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The Honorable Lisa Monaco
Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Matthew Olsen
Assistant Attorney General for National Security
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Deputy Attorney General Monaco and Assistant Attorney General Olsen,

We write to raise concerns about the Department of Justice collection and publication of information about domestic terrorism, which it has identified “one of the most significant threats” facing the country.¹ The White House, Congress, and the public share this concern, and have been seeking data to better understand the issue and the DOJ’s efforts to address it. Transparency in how DOJ utilizes its domestic terrorism resources is essential to ensuring that the government’s power and resources are properly directed to threats and that they are not deployed to suppress dissent as has too often been the case in the past. Unfortunately, the domestic terrorism data produced by DOJ and the Federal Bureau of Investigation in response to various legal requirements has been incomplete, inconsistent, and confusing. DOJ has the duty to collect and accurately report this data and has record keeping systems that should allow it to do so. We request that the Department utilize these systems and, if necessary, create supplementary reporting mechanisms to provide the public and lawmakers with more comprehensive information about DOJ’s use of domestic terrorism resources.

The 2020 National Defense Authorization Act (NDAA) required the FBI and Department of Homeland Security to annually report on completed or attempted domestic terrorism (DT) incidents, the number of investigations in each DT category, as well as the number of federal criminal charges with connection to DT.² And the White House’s June 2021 National Strategy for Countering Domestic Terrorism broadly

¹ Office of the Deputy Attorney General, Dept. of Justice (DOJ), memorandum, Re: Guidance Regarding Investigations and Cases Related to Domestic Violent Extremism, March 8, 2021 (hereinafter “Deputy attorney general memorandum”), 1, https://www.scribd.com/document/507550668/DVE-Guidance#fullscreen&from_embed.

² National Defense Authorization Act for Fiscal Year 2020, Pub. Law 116–92, title LVI, § 5602(b)(4) (2019), <https://www.congress.gov/116/plaws/publ92/PLAW-116publ92.pdf>.

emphasized the need for better data collection and information sharing to facilitate a more comprehensive assessment of the DT threat.³

We recognize that the DOJ has taken steps to improve DT data collection. In March 2021, then-Acting Deputy Attorney General John P. Carlin issued a memorandum to all federal prosecutors establishing a protocol to ensure “appropriate coordination and consistency” in identifying and tracking DT incidents.⁴ The memorandum required federal prosecutors to designate criminal investigations or cases that involve any suspected domestic violent extremism (DVE) or bear a material nexus to DVE as “DVE-related” and to report such cases to DOJ’s National Security Division.⁵ The process for identifying and reporting DVE-related matters outlined in the Carlin memorandum was subsequently adopted and clarified in the Justice Manual, which provided detailed instructions for identifying cases that are DVE-related matters, and procedures for reporting these cases to the National Security Division’s Counterterrorism Center.⁶

Incomplete and inaccurate DT data

The results of this data collection have not, however, been made public. In fact, the data that has been made publicly available is either incomplete or inaccurate. The data produced by the FBI in the 2021, 2022, and 2023 reports required under the NDAA of 2020 does not meet the specifications of the law. Instead of providing comprehensive data on the number of DT incidents, investigations, and prosecutions and how they mapped on to its five identified DT threat categories, the FBI presented Congress with a list of selected incidents that it considered significant. Many of the cases included in the FBI’s inventory seem to be dubiously labeled as terrorism because they do not appear to involve activities that are “dangerous to human life,” and therefore do not meet the statutory definition of domestic terrorism.⁷ For instance, the FBI’s 2023 NDAA report highlights an incident in which individuals vandalized construction vehicles and sabotaged trees designated for cutting in a state park, leaving behind warning signs that trees had been “spiked.”⁸ The 2022 report includes a case where an individual was arrested and charged with evading \$1.5 million in taxes.⁹

Inaccuracies in the DOJ’s DT data have also become apparent in a Freedom of Information Act case filed by the Brennan Center and Charles Kurzman of the University of North Carolina. In that case, the judge ordered the DOJ to disclose court docket information for certain terrorism-related prosecutions maintained by the DOJ’s Offices of the United States Attorneys, noting that the public has an interest in understanding whether the USAO database “contain[s] inaccuracies and that those inaccuracies may have

³ The National Security Council, *National Strategy for Countering Domestic Terrorism*, June 2021, 16, <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>.

⁴ Deputy attorney general memorandum, 1, https://www.scribd.com/document/507550668/DVE-Guidance#fullscreen&from_embed.

⁵ Deputy attorney general memorandum, 1–2. The Justice Department and Department of Homeland Security (DHS) sometimes use the phrase “domestic violent extremism” as a synonym for domestic terrorism, and other times to suggest broader activities claimed to be related to domestic terrorism. See Federal Bureau of Investigation (FBI) and DHS, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, June 2023 (hereinafter “FBI and DHS *Strategic Intelligence Assessment 2023*”), 4, <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report-2023.pdf/view>. The Brennan Center considers this term to be imprecise, adding to the confusion on domestic terrorism reporting.

⁶ DOJ, Justice Manual, title 9 (“Criminal”), Sec. 2.137 (“Notification, Consultation, and Approval Requirements in Matters Involving Domestic Violent Extremism, Including Domestic Terrorism”), <https://www.justice.gov/jm/jm-9-2000-authority-us-attorney-criminal-division-mattersprior-approvals#9-2.137>.

⁷ 18 U.S. Code § 2331(5)(A).

⁸ FBI and DHS *Strategic Intelligence Assessment 2023*, 39.

⁹ FBI and DHS, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, October 2022, 32.

resulted in erroneous public reporting from the Department.”¹⁰ The cases disclosed by the DOJ do not align with the breakdown conveyed in the FBI’s NDAA reports.¹¹ Of the 85 “Significant Domestic Terrorism Incidents” included in the FBI’s 2021 NDAA report, around 90 percent involved militias, sovereign citizens and anarchists, and racially motivated attacks while only seven related to animal rights and environmental extremism.¹² In contrast, around 30 percent of the cases identified through the Brennan Center’s FOIA related to animal and environmental extremism, with only about 50 percent involving the ideologies that make up the bulk of the selectively identified incidents the FBI reported to Congress.¹³

Given these shortcomings, it is unsurprising that in November 2022, U.S. Senator Gary Peters, Chair of the Senate Homeland Security and Governmental Affairs Committee, issued a report finding that the FBI had “failed to provide a majority of the required data on domestic terrorism” as mandated by the 2020 NDAA.¹⁴ A June 2023 audit conducted by the DOJ inspector general likewise criticized the DOJ’s implementation of the Justice Manual updates. The audit report stated that not all of DOJ’s law enforcement components have the “same understanding as the FBI and NSD National Security Division of what constitutes a DVE nexus” and identified an ongoing need for consistent reporting.¹⁵

Existing sources of DT data

In the NDAA reports, the FBI claimed that it was unable to provide the requisite data on DT incidents to Congress because it does not collect that information and because state and local law enforcement are not required to report on domestic terrorism incidents.¹⁶ The FBI’s failure to collect DT incident data is inexplicable given DOJ’s claimed prioritization of this threat. It certainly should know and be able to accurately report how many incidents categorized by the Department as DT have occurred, how many DT investigations it opened, how it categorized them, and how many have resulted in successful prosecutions.

We recognize that it may not always be easy to determine whether an incident is an act of DT, a hate crime, or a hate crime with a nexus to DT, or none of the above until an investigation has been conducted. But these are determinations that FBI field offices and U.S. Attorneys’ Offices are required to make on a regular basis when deciding when and how to deploy their DT, civil rights, and violent crime resources.

¹⁰ Brennan Center v. DOJ, No. 1:18CV01860 (D.D.C July 1, 2021), 28, https://www.brennancenter.org/sites/default/files/2023-03/45_Order_Brennan%20v.%20DOJ_7.1.21.pdf. The court order required the DOJ to provide docket numbers for cases that were both tagged by the United States Attorneys’ Office as terrorism and had a public connection to terrorism (e.g., in charging documents, sentencing memoranda, requests for sentence enhancement, and press releases).

¹¹ Faiza Patel and Charles Kurzman, “The Reality Behind Inflated Domestic Terrorism Prosecution Numbers,” Brennan Center for Justice, May 10, 2023, <https://www.brennancenter.org/our-work/analysis-opinion/reality-behind-inflated-domestic-terrorism-prosecution-numbers>.

¹² Patel and Kurzman, “The Reality Behind Inflated,” <https://www.brennancenter.org/our-work/analysis-opinion/reality-behind-inflated-domestic-terrorism-prosecution-numbers>. Note that, in the 2022 and 2023 NDAA report, the FBI did not provide a threat category for all significant incidents.

¹³ These percentages were calculated based on unpublished dockets received from the DOJ through the Brennan Center and Charles Kurzman’s ongoing Freedom of Information Act case.

¹⁴ U.S. Senate Committee on Homeland Security and Governmental Affairs (hereinafter “Senate HSGAC”), *The Rising Threat of Domestic Terrorism: A Review of the Federal Response to Domestic Terrorism and the Spread of Extremist Content on Social Media*, November 2022, 69, https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/221116_HSGACMajorityReport_DomesticTerrorism&SocialMedia.pdf.

¹⁵ Office of the Inspector General, DOJ, *Audit of the Department of Justice’s Strategy to Address the Domestic Violent Extremism Threat*, June 2023, 17, <https://oig.justice.gov/sites/default/files/reports/23-078.pdf>.

¹⁶ Senate HSGAC, *The Rising Threat of Domestic Terrorism*, 69, https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/221116_HSGACMajorityReport_DomesticTerrorism&SocialMedia.pdf.

DOJ should have a clear and transparent process that guides these decisions so there is uniformity across the country and accountability in how the resources are categorized and utilized.

For instance, the FBI has a process for receiving complaints and processing source reports that document whether and when they result in opening assessments, preliminary investigations, and full investigations, or are declined for prosecution or referred to another agency. FBI agents track their work on these investigations by case caption, detailing the classification and category, and documenting statistical accomplishments pertaining to those investigations as they proceed to prosecution or declination. As such, the Bureau should be able to produce the DT incident and investigation data Congress required in the NDAA of 2020. Likewise, U.S. Attorneys' Offices maintain records of the complaints, referrals, declination decisions, indictments, and convictions obtained by their prosecutors. While obviously not every case opened as a DT investigation will result in a DT prosecution, the DOJ should be able to track what happens in each of these cases, whether they are deferred or declined, and how many DT, civil rights, or violent crime resources are devoted in each investigative case and category.

We urge DOJ to leverage these data sources to ensure the information reported to Congress by the FBI and US Attorneys' Offices is as complete and accurate as possible and if necessary to create additional tracking mechanisms to allow the agency to fulfill its legal obligations.¹⁷ In the interim, we request DOJ to publicly release data regarding the number and type of investigations it has labeled "DVE-related" per the March 2021 Carlin memo and the DOJ manual. This data should include the number of cases that involve suspected domestic violent extremism or bear a material nexus to domestic terrorism and should include the threat category the FBI assigned to the investigation (identifiable in the FBI case file designation), as well as the federal statutes that agents and prosecutors believe may have been violated. Releasing this data can begin to fill the gap in public knowledge due to the FBI's non-compliance with the NDAA requirements as well as address the inspector general's concern that NSD and the FBI have differing understandings of what constitutes a DVE nexus.

The release of accurate data on domestic terrorism is both a legal requirement and critical for the legitimacy of the Department's domestic terrorism efforts. This problem has festered for too long and we urge you to take action.

Sincerely,



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¹⁷ Where there are discrepancies between data collected by the different DOJ components, the Department should clearly articulate how and why the discrepancy exists and what is being done to address it.

