



Department of Justice

STATEMENT OF

MATTHEW G. OLSEN
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

AND

JILL SANBORN
EXECUTIVE ASSISTANT DIRECTOR
NATIONAL SECURITY BRANCH
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

AT A HEARING ENTITLED

“THE DOMESTIC TERRORISM THREAT ONE YEAR AFTER JANUARY 6”

PRESENTED

JANUARY 11, 2022

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Good morning Chairman Durbin, Ranking Member Grassley, and distinguished Members of the Committee, and thank you for the opportunity to testify on behalf of the Department of Justice. Protecting the American people from national security threats, including international and domestic terrorism, is the top priority of the Department.

The threat posed by domestic violent extremism and hate crimes is on the rise in recent years, as evidenced by the horrific attacks in Pittsburgh, El Paso, and Charlottesville, and many other plots or threats that have been disrupted. The number of Federal Bureau of Investigation (“FBI”) investigations of suspected domestic violent extremists has more than doubled since the spring of 2020. Last week marked the one-year anniversary of the January 6th assault on the U.S. Capitol, which has led to unprecedented efforts by the Department of Justice, including the FBI, to investigate and hold accountable all who engaged in violence, destruction of property, and other criminal activity on that day. To date, the Department has arrested and charged more than 725 individuals who took part in the Capitol assault.

Federal law enforcement and the Intelligence Community assess that the greatest terrorism threat to our country is posed by lone actors or small cells who typically radicalize online and look to attack soft targets with easily accessible weapons. We see these threats manifested in both Domestic Violent Extremists (“DVEs”) and Homegrown Violent Extremists (“HVEs”), two distinct threats — both of which are based in the United States. Individuals who seek to commit violent criminal acts in furtherance of social or political goals stemming from domestic influences — such as racial or ethnic bias, or anti-government or anti-authority

sentiments — are described as DVEs, whereas HVEs are individuals inspired primarily by foreign terrorist groups, but who are not receiving individualized direction from those groups.

Today’s hearing is focused on domestic terrorism. Domestic violent extremists are often motivated by a mix of socio-political, ideological, and personal grievances, and have focused on readily accessible targets to include houses of worship, retail establishments, and mass public gatherings. The vulnerability of these targets, the insular nature of the process by which these individuals radicalize and mobilize to violence, and the limited communications they typically have with others regarding their plans pose significant challenges to law enforcement in its efforts to detect and disrupt these plots before they are carried out.

We face threats from DVEs that espouse a range of ideologies. Some are motivated by racial or ethnic animus. Others hold anti-government or anti-authority views. The FBI uses several categories for DVEs, including Racially or Ethnically Motivated Violent Extremists (“RMVEs”) and Anti-Government or Anti-Authority Violent Extremists (“AGAAs”) — which include Militia Violent Extremists (“MVEs”), and Anarchist Violent Extremists (“AVEs”). RMVEs who advocate for the superiority of the white race were the primary source of lethal attacks perpetrated by DVEs in 2018 and 2019. MVEs and AVEs were responsible for three of the four lethal DVE attacks in 2020. AAGVEs have specifically targeted law enforcement and the military as well as institutions or members of the U.S. Government.

The Department of Justice uses all the tools at its disposal to combat domestic terrorism. Our efforts represent a critical part of the first-ever National Strategy for Countering Domestic Terrorism (“National Strategy”), which was released in June 2021, and which sets forth for the first time a comprehensive, whole-of-government policy to address the many facets of the domestic terrorism threat. Our testimony today will focus first on how we are organized to handle domestic terrorism cases. We will then describe the legal authorities we rely on in investigating and prosecuting domestic terrorism. Finally, we will discuss some of the concrete steps we have taken to implement the National Strategy.

I.

The Department of Justice uses all of its authorities — including those exercised by the FBI, the U.S. Attorney’s Offices, the National Security Division, the Civil Rights Division, the Tax Division, the Criminal Division, and other components — to take a whole-of-Department approach to combatting domestic terrorism.

On the front lines of our efforts to investigate and prosecute domestic and international terrorism are the FBI-led Joint Terrorism Task Forces (“JTTFs”) and the Department’s 94 U.S. Attorney’s Offices. JTTFs provide an essential hub for cooperating on both international and domestic terrorism matters across all levels of government nationwide. The FBI has established JTTFs across all 56 FBI field offices, which leverage enduring partnerships with federal and state, local, tribal, and territorial agencies to detect, identify, and disrupt terrorist threats. Each U.S. Attorney’s Office also coordinates a group of federal, state, local, tribal, and territorial

officials in each district, referred to as an Anti-Terrorism Advisory Council (“ATAC”). The ATACs work in close partnership with corresponding JTTFs to promote training and information-sharing among federal, state, local, tribal, territorial, and private sector partners, in both international and domestic terrorism matters. This training and information-sharing is critical because there are many more state, local, tribal, and territorial law enforcement officers on the ground than there are federal agents, and they may be the first to come across individuals planning terrorist acts within their communities. Federal and state, local, tribal, and territorial officials often evaluate these threats together, including assessing whether federal or state charges are available to disrupt them, with the goal of preventing terrorist attacks before they occur. Each U.S. Attorney’s Office has also designated a senior prosecutor to serve as a National Security/ATAC Coordinator. The National Security/ATAC Coordinator serves as the lead counterterrorism prosecutor for the district as well as the primary point of contact for the Department on terrorism matters. Many U.S. Attorneys’ Offices also have designated National Security Sections or Units within the office that are specifically focused on counterterrorism and other national security matters. The National Security/ATAC Coordinator and other national security prosecutors in the U.S. Attorney’s Offices are specially trained in domestic and international terrorism matters and work closely with the JTTFs to investigate and prosecute terrorism matters.

At Main Justice here in Washington, the National Security Division (“NSD”) was created in 2006 to integrate, coordinate, and advance the Department’s counterterrorism and other national security work nationwide. NSD has a Counterterrorism Section (“CTS”) with more than 35 attorneys, all of whom are equipped to work on both domestic and international terrorism cases in concert with U.S. Attorney’s Offices. Those CTS attorneys regularly coordinate with the FBI’s Domestic Terrorism Operations Section. CTS is fully integrated with the U.S. Attorney’s Offices around the country for purposes of all terrorism matters. NSD attorneys serve as important resources and partners in litigating legal issues and can also participate actively as co-prosecutors. Among the cadre of CTS attorneys who work on counterterrorism cases are a number of attorneys referred to as domestic terrorism coordinators who have particular expertise regarding, and assist other federal prosecutors with, certain recurring issues in domestic terrorism-related matters. Also within CTS, there is a Domestic Terrorism Counsel who, among other things, assists NSD’s headquarters-level efforts to identify trends to help shape our strategy to combat domestic terrorism and domestic violent extremism.

At FBI Headquarters, the National Security Branch (“NSB”) was established in 2005, combining counterterrorism and counterintelligence investigative and intelligence programs into a singular, unified organizational structure. Today, NSB is principally comprised of the FBI’s Counterterrorism Division, Counterintelligence Division, Weapons of Mass Destruction Directorate, and the interagency Terrorist Screening Center. The Counterterrorism Division, through its Domestic Terrorism Operations Section, provides guidance and coordination among the FBI’s 56 field offices on matters of domestic terrorism and maintains close relationships with law enforcement partners both inside and outside the Department of Justice to ensure a cohesive and uniform approach to all domestic terrorism investigations.

Other Department of Justice components fulfill a critical role in countering domestic terrorism:

- The Civil Rights Division is responsible for overseeing the prosecution of hate crimes, certain of which, as described in more detail below, may also qualify as acts of domestic terrorism.
- Some anti-government violent extremists who are engaged in domestic terrorism refuse to pay taxes, and the Tax Division is responsible for overseeing prosecution of tax offenses committed by such individuals.
- The Criminal Division also plays a vital role in some domestic terrorism prosecutions.
- The Department's grant-making components also support programs aimed at preventing terrorist incidents. For example, the Bureau of Justice Assistance within the Office of Justice Programs ("OJP") supports the State and Local Anti-Terrorism Training Program. That program provides instruction that focuses on the prevention of terrorism within the United States and provides the tools necessary for state, local, tribal, and territorial law enforcement officers to understand, detect, deter, and investigate acts of terrorism and violent criminal extremism in the U.S. The program accomplishes this in partnership with the FBI, fusion centers, local intelligence centers, and U.S. Attorneys' Offices. Due to the COVID-19 pandemic, the program currently is providing online training, a secure website for law enforcement specific training, and customizable technical assistance to law enforcement officers and members of the intelligence community. The program also provides a "Train-the Trainer," course that helps law enforcement agencies develop in-house anti-terrorism training capabilities. Additionally, for nearly a decade, OJP's research component, the National Institute of Justice, has administered a domestic violent extremism and domestic terrorism research program to inform terrorism prevention efforts (principally at the state and local level), such as those aimed to prevent the recidivism of those convicted of terrorism related offenses.
- The Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") also plays a vital role in investigating violations of the federal firearms and explosives laws, among other potential acts of terrorism. Together with the FBI, ATF also jointly manages the Terrorist Explosive Device Analytical Center, the single interagency organization that analyzes all terrorist improvised explosive devices of interest to the United States.

II.

A.

The federal criminal code provides a definition of “domestic terrorism” (*see* 18 U.S.C. § 2331(5)) that covers 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[.]

Where incorporated into other authorities, this definition provides us with an array of expanded investigative tools and sentencing enhancements in domestic terrorism matters:

- Judges can issue nationwide search warrants in cases involving domestic terrorism, just as they are authorized to do in cases involving international terrorism. Typically, judges can only issue warrants pertaining to their districts. This expanded authority reduces delays and burdens on investigations with regional or national scope. Fed. R. Crim. P. 41(b)(3).
- Judges may grant orders giving investigators greater access to certain educational and taxpayer records in domestic and international terrorism investigations. 20 U.S.C. §§ 1232g(j)(1)(A), 9573(e); 26 U.S.C. § 6103(i)(7)(C).
- Investigative and law enforcement officers have additional authority to share intercepted communications and derivative evidence, including with appropriate federal, state, local, or foreign officials, when disclosing information revealing a threat of terrorism, including domestic terrorism. *See* 18 U.S.C. § 2517(8).
- Government attorneys also have additional authority to share grand-jury matter, including with appropriate federal, state, local, or foreign officials, when disclosing information to prevent or respond to a threat of terrorism, including domestic terrorism. *See* Fed. R. Crim. P. 6(e)(3)(D).

- Some statutes, particularly ones relating to conduct that impedes our investigations, carry enhanced statutory maximums if the offense involves or is intended to facilitate domestic or international terrorism. *See, e.g.*, 18 U.S.C. § 1001 (material false statements); *id.* § 1505 (obstruction of justice); *id.* § 1028 (fraudulent identification); *cf. id.* § 226 (including definition within an element of the offense for bribery affecting port security).

In addition, the federal criminal code contains a definition of “Federal crime of terrorism,” to mean an offense that “is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct,” and violates one of the enumerated statutes prohibiting terrorism-related offenses, such as statutes related to weapons of mass destruction. 18 U.S.C. § 2332b(g)(5). That definition includes both domestic and international terrorism, and it provides enhanced authority with respect to investigations, detention, sentencing, and supervised release:

- Congress has extended the statute of limitations, *id.* § 3286, and created a rebuttable presumption of pretrial detention for the offenses listed in the definition of “Federal crime of terrorism,” *id.* § 3142(e)(3), better empowering the government to protect the public and hold individuals accountable for those criminal activities.
- Any act that is indictable under any provision listed in 18 U.S.C. § 2332b(g)(5)(B) is also defined as a type of racketeering activity subject to potential prosecution under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*
- The Sentencing Guidelines provide a significant sentencing enhancement for offenses that involve, or are intended to promote, a “federal crime of terrorism”—often increasing the guideline range to the statutory maximum. *See* USSG § 3A1.4.
- The Sentencing Guidelines also provide for a similar upward departure for other offenses that were calculated to influence or affect the conduct of government by intimidation or coercion, to retaliate against government conduct, or to intimidate or coerce a civilian population. *See id.* cmt. n.4.
- Congress has also authorized lifetime supervised release for the offenses listed in the definition of “Federal crime of terrorism,” *see* 18 U.S.C. § 3583(j), which helps to prevent recidivism.

B.

The Department of Justice has prosecuted individuals whose conduct involves domestic terrorism or a threat thereof using a range of criminal statutes. These include weapons charges, *e.g.*, 18 U.S.C. §§ 922, 924; charges relating to use or possession of explosives, *e.g.*, 26 U.S.C. §§ 5845, 5861; threat, hoax, or riot charges, *e.g.*, 18 U.S.C. §§ 871, 875, 876, 1038, 2101; and charges proscribing attacks on federal officials or facilities, *e.g.*, *id.* §§ 111, 115, 351, 844, 930, 1114, 1361, 1751. Arson, *id.* § 844, or specific charges relating to violence against animal enterprises, *id.* § 43, may apply to animal rights or environmental violent extremists. Moreover, several statutes reach conduct that may be associated with terrorism, without regard to whether the offense itself involves domestic or international terrorism. These include statutes relating to aircraft sabotage, 18 U.S.C. § 32; weapons of mass destruction, *e.g.*, *id.* §§ 175, 175b, 175c, 229, 831, 832, 2332a, 2332h, 2332i; arson and bombing of federal property, *e.g.*, *id.* §§ 844, 2332a, 2332f; and causing injury or death to a federal official, *e.g.* *id.* §§ 111, 115, 351, 1114, 1751; among others. And it is a crime to provide material support or resources to another knowing or intending that they be used in preparation for or carrying out certain terrorism-related offenses. *Id.* § 2339A.

Hate crimes charges, *e.g.*, 18 U.S.C. §§ 245, 247, 249, and 42 U.S.C. § 3631, may also be appropriate to address incidents of domestic terrorism. A hate crime occurs where an attacker engages in criminal violence motivated by a person's actual or perceived characteristics, such as race, color, national origin, religion, sexual orientation, gender, gender identity, or disability. A hate crime that is also designed to coerce a civilian population or influence the policy of a government in furtherance of a socio-political goal may also qualify as domestic terrorism. 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.

We also work closely with our state, local, tribal, and territorial partners to confront domestic terrorism. Some cases involving suspected domestic violent extremists do not involve violations of federal law and are instead prosecuted by state and local authorities under state law. Other cases may involve violations of both federal law and state law, and the state charge, in some circumstances, may be the most effective way to prosecute an individual. In those circumstances, we support our state, local, tribal, and territorial partners in any way we can.

It is important to emphasize that we investigate and prosecute domestic violent extremists for their criminal acts, not for their beliefs or based on their associations. In fighting domestic terrorism, we respect the constitutional rights of freedom of speech, association, and assembly of all Americans. We open cases based on suspected criminal violations, not ideologies, and hold sacred the rights of individuals to peacefully exercise their First Amendment freedoms. The FBI may not and does not open investigations solely on the basis of First Amendment-protected activity.

III.

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 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; and 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.

* * *

In all our efforts, the Justice Department is guided by our commitment to protecting civil liberties. In our country, espousing an extremist ideology is not itself a crime. Nor is expressing hateful views or associating with hateful groups. But when individuals or groups try to promote or impose an ideology through acts or threats of force or violence, those acts can be among the most dangerous crimes we confront as a society. Regardless of the motivating ideology, we will use every appropriate tool at our disposal to deter and disrupt such acts and to bring their perpetrators to justice.

We appreciate the opportunity to discuss these issues with you, and we would be pleased to answer your questions.