credible threats of violence from Domestic Violent Extremist (DVEs) related to the election and the transition process, the elevated threats posed by Anti-

Government or Anti-Authority Violent Extremists (AGAAVEs), and the potential for DVEs to exploit First Amendment-protected activities. Raw intelligence was shared with federal, state, and local partners warning of the threat posed by domestic violent extremists, including the potential for increased violent extremist activity at lawful protest events.

As an example, in June 2020, the FBI issued two separate Joint Intelligence Bulletins (JIB) highlighting the potential for increased violent extremist activity occurring during lawful protests taking place in communities across the United States. The first JIB advised partners should remain vigilant in light of the persistent threat posed by DVEs and their unpredictable target selection in order to effectively detect, prevent, preempt, or respond to incidents.

A second JIB, published ten days later, highlighted the elevated threat MVEs pose to state and local law enforcement, government personnel, and associated facilities. JIBs are finished intelligence products the FBI writes jointly with the Department of Homeland Security and/or the National Counterterrorism Center and are typically designed for dissemination to a wide array of U.S. intelligence and law enforcement partners.

7. Subsequent to January 6, did DOJ create any intelligence reports connecting the attacks and related activity that had been occurring at government buildings and statehouses around the country as testing grounds for an event like the one on January 6?

a. If so, has DOJ shared the intelligence reports with law enforcement partners to take actionable steps to prevent additional political violence?

RESPONSE:

The FBI routinely shares intelligence products with its federal, state, and local partners. In the months following the January 6th attack, the FBI, in conjunction with the Department of Homeland Security and the National Counterterrorism Center released three JIBs warning of the potential danger of domestic violent extremists conducting violent attacks of politicians or government officials. All of these JIBs were disseminated to a wide array of U.S. intelligence and law enforcement partners.

The first JIB, published on January 13, 2021, warned of the elevated threat of DVE violence through the period of political transition to the new administration and beyond. The second JIB, published on March 3, 2021, assessed the national capital region remained an attractive target for domestic violent extremists. A third JIB, published on April 27, 2021, warned of a heightened threat posed by domestic violent extremists to elected officials nationwide.

8. Efforts to address the threat of far-right and white supremacist violence through reforms that overstep or infringe on civil liberties and potentially expand racial profiling or unwarranted, discriminatory surveillance and harassment of marginalized communities would be unacceptable. How will you gather intelligence to prevent future violence and criminal behavior by anti-

government extremist organizations and individuals without jeopardizing civil rights and civil liberties?

RESPONSE:

The FBI cannot open an investigation based solely on the exercise of First Amendment-protected rights or any specific ideology. We focus on individuals who commit or intend to commit violence or criminal activity that constitutes a federal crime or poses a threat to national security. Membership in groups, no matter how offensive their views might be, is not illegal in and of itself and is not in and of itself a sufficient basis for domestic terrorism investigations. The FBI conducts an internal legal review for every DT investigation.

The FBI's authorities are outlined in the *Attorney General's Guidelines for Domestic FBI Operations* (AGG-DOM) and related implementing policy documents, including the *FBI Domestic Investigations and Operations Guide* (DIOG). The FBI's mission is to protect the American people and defend the Constitution. Therefore, the FBI actively works to safeguard the civil liberties of the American people, and firmly believes in the peaceful exercise of First Amendment protected freedoms.

9. In many cases, researchers and open-source social media platforms provide evidence that there are instances of anti-government organizations providing material support and conspiring with terrorists⁵. Given the risk this poses to the U.S., how are you investigating these situations and still ensuring civil liberties protections?

RESPONSE:

Where an individual conspires with others to commit a federal crime, such as providing material support to a foreign terrorist organization, that activity may provide a basis for initiating an investigation, consistent with the First Amendment.

a. To what extent does DOJ consider far-right and white supremacist extremist organizations a threat to government officials, minority populations, and immigrants today?

RESPONSE:

As the Attorney General has testified, the Intelligence Community has found that racially or ethnically motivated violent extremists, the majority of whom advocate for the superiority of the white race, present the most lethal domestic terrorism threat that we currently face and were the primary source of fatalities perpetrated by DVEs in 2018 and 2019.

10. To what extent does DOJ consider combating hate crime part of its counterterrorism strategy? What steps is the Department taking to ensure that hate crime investigations are not kept artificially separate from domestic terrorism investigations?

RESPONSE:

In 2019, the FBI created the Domestic Terrorism-Hate Crimes Fusion Cell, which is designed to facilitate coordination and information-sharing between the FBI's counterterrorism and criminal investigative missions and agents and prosecutors specifically regarding incidents and investigations that could constitute hate crimes and/or acts of domestic terrorism. Composed of subject matter experts from both the Counterterrorism and Criminal Investigative Divisions, the Fusion Cell offers program coordination from FBI Headquarters, helps ensure seamless information sharing across divisions, and augments investigative resources. Through the Fusion Cell, the FBI applies the expertise, dedication, and resources of both the Counterterrorism and Criminal Investigative Divisions to these overlapping threats, working to prevent the threats on the horizon and provide justice to the victims of hate crimes. Because individual incidents may be investigated as both domestic terrorism and a hate crime, the Fusion Cell brings the force of the FBI to bear against any event that may fall into these categories, investigating crimes through the lenses of both divisions unless or until one avenue is foreclosed or eliminated. Further, because the modus operandi of individual incidents may not be immediately known, multiple investigative avenues may be pursued. In all cases, the prosecutors retain and employ the full suite of legal tools as applicable to DVE subjects.

11. Each year, various DOJ Violent Crimes Task Forces successfully prosecutes white supremacist gangs. Why are those cases not considered part of the RMVE domestic terrorism caseload? What efforts are currently underway to combine those efforts to capture the full scope of white supremacist violence in this country?

RESPONSE:

Today's white-supremacist gangs are closely tied to criminal groups that emerged in state corrections systems. Racist beliefs inform their identities and, sometimes, motivate their crimes. But like other street and prison gangs, their primary drivers are maintaining power, often through horrific violence, and making money, frequently through trafficking drugs like methamphetamine. Absent the kind of unlawful activity that the Department would generally consider domestic terrorism, the Department's violent-crime task forces typically view unlawful white-supremacist gang activity as violent crime, drug trafficking, or another offense category depending on the nature and circumstances of the gang's conduct.

a. What are the lead agencies in the Violent Crimes Task Force? How does the Department determine those agencies?

RESPONSE:

DOJ Violent Crime Task Forces are typically led by an investigative agency, such as the FBI, which staffs the task forces by designating task-force officers from state and local police departments. In most instances, the task forces are aimed at addressing high rates and/or spikes in violent crimes (*e.g.*, homicides, aggravated assaults and nonfatal shootings, robberies, and gang-related offenses) in a locality, such as a metropolitan area, a county, or several counties in one or more bordering states. Often, other Department components and federal agencies, such as ATF, DEA, USMS, and DHS's Homeland Security Investigations, will commit to staffing an FBI-led task force with one or more of its special agents or deputies. The agency that stands up the task force is usually responsible for leading it.

b. How does the makeup of the Violent Crimes Task Force equip it to address the counterterrorism aspects of white supremacist violence that it encounters?

RESPONSE:

The task forces designate task-force officers from state and local police departments, as well as from federal law enforcement partners. Some of the first to identify a potential threat of domestic terrorism are often state, local, tribal, or territorial partners, or those in their communities. And even as Federal law enforcement does critical work to protect Americans from domestic terrorism threats, it is often state, local, tribal, and territorial law enforcement that serve as the first line of defense against domestic terrorism in communities across the United States, much as they do for many other threats to public safety.

The goal of the Safe Streets Task Force (SSTF) is to reduce gang-related violent crimes through a comprehensive, FBI-led law enforcement approach, utilizing intelligence-driven investigative efforts to detect, disrupt, dismantle, and interdict domestic and international gangs. Gangs, whether neighborhood based, national or international, exist for a multitude of reasons: money, protection, community, and ideology. The SSTF investigates gang-related criminal activity; it strives to work jointly with the domestic terrorism squads to address gang-related criminal threats within legal parameters.

12. What steps can be taken to prevent the balkanized manner in which DOJ addresses white supremacist violence from disrupting the intelligence flow about these threats?

RESPONSE:

The Department's Domestic Terrorism Executive Committee ("DTEC") provides a national-level forum for information sharing at the leadership level on domestic terrorism matters. Originally created in the aftermath of the 1995 Oklahoma City bombing, the DTEC includes representatives from the U.S. Attorney's Offices, the National Security Division, other divisions of Main Justice, the FBI, the Department of Homeland Security, and other law enforcement agencies.

In 2019, the FBI created a Domestic Terrorism-Hate Crimes Fusion Cell to facilitate coordination and information-sharing between agents and prosecutors specifically regarding incidents and investigations that could constitute hate crimes and/or acts of domestic terrorism. This Fusion Cell provides multi-program coordination, helps ensure seamless information sharing, and enhances investigative resources to combat the domestic terrorism threat and/or hate crimes.

The FBI also works closely with our SLTT partners to confront domestic terrorism. Some cases involving suspected DVEs do not involve violations of federal law and are instead prosecuted by state and local authorities. Other cases may involve violations of federal and state laws, but in some circumstances, the state law may be the most effective way to prosecute an individual. In these circumstances, we support our SLTT partners in any way we can.

13. Earlier this month, DOJ announced that it will review how it enforces prohibitions on racial discrimination by law enforcement agencies and other institutions that receive federal funding. In light of the fact that race-based hate crimes have always been the most numerous hate crimes

reported to the FBI, should federal funding for police departments be conditioned on credible police department reporting and effective efforts to prevent bias-motivated criminal activity?

RESPONSE:

In September 2021, Associate Attorney General Vanita Gupta issued a memorandum directing a review of the Department’s implementation and administrative enforcement of federal laws that prohibit discrimination in the use of public funds, including Title VI of the Civil Rights Act, the Safe Streets Act, and the Violence Against Women Act. Specifically, she directed the Civil Rights Division—working in partnership with the Office of Justice Programs, the Office of Community Oriented Policing Services, and the Office on Violence Against Women—to commence a review of the Department’s implementation and administrative enforcement of these statutes, and to provide her any recommendations within 90 days. The review is intended to ensure that the Department is providing sufficient oversight and accountability regarding the activities of its federally funded recipients. As President Kennedy explained in his message to Congress proposing the enactment of Title VI: “Simple justice requires that public funds, to which taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, or results in racial discrimination.” Among other steps, the review (i) examined the Department’s criteria for conducting compliance reviews and opening complaint investigations; (ii) recommended improvements to strengthen grantees’ data collection and reporting efforts, including whether the Department can employ more efficient technologies to collect data, and whether the Department can take steps to minimize the data-collection burden on recipients; (iii) identified any measures that would enhance coordination between the Department’s grant-making and enforcement components; and (iv) examined whether any changes are needed to strengthen the Department’s compliance procedures. Per Associate Attorney General Gupta’s directive, the Civil Rights Division and the other DOJ components submitted their recommendations to her office within 90-days.

14. Please describe recent changes made to the Domestic Operations and Investigations Guide to prevent improper surveillance of domestic groups.

RESPONSE:

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

The AGG-DOM and the FBI DIOG include several other requirements aimed at safeguarding civil liberties. For example:

- They categorize investigatory activities at different levels (assessments, preliminary investigations, and full investigations) and impose specific requirements for the initiation and

conduct of each of those activities, with the least burdensome requirements attaching to early-stage activities, and more robust showings required to engage in more intrusive activities.

- They make clear that it is “vitally important” in any matter that could create the appearance that an investigation might involve First Amendment or constitutionally protected activities that the FBI documents the authorized, well-founded basis for the investigative steps it intends to pursue.
- They provide useful examples of scenarios demonstrating the distinctions between constitutionally protected speech versus advocacy that is intended and likely to incite imminent violence or lawless action.

15. How will the Department work to ensure that federal investigations into potential domestic terrorist threats do not result in improper surveillance of domestic groups?

RESPONSE:

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

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

- “Simply stating such a purpose, however, is not sufficient to ensure compliance with this requirement. The authorized purpose must be well-founded and well-documented. In addition, the information sought and the investigative method used to obtain it must be focused in scope, time, and manner to achieve the underlying purpose. Furthermore, the Constitution sets limits on what that purpose may be. It may not be solely to monitor the exercise of constitutional rights, such as the free exercise of speech, religion, assembly, press and petition, and, equally important, the authorized purpose may not be based solely on the race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity of an individual, group, or organization or a combination of only those factors.” (DIOG §4.1.2)

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

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

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

- “...During the course of lawful investigative activities, the FBI may lawfully collect, retain, and

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

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

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

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

QUESTIONS FROM REP. RASHIDA TLAIB

1. As of today, should the public consider prosecutions classified under the “terrorism” program categories in DOJ’s CaseView/LIONS database to reflect what DOJ views as an accurate count of its terrorism prosecutions?

RESPONSE:

No. The LIONS database, where a case may receive different codes, serves purposes other than counting terrorism prosecutions. The National Security Division maintains a chart of public/unsealed convictions resulting from international terrorism investigations since September 11, 2001.

2. Does DOJ consider “domestic terrorism” to be synonymous with “domestic violent extremism,” and, if not, what is the difference?

RESPONSE:

In a legal sense, the term “domestic terrorism” has a specific statutory meaning. It is defined at 18 U.S.C. § 2331 as meaning: “activities that – (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (b) appear to be intended – (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping; and (C) occur primarily within the territorial jurisdiction of the United States.” The definition focuses on the apparent effect of the action being to impact broader populations or the government. Domestic Violent Extremism generally refers either to the commission of an act of domestic terrorism or to the predicated suspected

planning of violent criminal acts that have not yet been committed, but that may be investigated for potential federal violations in furtherance of a political or social goals.

In the FBI's terminology, the term "domestic violent extremism" generally refers to those who commit violent criminal acts in furtherance of ideological goals stemming from domestic influences—as opposed to foreign ones. The FBI distinguishes "domestic violent extremism" from "homegrown violent extremism." Director Wray has described "homegrown violent extremism" as referring to those who are inspired by Foreign Terrorist Organizations but not receiving direction from them. 3. The Acting Deputy Attorney General's March 2021 Guidance Regarding Investigations and Cases Related to Domestic Violent Extremism (DAG Guidance) asks federal prosecutors to notify the Counterterrorism Section of the DOJ National Security Division of all criminal "investigations and prosecutions involving conduct related to domestic violent extremism."

a. Is this reporting happening regularly and holistically? If not, what steps remain to fully implement the DAG Guidance?

RESPONSE:

Yes. The guidance is fully operational, and the National Security Division routinely receives reporting on DVE cases from U.S. Attorneys' Offices.

b. Will DOJ commit to publicly disclosing, on an annual basis, comprehensive data on its domestic terrorism investigations and prosecutions, including the information requested to be reported to Congress in Section 5602(b)(4) of the National Defense Authorization Act (NDAA) of 2020? Please note that the first such disclosure under that NDAA provision released in May 2021 lacked the aforementioned data looking backward (from January 1, 2009, through December 22, 2019) as well as several other legally required categories of information. Please provide the Subcommittee with this data.

RESPONSE:

The Department is committed to complying with all of its mandatory disclosure obligations. Section 5602(b)(4) of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, 133 Stat. 1198 (2019), required the Director of the FBI and the Secretary of Homeland Security, in consultation with the Director of National Intelligence, to issue a report containing certain data relating to domestic terrorism. In response to this requirement, in May 2021, FBI and DHS jointly submitted to the relevant Congressional committees a report titled "Strategic Intelligence Assessment and Data on Domestic Terrorism." Unfortunately, the FBI cannot provide historical data prior to 2015 because the case management system used prior to 2015 was not set-up to track statistical information. The FBI cannot ensure the fidelity of any data prior to the switch to the electronic-based system in 2014. Since then, the FBI has made significant strides and has provided/analyzed the requested data and intends on doing so for each upcoming reporting year. As referenced above, in October 2022, the FBI and DHS published a second report covering data for the years 2020 and 2021.

4. The Departments of Defense and Homeland Security have recognized they have problems with their own employees' involvement in white supremacy and far-right militancy. Has DOJ conducted a similar review?

RESPONSE:

DOJ has a robust internal vetting processes for employees. For instance, every new applicant to the FBI is thoroughly vetted by the FBI's Security Division, which conducts a comprehensive Background Investigation in accordance with applicable Executive Orders and ODNI guidelines.

5. Fusion Center activities, which the Center for Prevention Programs and Partnerships funds, have a poor track record. They are products of the post-9/11 push to supercharge information sharing and surveillance coordination between federal, state, and local governments and the private sector. These centers were roundly criticized in a bipartisan 2012 U.S. Senate investigation⁶ that found they had "yielded little, if any, benefit to federal counterterrorism intelligence efforts" while releasing reports that were useless or corrosive of civil liberties. Just last year, one fusion center was caught distributing fake posts by right-wing activists as evidence of potential violence at anti-police brutality demonstrations, while others were found to have monitored racial justice organizers and protests.⁷ Does DOJ, the Department of Homeland Security, or any other federal agency intend to conduct a full, public audit of fusion centers to evaluate their usefulness and their impact on civil rights and liberties, including privacy and First Amendment activity? Will DOJ commit to conducting one?

RESPONSE:

The Department refers you to DHS, which runs the Fusion Centers.

6. In December 2020, two weeks before the January 6 attack on the U.S. Capitol, far-right militants attacked the Oregon State Legislature, including member of the Proud Boys. They fought with Police, beach [sic] journalists, and damaged and into the building, with the support of one Oregon state legislator. How many federal prosecutions arose from this incident?

RESPONSE:

There have been no federal prosecutions arising from this incident, which occurred on state property and is being investigated by state and local authorities. According to press reporting, at least five individuals were arrested during the incident. Additionally, the Marion County District Attorney's Office charged a former state official with official misconduct and criminal trespass for his alleged role in the incident, and in July 2022, the former official pleaded guilty to a misdemeanor offense of first-degree official misconduct.