

Testimony of Justin E. Herdman
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“Examining the ‘Metastasizing’ Domestic Terrorism Threat After the
Buffalo Attack”
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Thank you Chairman Durbin and thank you Ranking Member Grassley for the invitation to speak before the Committee on the vital issue of domestic terrorism. I have spent nearly twenty years of my professional career, mostly as a federal prosecutor but also in the military, in the field of counter-terrorism. While I bring to bear just one perspective on the work before the Committee, I believe that my experience as a federal prosecutor in the Northern District of Ohio is of particular relevance on this subject.

The Northern District of Ohio comprises the 40 northernmost counties of the state and is a true cross-section of modern America. The nearly six million residents of the district live in everything from huge metropolitan areas like Cleveland and Akron, with a total regional population of over 3.5 million, all the way down to tiny Holiday City with a population of 47. I had the honor of serving this district as a Justice Department official, first as an Assistant United States Attorney from 2006 to 2013, and then as United States Attorney from 2017 to 2021.

The title of this hearing is fitting. In my career, I have seen the nature of the terrorist threat metastasize. This word metastasize is important here because to me, it means the threat has both spread, in that incidents are occurring at seemingly greater frequency, and changed, in that the nature of that threat includes different actors offering new challenges to law enforcement. The tools brought to bear against terrorism, particularly domestic terrorism, have had to adapt as well. I hope that whatever I may offer in my testimony will equip this Committee in considering whether additional or supplemental authorities are necessary.

To help illustrate the changing nature of the terrorism threat, I would point to a few cases from my district on which I either worked directly as a prosecutor or supervised as US Attorney. My early work as a federal prosecutor in the office’s National Security Unit was primarily devoted to investigating and prosecuting cases involving international terrorism, which necessarily involved individuals acting on behalf of, or inspired by, designated foreign terrorist organizations. In those matters, we worked with investigators across multiple states and across the world. Coordination with the National Security Division at the Department of Justice was essential, as we often had to carefully address issues of importance to our nation’s foreign policy and intelligence communities.

By 2010 in Ohio, we had started to observe an uptick in violent extremism with no connection to international terrorism. These were often individuals who had amassed weapons and were committed to violent attacks, including cases where the perpetrators had developed a plan to attack local leaders, schools, or political institutions. In 2012, a group of five Cleveland-area young men who were self-proclaimed anarchists considered a variety of violent attacks, including the G-8 summit held in Chicago that year and the Republican National Convention in Tampa. Ultimately, they attempted to detonate an explosive device at the bottom of a support

column beneath the Route 82 bridge in Brecksville, Ohio – a bridge that spans a deep crossing in the Cuyahoga Valley National Park – and their intent was to bring down the entire bridge. In 2013, I was part of the trial team that prosecuted Joshua Stafford, the only conspirator who went to trial, and I left the US Attorney’s office shortly thereafter for private practice.

This background helped frame my view of the counter-terrorism landscape when I was sworn in as US Attorney in August 2017. At that time, I was briefed by the Cleveland FBI on a host of ongoing terrorism threats, including a number of domestic terrorism investigations. These briefings were eye-opening, as the nature of the terrorism threat had evolved even in the few short years that I had been away from the office.

In addressing my tenure as US Attorney and the varied threat picture that we faced, I would like to start by addressing the danger posed by white supremacists, either in an organized or individual capacity. As the testimony today will demonstrate, that threat is profound and it is pervasive. In 2019, a white supremacist named James Reardon was arrested by federal authorities for filming himself with a Nazi-era firearm and, over audio of multiple gunshots and screaming people in the background, threatening a mass shooting at the Jewish Community Center of Youngstown, Ohio. Reardon’s commitment to the white supremacist cause was well-established, as he had been present in Charlottesville at the 2017 Unite the Right rally, and federal authorities recovered the above-referenced firearm, an MP40 submachine gun, as well as a Hitler Youth knife and Nazi propaganda posters from Reardon’s residence. In May 2021, Reardon pleaded guilty to two federal felony counts: transmitting a threatening communication and possession of a firearm in furtherance of a crime of violence. In November 2021, he received a 41 month prison sentence with five years of post-release supervision. I am particularly proud of this case because I am convinced that we saved lives. I also believe that this case demonstrates the power of a vigilant member of the community, who saw the threat posted online, and a responsive law enforcement officer, who acted quickly and took the threat seriously.

This is a fitting place to pause, as the Jewish community is one with whom I worked very closely as US Attorney in order to address the wide range of threats against Jewish houses of worship, Jewish schools, and Jewish cultural organizations. White supremacists pose a serious and ongoing threat to our Jewish friends and neighbors, but they are by no means the only such threat. A case that our office prosecuted in late 2018 demonstrates the complex and serious threat picture faced by America’s Jewish communities.

Damon Joseph was a resident of Toledo, a recent convert to Islam and a self-avowed adherent to violent jihad. Having been inspired by online videos and materials produced by the Islamic State of Iraq and al-Sham (“ISIS”), Joseph became increasingly radicalized in the fall of 2018. After the attack on the Tree of Life Synagogue in Pittsburgh, Joseph conducted surveillance of two Toledo-area synagogues and scripted a nine-point plan for inflicting mass casualties at those locations. As Joseph stated: “Jews who support the state of [I]srael are desired targets.” He was arrested on December 10, 2018 and ultimately pleaded guilty to both federal terrorism and federal hate crimes charges, which as far as I am aware, was the first time a prosecution for both of these offenses had been pursued. He is currently serving a twenty year term of federal imprisonment.

I am well aware that the subject matter of today's hearing is domestic terrorism and that the Joseph case is one which, at least on initial appearance, appears to fall into the more familiar category of post-9/11 international terrorism. I raise the Joseph case, though, because I think that it amply illustrates the grave threat posed to the United States and law enforcement by a host of violent actors. The threat picture that emerged while I was US Attorney was incredibly complicated and poses a heightened danger to all residents of our communities. While white supremacy and violent jihad offers adherents a somewhat cohesive set of warped principles that ultimately forms an ideology, I saw several cases that defied easy categorization because of blended, evolving, or simply non-existent ideologies.

Elizabeth Lecron and Vincent Armstrong were a Toledo-area couple who harbored a deep fascination with the Columbine shootings. One of their acquaintances, concerned with the couple's active discussions about emulating that attack, reported them to law enforcement. During the course of the FBI investigation, the couple visited Columbine High School and, over time, this sick obsession moved into active planning for a mass casualty attack at a specific Toledo bar. Elizabeth Lecron separately attempted to acquire an explosive device for use against a gas pipeline. They were arrested in December 2018 and Lecron was ultimately convicted of attempting to provide material support to terrorism, in violation of 18 USC 2339A, in a purely domestic terrorism setting. She is currently serving a fifteen year term of federal imprisonment.

Christian Ferguson and Allen Kenna were both arrested in 2020, in separate cases. Ferguson was plotting to lie in wait for a law enforcement officer and planned to capture or kill them when they responded to a false 911 call. Ferguson was specifically interested in obtaining a response by federal law enforcement because he believed they had better quality firearms and body armor to steal after he killed them. Ferguson conducted reconnaissance in a dry run and facilitated a hoax distress call to gauge response time by law enforcement.

Kenna had well-developed plans to attack an Ohio high school with explosives and firearms. Kenna had previously been seen entering that high school after school hours, where he filmed school hallways and asked questions concerning school operations, facilities and resource officers. After searching his residence and cellphone, investigators found disturbing journal entries in which Kenna expressed his desire to attack the school, as well as research he conducted on a variety of topics related to the planned attack. Similar to Ferguson, Kenna also placed false calls to law enforcement in Kansas designed to deploy SWAT officers to a school in that state.

I have focused on these cases, but there are many more from my tenure as US Attorney that kept me up at night as a federal prosecutor, and continue to do so even though I am no longer a Justice Department official. I would offer the following observations from my nearly two decade career in counter-terrorism.

First, this may go without saying, but in a world of limited resources, the most effective pro-active law enforcement actions are those directed at individuals who are actively planning, plotting, and preparing to conduct violent attacks. This means that law enforcement must be focused on conduct above all else – in essence, investigators must determine whether an

individual is taking steps that would indicate an attack is contemplated or imminent. This will often, but not always, include some outward expression of intent to the subject's inner circle or online community. Law enforcement must be flexible in developing strategies that are focused on this conduct, not only because that is what the Constitution requires, but because this is proven to result in prosecutions that will most effectively and efficiently disrupt plots before they occur.

Second, and related to the first, is encouraging a vigilant public and responsive law enforcement, especially at the local level. While we did see an increase in the number of reports regarding individuals suspected of being a danger to themselves or others, these complaints were also made to federal, and not local, law enforcement. I would encourage whatever efforts this Committee might be contemplating regarding local law enforcement response to threats, including threats to vulnerable populations or law enforcement itself. A police officer who knows his or her own community, and the people within it, is an excellent first line of defense against mass casualty attacks when that officer is provided with specific, credible information about a concern. We saw this model work in the James Reardon case, among others, and I am convinced that this one area – public awareness and local law enforcement responsiveness – that can be improved and save lives.

Third, ideology is helpful in identifying individuals who possess the baseline motivation to conduct an attack, particularly against communities of color, ethnicity, or faith, but modern violent extremists often bring a blurred and incoherent belief system to their plots. This means that the political outcomes sought by these domestic terrorists will often seem unserious or fanciful, but that does not make them any less dangerous. An individual with a self-developed series of hatreds or grievances can accelerate from theory to action very quickly, and with very little prompting. For this reason, network-level and organizational cases against identified violent groups are important, but they will not capture the very serious threat posed by individual extremists who are not tethered to others by a common set of beliefs.

Fourth, close coordination with certain communities under threat is absolutely essential. The example that I raised with respect to our Ohio-based Jewish communities illustrates this essential requirement for preparedness and response. While we may not be able to identify every single group or individual extremist who would threaten a specific population, we do know that certain demographics – Jewish, but also Muslim, Latino, Asian, and Black communities – are the declared targets of domestic terrorists and extremists. I am aware of federal programs that are specifically designed to enhance security at houses of worship and I have participated in such programs with Jewish, Muslim, and Black faith communities. These efforts are fruitful and I would encourage expansion of such initiatives.

Fifth, while I am welcome discussion regarding any legislative fixes contemplated by the Committee, I think that the number and variety of cases brought by one US Attorney's office demonstrates that the current suite of federal laws is adequate to deter and disrupt domestic terrorist attacks. In my opinion, we were successful in these prosecutions because they were a priority area for our office; we worked very closely with federal, state and local partners to address the domestic terrorism threat; we maintained close ties with our community partners and frequently coordinated with them; and we had an excellent group of experienced prosecutors,

agents, and officers who exercised outstanding judgment and discretion during these investigations.

Once again, I thank you for the opportunity to address the Committee and I look forward to answering any questions that you may have for me.