

*Written Testimony of*

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The Consequences of Inaction

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Chairman Raskin, Ranking Member Roy, and members of the Subcommittee, thank you for inviting me to testify about the deficiencies in the federal government's response to white supremacist violence. Organized white supremacist violence has posed an enduring threat in the United States since its founding. The debate over what to call this violence, however, is relatively new, as are current and former Justice Department officials' claims that they need new laws to properly address it. This argument came as a surprise to me, because when my fellow FBI agents asked me to go undercover against violent neo-Nazis in Los Angeles in 1992, no one at the Justice Department questioned our legal authority to do so, or hesitated to call the violent acts that white supremacists committed "terrorism." That operation was opened as a domestic terrorism investigation supported by the Joint Terrorism Task Force. We solved several bombings, seized dozens of illegal weapons, and prevented other planned acts of violence. Using traditional law enforcement tactics, we obtained criminal convictions under a variety of federal statutes.

Today, when white supremacists commit deadly attacks such as the recent mass shooting at a San Diego synagogue, their crimes often fit the federal definitions of both domestic terrorism and hate crimes, as well as state statutes like murder. Though the laws governing these crimes all carry substantial penalties, the designation as either "domestic terrorism" or "hate crimes" is important chiefly because Justice Department policies de-prioritize hate crimes investigations. The Justice Department often arbitrarily categorizes white supremacist violence that targets people based on their race, religion, national origin, gender, sexual orientation, gender identity, or disability. But this has significant consequences for how federal officials frame these crimes in public statements, how they prioritize and track them, and whether they will investigate and prosecute them.

Terrorism investigations are the FBI's number one priority and are well-resourced. They tend to look broadly to determine if an ongoing criminal organization may have supported the terrorist attack or are planning new ones. Civil rights violations like hate crimes rank fifth out of eight investigative priorities, and investigations tend to focus narrowly on an individual attack or attacker. To make matters worse, the Justice Department, as a matter of policy and practice, defers the vast majority of hate crimes investigations to state and local law enforcement, without any federal evaluation to determine if the perpetrators are part of a larger violent far-right group. State and local law enforcement are often ill-equipped or unwilling to properly respond to these

crimes. As a result, the Justice Department doesn't know how many people militant white supremacists attack, injure, or kill each year in the United States, which leaves intelligence analysts and policy makers in the dark about the impact this violence inflicts on our society, or how to best address it. More importantly, the failure to properly label and respond to far-right violence deprives victimized communities of basic human dignity and equal protection of the law.

Though white supremacist attacks represent just a tiny proportion of the violence that takes place in the U.S. each year, they require specific attention because they pose a persistent threat to vulnerable communities, particularly communities of color, immigrants, LGBTQ people, women, the disabled, and religious minorities. These communities are already disproportionately victimized by other forms of violent crime, including police violence, many of which are never prosecuted. Additionally, the organized nature of the white supremacist groups that often commit this type of violence allows them to quickly replace any member who is arrested and incarcerated, and to continue threatening further acts of violence after any individual crime is successfully prosecuted. Finally, hate crimes are intended to inflict injuries beyond their direct victims, threatening and intimidating entire communities of people who share similar attributes and inflicting a greater social harm. These crimes demand a more comprehensive and strategic government response that recognizes and more effectively redresses this broader injury rather than simply increasing criminal penalties.

Developing more effective federal policies to address far-right violence requires a new approach that better protects vulnerable communities from all forms of deadly violence, and remediates the communal injuries these crimes inflict through restorative justice practices.

### **New Laws Are Unnecessary and May Cause Harm**

Current and former Justice Department officials have been calling for a new domestic terrorism statute to combat far-right violence, but there are already dozens of federal statutes carrying severe penalties that are available to investigators and prosecutors pursuing these crimes, as detailed in our report, "Wrong Priorities for Fighting Terrorism."<sup>1</sup> Which of these statutes prosecutors ultimately charge in a particular case is far less important than how Justice Department officials label these

attacks in public statements when they occur, and how they prioritize, resource, and track the investigation and prosecution of these crimes. Under current policies, when Justice Department officials call these attacks “hate crimes” and place them far down their priority list, they are sending victimized communities the unmistakable message that the government values their lives less. The Justice Department doesn’t need new laws, it needs new policies.

There is reason to fear that new laws expanding the Justice Department’s counterterrorism powers will not make Americans safer from terrorist violence. Instead, they may further entrench existing disparities regarding which communities the government targets with its most aggressive tactics, with serious implications for Americans’ free speech, association, and equal protection rights. The Justice Department has a history of prioritizing cases that target civil rights, anti-war, social justice, and environmental protest groups over those investigating white supremacist violence. For years the FBI maintained that “eco-terrorism,” which hasn’t produced any U.S. fatalities over many decades, was the primary domestic terrorism threat.<sup>2</sup> While environmental protest groups have engaged in civil disobedience and property damage, this activity could only very rarely be considered “dangerous to human life,” which is a necessary element of the statutory definition of domestic terrorism.<sup>3</sup> In 2010, the Justice Department Inspector General criticized the FBI for treating non-violent civil disobedience and vandalism as justification to conduct lengthy and aggressive terrorism investigations of environmental activists, racial and social justice protesters, and peace advocates.<sup>4</sup>

Recent evidence suggests the Justice Department is continuing to treat protests as terrorism, particularly in its monitoring of minority-led movements like Native American water protectors and Black Lives Matter activists, falsely framed as “black identity extremists.”<sup>5</sup> Its failed attempt to prosecute more than 200 anti-Trump activists who were near where some windows were broken and a limousine was lit on fire during the #J20 post-inauguration protests stands in sharp contrast to the relative handful of federal arrests arising from more than two years of far-right rioting across the country where journalists and counter-protesters were beaten, stabbed, shot, and killed.<sup>6</sup> *The Intercept* published an analysis of 752 cases the Justice Department classified as domestic terrorism since 9/11, and found only 268 involved far-right defendants who were charged with crimes that met the federal definition of terrorism.<sup>7</sup>

Congress must also be cautious that any new law aimed at white supremacist violence could prove ineffective or worse, be misused to target the groups it intends to protect. Though African Americans make up only about 13.4 percent of the U.S. population, state and local law enforcement agencies identified them as offenders in 21.3 percent of the hate crimes they reported in 2017.<sup>8</sup> Most hate crimes statutes work by expanding criminal liabilities and/or increasing existing penalties for otherwise prosecutable offenses when evidence of a biased motivation can be demonstrated. This penal approach to hate crimes conflicts with research, corroborated by the Justice Department's National Institute of Justice, which demonstrates that even draconian penalties have not proven effective deterrents to crime.<sup>9</sup> The number of bias offenses reported in victim surveys has been remarkably consistent over decades and arguably even increasing in recent years, despite the enactment of new hate crimes laws.<sup>10</sup>

Rather than giving the Justice Department new powers that could be abused to further target minority groups and political dissidents instead of terrorists, Congress should intensify its oversight of federal counterterrorism and civil rights programs to ensure that security resources are directed toward the deadliest threats, and that all Americans receive equal protection under the law. Congress must require that counterterrorism resource decisions be based on objective evaluations of the physical harm different groups pose to human life, rather than on political considerations that prioritize the safety of some communities over others.

### **Current Laws Provide Ample Authority to Police Far-Right Violence**

The term "terrorism" is best understood as a rhetorical device that describes violence the government or society particularly despises. There is a debate regarding whether it is an appropriate term for legal proceedings, as its use tends to politicize prosecutions of criminal acts already prohibited by other laws, but the Justice Department has embraced it. The problem is that federal officials use the terrorism label most frequently to describe criminal activity by Muslims, and balk at using it when the perpetrator is white. Congress has codified a facially neutral definition of what conduct can be considered domestic terrorism, so it is crucial that Justice Department officials apply the term equally, regardless of the identity of the perpetrator.

Federal law defines domestic terrorism as illegal acts occurring in the U.S. that are “dangerous to human life” and appear to be “intended to intimidate or coerce a civilian population.”<sup>11</sup> Though this statutory definition does not itself impose any criminal liability, Congress identified 51 “federal crimes of terrorism” targeting the types of violent acts domestic far-right militants commonly commit, and passed a 52nd law that further prohibits material support toward the commission of these crimes.

In addition, Congress passed five federal hate crimes laws outlawing violence directed at people because of bias against their race, religion, national origin, gender, sexual orientation, gender identity, or disability; designed to interfere with their free exercise of constitutional rights; deprive them of housing; or targeting places of religious devotion.<sup>12</sup> Hate crimes can involve anything from minor property crimes like vandalism all the way up to mass murder. Clearly not all of these crimes could or should be considered terrorism, but there is an obvious overlap between hate crimes that involve deadly violence and domestic terrorism, as they are both intended to frighten, intimidate, and coerce a civilian population. Because far-right violence often targets communities protected by hate crimes statutes, these laws can be effective tools for prosecutors in cases labeled as domestic terrorism investigations.

The Justice Department recognizes an overlap between organized white supremacist violence that meets the definition of domestic terrorism and hate crimes. FBI policy instructs agents conducting a federal hate crime investigation to open a parallel domestic terrorism investigation whenever the suspect has “a nexus to any kind of white supremacist group.”<sup>13</sup> It appears, however, that the FBI does not always follow this policy. Despite the Attorney General calling the Charlottesville vehicle attack an act of terrorism, the FBI and U.S. Attorney’s office labeled the investigation of Alex Fields’ murder of Heather Heyer during the 2017 “Unite the Right” rally in Charlottesville a “civil rights investigation,” seemingly ignoring that it took place during a pre-planned white supremacist riot.<sup>14</sup> To be clear, the decision to ultimately charge Fields under federal hate crimes statutes exposes him to severe punishment, including the death penalty, so no new laws are necessary to fully address his crime even if none of the 51 “federal crimes of terrorism” could have been charged. But labeling a case as a hate crime investigation at the onset narrows the scope of these inquiries to the individual act, rather than examining it as a part of a potentially larger and ongoing domestic terrorism conspiracy.

Where the perpetrators of far-right violence act as a group, organized crime statutes also provide a robust mechanism to dismantle these criminal enterprises. When federal officials open a domestic terrorism investigation they can use all of these federal laws and a multitude of others to prosecute the case.<sup>15</sup> Justice Department records listed 66 different federal statutes as the lead charge on four or more domestic terrorism prosecutions from 2013 through 2017.<sup>16</sup> A recent example of far-right attacks that Justice Department officials quickly and publicly labeled as acts of terrorism include a militia group's fire-bombings of a Minnesota mosque and Illinois abortion clinic.<sup>17</sup> The Justice Department prosecuted the militia members using a terrorism statute, a hate crime statute, and an organized crime statute.

Where the available evidence gathered during a domestic terrorism investigation suggests state laws would be more effective to properly address the crime, federal agents can refer these cases to state and local prosecutors.<sup>18</sup> Recent examples of far-right violence that appear to have met the statutory definition of domestic terrorism but resulted in no federal charges include the 2018 slaying of a gay Jewish man in California by a member of the violent neo-Nazi group Atomwaffen Division, the 2017 murder of a black man in New York City by a white supremacist intent on starting a race war, and the 2016 vehicular homicide of a black man in Oregon by a member of European Kindred, a white supremacist prison gang.<sup>19</sup> State and local prosecutors charged these perpetrators with hate crimes and, in the New York City case, with violating a state terrorism statute, indications that the crimes likely met the federal definition of domestic terrorism as well, as they were deadly and intended to intimidate a civilian population. But the Justice Department does not properly account for them, or other deadly white supremacist crimes occurring across the country, as potential acts of domestic terrorism.

### **Flawed Policies Blind Policy Makers and Leave Communities Less Secure**

Since 9/11, the Justice Department has prioritized “international terrorism” investigations, which in practice primarily target Muslims, over “domestic terrorism” investigations, which do not. International terrorism investigations often involve aggressive monitoring and infiltration of Muslim, Arab, Middle Eastern, South Asian, and African American communities throughout the U.S. to pre-emptively identify and selectively prosecute “radicalized” individuals who might express opposition to U.S. foreign policies or support for groups the U.S. designates as foreign terrorist

organizations, but have not attempted to commit violent acts. These efforts include highly problematic “countering violent extremism” (CVE) programs that rely on long-discredited theories of terrorist radicalization. CVE programs are stigmatizing and divisive to the communities they target, and have not proven effective in reducing violence.<sup>20</sup> The federal government’s “domestic terrorism” efforts, on the other hand, investigate and prosecute only a tiny percentage of the violent acts committed by white nationalists and other far-right militants.

FBI officials recently indicated that 80 percent of its counterterrorism field agents work international cases, and only 20 percent domestic.<sup>21</sup> This distribution is not proportionate with the comparative number of annual attacks and fatalities caused by international versus domestic terrorists, based on the available data compiled by academic researchers and advocacy groups. Researchers at the National Consortium for the Study of Terrorism and Response to Terrorism compiled an Extremist Crime Database (ECDB) to collect open-source data on the violent and non-violent criminal activities of far-right groups. ECDB researchers identified 450 fatalities from 210 far-right attacks they deemed “ideologically-motivated” between 1990–2018.<sup>22</sup> The Anti-Defamation League includes 52 police officers among the victims killed by far-right militants over that period.<sup>23</sup>

Yet even within the domestic terrorism program, the FBI has not prioritized investigations of white supremacist violence, for years listing “eco-terrorism” as the number one threat. It recently announced the reorganization of its domestic terrorism program categories, creating a new “racially-motivated violent extremism” category that swallows up what had previously been separate categories for white supremacists and what the FBI called “black identity extremists.” Seven U.S. senators have complained that this change masks the scope of white supremacist violence and the resources the FBI devotes to investigating them.<sup>24</sup>

The Justice Department further obscures the data regarding white supremacist violence by arbitrarily designating a significant portion of these deadly attacks as hate crimes without any evaluation to determine whether the crimes fit the definition of domestic terrorism, or were committed by a member of an organized racist group with a history of violence. Its policy to defer the investigation of these crimes to state and local law enforcement exacerbates this problem, and makes it more difficult to track racist violence. In 1990, Congress passed the Hate Crimes Statistics Act,



requiring the Justice Department to collect national data regarding bias crimes.<sup>25</sup> As a matter of policy, however, the Justice Department chooses instead to rely on state and local law enforcement agencies to voluntarily report hate crimes to the FBI through the Uniform Crime Reporting (UCR) system, rather than conducting its own investigations and data collection activities regarding these crimes. The problem is that not all police agencies submit data to the UCR system, and the vast majority of those that participate consistently report zero hate crimes, making this data woefully incomplete.<sup>26</sup> Congress should compel the Justice Department to comply with the law.

Where states have appropriate laws and the will to enforce them, the Justice Department's policy of deferring the investigation and prosecution of hate crimes to state and local authorities might make sense. The majority of hate crimes, which do not involve violence harmful to human life and are often committed by juveniles or people with underlying mental health issues, can certainly be better handled by local authorities. But where the hate crimes involve deadly violence, and especially when the perpetrators are involved with white supremacist groups that have previously engaged in violence, the federal government should take notice and conduct an evaluation to determine if a federal investigation is more appropriate. Failing to do so deprives its agents and analysts of intelligence necessary to fully understand the threat and leaves all communities at risk.

Unfortunately, not all states have laws that are effectively tailored to address bias-motivated crimes, and many that do have these laws rarely enforce them. As a result, most hate crimes investigations deferred to the states fall into an accountability void. In 2017, 87.4 percent of the 16,149 state and local law enforcement agencies participating in the federal Uniform Crime Reporting (UCR) system reported no hate crimes within their jurisdictions.<sup>27</sup> The remaining 12.6 percent of law enforcement agencies that reported at least one hate crime in 2017 identified a total of 7,175 incidents involving more than 8,800 victims, including 990 aggravated assaults, 15 murders, and 23 rapes.<sup>28</sup> The more than 2,300 property crimes involving destruction, damage, or vandalism they reported in 2017 are aggregated in the UCR data, so it is impossible to distinguish between a potential terrorist act, like a bombing, versus racist graffiti scribbled in on a bathroom wall based on these records.<sup>29</sup>

Justice Department crime victim surveys indicate there were about 230,000 violent hate crime victimizations each year from 2004 to 2015, yet federal

prosecutors try only about 25 defendants in hate crimes cases each year.<sup>30</sup> The true number of white supremacist hate crimes and the damage this violence inflicts on American communities remains unmeasured, depriving intelligence analysts and policy makers of information necessary to craft effective solutions, and undermining public trust in law enforcement in underserved communities.

The Justice Department's reliance on state and local law enforcement to police the vast majority of bias-motivated violence ignores the natural obstacles and disincentives that inhibit their ability to effectively prosecute these cases. No governor or mayor wants to report high numbers of hate crimes within their territories. Even where local politicians encourage hate crimes enforcement, pursuing these charges is challenging. Typically, these laws require police and prosecutors to prove that a specific bias motivated the crime, and often that it was the only motivation. For the most egregious cases involving violent crimes like murder, aggravated assault, and rape, the prosecutor's additional effort to prove a hate crime enhancement may not significantly increase the sentences imposed.<sup>31</sup> *ProPublica* examined 981 hate crimes reported in Texas from 2010 to 2015, for example, and found only 8 were successfully prosecuted using hate crimes statutes.<sup>32</sup>

A bigger problem, however, is that the minority, immigrant, LGBTQ, and dissident communities targeted by far-right violence often have fraught relationships with law enforcement agencies that tend to over-police them as crime suspects, yet under-serve them when they are crime victims. Half of the violent crime committed in the U.S. each year goes unsolved, including almost 40 percent of homicides and 64 percent of rapes.<sup>33</sup> Disproportionately high rates of these unsolved homicide victims across the country are black, Native American, LGBTQ, and migrants, some number of which are likely bias crimes.<sup>34</sup> This broken trust with law enforcement is reflected in the Justice Department's crime victim surveys, which indicate less than half of violent hate crime victimizations are reported to police, and only 4 percent result in arrests.<sup>35</sup>

## **Recommendations for A New Approach to White Supremacist Violence:**

### **1. Reforming Police Practices to Restore Community Trust**

Minority communities are disproportionately victims of many different kinds of violence, including at the hands of law enforcement, and are often denied equal protection when they seek justice. A comprehensive strategy to protect these communities from white supremacist terrorism and hate crimes must include measures to address these disparities and to reform police practices.

The Justice Department has an important role in holding law enforcement officials accountable for civil rights violations, but these cases are rarely prosecuted. Recent allegations of police cooperation with or assistance to far-right groups involved in violent protests should be fully investigated.<sup>36</sup> Congress should also investigate what role the FBI played in providing or failing to provide intelligence to state and local police agencies regarding the violent far-right riots that took place across the country beginning in 2016. Many of the groups and individuals participating in violence during the Charlottesville “Unite the Right” rally had previously engaged in violence at rallies in Huntington Beach, San Bernardino, Sacramento, and Berkeley, California. Others that participated in violence in Charlottesville were later involved in violence at far-right events in Florida and Tennessee.<sup>37</sup> What intelligence was the FBI providing to state and local law enforcement officials through the FBI’s Joint Terrorism Task Force or other federal intelligence sharing systems? Why were so few federal arrests made? Building trust in victimized communities requires accountability from law enforcement.

### **2. Explore a Restorative Justice Approach to Hate Crimes**

White supremacist terrorism and hate crimes victimize entire communities. Such crimes harm the larger society by creating heightened inter-community tensions, increased risk of civil disorder, psychological distress, and feelings of insecurity.<sup>38</sup> Taking action to address these communal injuries and promote a tolerant and inclusive society are essential elements of a strategy to counter far-right violence. A purely penal approach to hate crimes and domestic terrorism does little to assuage the fear, anger, and social division that these crimes create.

Mounting evidence suggests that both victims and communities harmed by hate crimes prefer alternative approaches to incarceration for hate crime offenders.<sup>39</sup> Some members of communities most often affected by hate crimes are critical of enhanced penalties, recognizing that hate crime prosecutions often target the lowest hanging fruit—with convictions often skewed against people of color, youth offenders, the mentally ill, and poor people.<sup>40</sup> Instead, research suggests that victims overwhelmingly prefer educational programs and restorative approaches that challenge underlying prejudices and prevent similar attacks.<sup>41</sup>

A restorative approach to justice focuses on accountability for healing the harm done to victims and communities as a result of criminal acts. It involves victims, offenders, and the community in search for solutions which promote repair, reconciliation, and reassurance.<sup>42</sup> Restorative justice is a different model than punitive or rehabilitative justice, which primarily focus on the offender.<sup>43</sup> A comprehensive restorative response to crime engages the community as a resource for reconciliation of victims and offenders. Restorative justice is a community-building response to a crime that facilitates healing and strengthens social cohesion.<sup>44</sup>

There are many different restorative justice approaches, from victim-offender mediations, to family and community counseling, to truth and reconciliation commissions. Congress should study restorative justice approaches and develop a plan to fund and implement these methods when acts of far-right terrorism and hate crimes occur. Providing alternative restorative approaches for some offenses and offenders may significantly reduce the costs of pretrial detention, trial, and incarceration. One study on the economic benefits of restorative approaches in the U.K. estimated that a recommended pre-court restorative justice program would pay for itself within the first year, and would save the government one billion pounds over ten years.<sup>45</sup>

## **Conclusion**

The Justice Department's failure to prioritize the white supremacist terrorism, hate violence, and police violence affecting these communities undermines the rule of law and threatens social cohesion, which ultimately undermines the nation's security. Rethinking this problem requires that we reorient our security efforts and resources to reduce and protect all Americans from all forms of violence.

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<sup>1</sup> MICHAEL GERMAN & SARA ROBINSON, BRENNAN CTR. FOR JUST., WRONG PRIORITIES ON FIGHTING TERRORISM (Oct. 2018), available at [https://www.brennancenter.org/sites/default/files/publications/2018\\_10\\_DomesticTerrorism\\_V2%20%281%29.pdf](https://www.brennancenter.org/sites/default/files/publications/2018_10_DomesticTerrorism_V2%20%281%29.pdf) [hereinafter “WRONG PRIORITIES ON TERROR”].

<sup>2</sup> See Henry Schuster, *Domestic Terror: Who’s the Most Dangerous?*, CNN, Aug. 24, 2005, <https://www.cnn.com/2005/US/08/24/schuster.column/>; John Vidal, *The Green Scare*, GUARDIAN, Apr. 3, 2008, <https://www.theguardian.com/environment/2008/apr/03/greenbuilding.ethicalliving>.

<sup>3</sup> 18 U.S.C. § 2331(5).

<sup>4</sup> OFF. OF INSPECTOR GEN., U.S. DEP’T OF JUST., A REVIEW OF THE FBI’S INVESTIGATIONS OF CERTAIN DOMESTIC ADVOCACY GROUPS 186–91 (Sep. 2010), available at <https://oig.justice.gov/special/s1009r.pdf>.

<sup>5</sup> See George Joseph & Murtaza Hussain, *FBI Tracked an Activist Involved With Black Lives Matter as They Travelled Across the U.S.*, DOCUMENTS SHOW, INTERCEPT, Mar. 29, 2018, <https://theintercept.com/2018/03/19/black-lives-matter-fbi-surveillance/>; Will Parrish & Sam Lavin, *‘Treating Protest as Terrorism’: US Plans Crackdown on Keystone XL Activists*, GUARDIAN, Sep. 20, 2018, <https://www.theguardian.com/environment/2018/sep/20/keystone-pipeline-protest-activism-crackdown-standing-rock>.

<sup>6</sup> See, e.g., Mike Carter & Steve Miletich, *Couple Charged With Assault in Shooting, Melees During UW Speech by Milo Yiannopoulos*, SEATTLE TIMES, Apr. 24, 2017, <https://www.seattletimes.com/seattle-news/crime/couple-charged-with-assault-in-shooting-melee-during-uw-speech-by-milo-yiannopoulos/>; David Kelsen, *7 Charged in Anaheim KKK Melees—But Stabby Klanner Not One of Them*, O.C. WKLY, Jul. 1, 2016, <https://ocweekly.com/7-charged-in-anaheim-kkk-melee-but-stabby-klanner-not-one-of-them-7305812/>; Sam Levin, *Stabbed at a Neo-Nazi Rally, Called a Criminal: How Police Targeted a Black Activist*, GUARDIAN, May 25, 2018, <https://www.theguardian.com/world/2018/may/25/neo-nazi-rally-california-stabbing-police-target-black-activist>; Frank John Tristan, *Huntington Beach Pro-Trump March Turns Into Attack on Anti-Trump Protestors*, O.C. WKLY, Mar. 26, 2017, <https://www.ocweekly.com/huntington-beach-pro-trump-march-turns-into-attack-on-anti-trump-protesters-press-7991623/>; James Queally, *Ku Klux Klan Rally in Anaheim Erupts in Violence; 3 Are Stabbed and 13 Arrested*, L.A. TIMES, Feb. 29, 2016, <http://www.latimes.com/local/lanow/la-me-ln-klan-rally-in-anaheim-erupts-in-violence-one-man-stabbed-20160227-story.html>; Frances Robles, *As White Nationalist in Charlottesville Fired, Police ‘Never Moved’*, N.Y. TIMES, Aug. 25, 2017, <https://www.nytimes.com/2017/08/25/us/charlottesville-protest-police.html>. See also Keith L. Alexander, *Federal Prosecutors Abruptly Dismiss All 39 Remaining Inauguration Day Rioting Cases*, WASH. POST, July 7, 2018, [https://www.washingtonpost.com/local/public-safety/federal-prosecutors-abruptly-dismiss-all-remaining-inauguration-day-rioting-cases/2018/07/06/d7055ffe-7ee8-11e8-bb6b-clcb691f1402\\_story.html?utm\\_term=.20c01a92836b](https://www.washingtonpost.com/local/public-safety/federal-prosecutors-abruptly-dismiss-all-remaining-inauguration-day-rioting-cases/2018/07/06/d7055ffe-7ee8-11e8-bb6b-clcb691f1402_story.html?utm_term=.20c01a92836b); Emily Shugerman, *J20 Protests: All You Need to Know About the Nearly 200 People Facing 60 Years in Jail for Protesting Trump*, INDEPENDENT, Nov. 16, 2017, <https://www.independent.co.uk/news/world/americas/j20-trump-protests-trials-jail-threat-inauguration-demonstrations-explained-a8057521.html>.

<sup>7</sup> Trevor Aaronson, *Terrorism’s Double Standard: Violent Far-Right Extremists Are Rarely Prosecuted as Terrorists*, INTERCEPT, Mar. 23, 2019, <https://theintercept.com/2019/03/23/domestic-terrorism-fbi-prosecutions/>.

<sup>8</sup> *Offenders, 2017*, FBI: UCR, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/offenders> (last visited Feb. 23, 2019).

<sup>9</sup> See NAT’L INST. OF JUST., U.S. DEP’T OF JUST., FIVE THINGS ABOUT DETERRENCE (May 2016), available at <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>. See also VALERIE WRIGHT, PH.D., SENT’G PROJ., DETERRENCE IN CRIMINAL JUSTICE (Nov. 2010), available at <https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>.

<sup>10</sup> See LYNN LANGTON, PH.D. & MADELINE MASUCCI, U.S. DEP’T OF JUST., SPECIAL REPORT: HATE CRIME VICTIMIZATION, 2004–2015 2 (June 2017), available at <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf> (charting approximately 250,000 annual victim reports of hate crimes between 2004–2015); JACK MCDEVITT ET AL., IMPROVING THE QUALITY AND ACCURACY OF BIAS CRIME STATISTICS NATIONALLY, U.S. DOJ: BUREAU OF JUSTICE STATISTICS 38–40 (July 2000) available at [http://www.jrsa.org/pubs/reports/bjs\\_bias\\_crime\\_data.pdf](http://www.jrsa.org/pubs/reports/bjs_bias_crime_data.pdf) (describing hate crime reporting from 1991 to 1998).

<sup>11</sup> 18 U.S.C. § 2331(5).

<sup>12</sup> See, U.S. DEP’T OF JUST., HATE CRIMES LAWS: ABOUT HATE CRIMES, at <https://www.justice.gov/crt/hate-crime-laws>.

<sup>13</sup> FBI, CIVIL RIGHTS PROGRAM POLICY IMPLEMENTATION GUIDE 15 (Oct. 2010), available at [https://www.aclu.org/sites/default/files/field\\_document/ACLURM003541.pdf](https://www.aclu.org/sites/default/files/field_document/ACLURM003541.pdf).

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- <sup>14</sup> Press Release, U.S. Attn’y Off. W.D. Va., Joint statement from United States Attorney’s Office for the Western District of Virginia, Federal Bureau of Investigation and the Civil Rights Division (Aug. 12, 2017), <https://www.justice.gov/usao-wdva/pr/joint-statement-united-states-attorney-s-office-western-district-virginia-federal>. See also, Landon Shroder, *Domestic Terrorism: Inside the FBI’s Joint Terrorism Task Force in Richmond*, RVA Magazine, Aug. 1, 2018, <https://rvamag.com/news/domestic-terrorism-inside-the-fbis-joint-terrorism-task-force-in-richmond.html>.
- <sup>15</sup> See WRONG PRIORITIES ON TERROR, *supra* note 1, at 5–14.
- <sup>16</sup> See *id.* at 9.
- <sup>17</sup> Press Release, U.S. Att’y Off., C.Dist. Ill., Superseding Indictment Adds New Charges Against Four East Central Illinois Men (May 2, 2018), available at <https://www.justice.gov/usao-cdil/pr/superseding-indictment-adds-new-charges-against-four-east-central-illinois-men-0>.
- <sup>18</sup> See WRONG PRIORITIES ON TERROR, *supra* note 1, at 16–18.
- <sup>19</sup> Sean Emery, *Blaze Bernstein Murder Case: Samuel Woodward Charged With a Hate Crime, DA Says*, O.C. REGISTER, Aug. 2, 2018, <https://www.oregionlive.com/news/2018/08/02/samuel-woodward-will-face-a-hate-crime-enhancement-in-the-blaze-bernstein-murder-case/>; David K. Li, *White Supremacists Pleads Guilty to Race-Hate Murder of Black Man in New York*, NBC NEWS, Jan. 23, 2019, <https://www.nbcnews.com/news/us-news/white-supremacist-pleads-guilty-race-hate-murder-black-man-new-n961731>; Aimee Green, *Russell Couturier: racial Bias Murder Conviction Could Be the First in 30 Years in Oregon*, OREGONIAN, Mar. 19, 2019, <https://www.oregonlive.com/news/2019/03/jury-finds-russell-couturier-guilty-of-murdering-black-teen-with-jeep.html>.
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- <sup>24</sup> Letter from Sen. Richard Durbin et al., to Att’y Gen. William Barr & FBI Dir. Christopher Wray (May 2, 2019), available at [https://www.durbin.senate.gov/imo/media/doc/Letter to AG Barr and Director%25 20Wray on violent white supremacist threat, 5-2-19.pdf](https://www.durbin.senate.gov/imo/media/doc/Letter%20to%20AG%20Barr%20and%20Director%20Wray%20on%20violent%20white%20supremacist%20threat%205-2-19.pdf).
- <sup>25</sup> 28 U.S.C. § 534 (1990).
- <sup>26</sup> In 2017, 16,149 law enforcement agencies participated in UCR hate crime reporting, out of approximately 18,000 law enforcement agencies nationwide, (approx. 90% participated). The vast majority of those participating reported zero hate crimes (87.4%). See *Hate Crimes by Jurisdiction, 2017*, FBI: UCR, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/jurisdiction> (last visited Feb. 21, 2019).
- <sup>27</sup> JACK MCDEVITT ET AL., IMPROVING THE QUALITY AND ACCURACY OF BIAS CRIME STATISTICS NATIONALLY, U.S. DOJ: BUREAU OF JUSTICE STATISTICS 13 (July 2000), available at [http://www.jrsa.org/pubs/reports/bjs\\_bias\\_crime\\_data.pdf](http://www.jrsa.org/pubs/reports/bjs_bias_crime_data.pdf); *Hate Crimes by Jurisdiction, 2017*, FBI: UCR, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/jurisdiction> (last visited Feb. 21, 2019).
- <sup>28</sup> See *Table 2: Incidents, Offenses, Victims, and Known Offenders 2017*, FBI: UCR, <https://ucr.fbi.gov/hate-crime/2017/tables/table-2.xls> (last visited May 10, 2019).
- <sup>29</sup> See *id.*
- <sup>30</sup> LYNN LANGTON, PH.D. & MADELINE MASUCCI, U.S. DEP’T OF JUST., SPECIAL REPORT: HATE CRIME VICTIMIZATION, 2004–2015 2 (June 2017), available at <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>; Press Release, U.S. Dep’t of Just., Justice Department Releases Update on Hate Crimes Prosecutions and Announces Launch of New Hate Crimes Website (Oct. 29, 2018), available at <https://www.justice.gov/opa/pr/justice-department-releases-update-hate-crimes-prosecutions-and-announces-launch-new-hate>.

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- <sup>32</sup> *Id.*
- <sup>33</sup> See Table 25: Percent of Offenses Cleared by Arrest or Exceptional Means by Population Group 2017, FBI: UCR, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-25>.
- <sup>34</sup> Wesley Lowry et al., *Murder With Impunity: An Unequal Justice*, WASH. POST, July 25, 2018, [https://www.washingtonpost.com/graphics/2018/investigations/black-homicides-arrests/?utm\\_term=.68b5fa47763e](https://www.washingtonpost.com/graphics/2018/investigations/black-homicides-arrests/?utm_term=.68b5fa47763e); Garett Bleir & Anya Zoledziowski, *Cases of Missing and Murdered Native American Women Challenge Police*, COURTS, NEWS 21, Aug. 15, 2018, <https://hateinamerica.news21.com/cases-of-missing-murdered-native-american-women-challenge-police-courts/>; Renata Correa Cló, et al., *Transgender Murders Frequently Left Unresolved*, NONDOC, Aug. 16, 2018, <https://nondoc.com/2018/08/16/transgender-murders-frequently-left-unresolved/>; Ryan Lenz, *Investigating Deaths of Undocumented Immigrants on the Border*, S.P.L.C., Aug. 26, 2012, <https://www.splcenter.org/fighting-hate/intelligence-report/2012/investigating-deaths-undocumented-immigrants-border>.
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- <sup>36</sup> See Sam Levin, *How a California Officer Protected Neo-Nazis and Targeted Their Victims*, GUARDIAN, Jan. 25, 2019, <https://www.theguardian.com/us-news/2019/jan/25/california-police-neo-nazis-antifa-protest>; Sam Levin, *Anti-fascists Were Stabbed at a Neo-Nazi Rally. Then Police Tried to Charge Them*, GUARDIAN, (Dec. 5, 2018), <https://www.theguardian.com/us-news/2018/dec/05/antifa-charges-california-activists-stabbing>; Katie Shepherd, *Texts Between Portland Police and Patriot Prayer Ringleader Joey Gibson Show Warm Exchange*, WILLIAMETTE WEEKLY, (Feb. 14, 2019), <https://www.wweek.com/news/courts/2019/02/14/texts-between-portland-police-and-patriot-prayer-ringleader-joey-gibson-show-warm-exchange/>; Thy Vo, *Contrary to Chief's Claim, Anaheim Police May Have Known When Controversial Klan Rally Would Begin*, VOICE OF OC, (Apr. 18, 2017), <https://voiceofoc.org/2017/04/contrary-to-chiefs-claim-anaheim-police-may-have-known-when-controversial-klan-rally-would-begin/>.
- <sup>37</sup> See A. C. Thompson et al., *Racist, Violent, Unpunished: A White Hate Group's Campaign of Menace*, PROPUBLICA, Oct. 19, 2017, <https://www.propublica.org/article/white-hate-group-campaign-of-menace-rise-above-movement>; Janet Reitman, *U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don't Know How to Stop It*, N.Y. TIMES MAG., Nov. 3, 2018, <https://www.nytimes.com/2018/11/03/magazine/FBI-charlottesville-white-nationalism-far-right.html>.
- <sup>38</sup> Brian Levin, *Hate Crimes: Worse by Definition*, 15 J. CONTEMP. CRIM. JUST. 6, 17–19 (1999), available at <https://doi.org/10.1177/1043986299015001002>.
- <sup>39</sup> See Neil Chakrabarti, *Mind the Gap! Making Stronger Connections Between Hate Crime Policy and Scholarship*, 27 CRIM. JUST. POL. REV. 577, 583 (2016). Theories and justifications of punishment have been debated *ad nauseum* by philosophers, academics, social scientists, and civil societies for centuries. We are, however, less concerned with the theoretical underpinnings behind punishment, but rather evaluating effective responses to curb far-right violence and help heal community fractures.
- <sup>40</sup> See, e.g., DEAN SPADE, Introduction: Their Laws Will Never Make Us Safer, in *AGAINST EQUALITY: PRISONS WILL NOT PROTECT YOU I*, 6–7 (Ryan Conrad, ed. 2012), available at <http://www.deanspade.net/wp-content/uploads/2013/02/againstequality.pdf>. Professor Spade poses a particularly cutting critique from a queer-abolitionist lens, urging the LGBTQ community not to rely on “violent systems” sold as “false promises—we’re told the prison systems will keep us safe . . . yet we know these systems only offer violence.” *Id.* at 9.
- <sup>41</sup> See, e.g., Neil Chakrabarti, *Mind the Gap! Making Stronger Connections Between Hate Crime Policy and Scholarship*, 27 CRIM. JUST. POL. REV. 577, 583 (2016) (finding that these preferences are shared by victims of violent and non-violent attacks, as well as victims from different communities, ages, and backgrounds).
- <sup>42</sup> HOWARD ZEHR, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE 181 (1990).
- <sup>43</sup> Lode Walgrave, *Restorative Justice for Juveniles: Just a Technique or a Fully Fledged Alternative?*, 34 HOWARD J. CRIME & JUST. 228, 230 (1995).

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<sup>44</sup> Kay Pranis, *Building Community Support for Restorative Justice: Principles and Strategies*, MINN. DEP'T OF CORRECTIONS (1995), available at <https://www.iirp.edu/eforum-archive/building-community-support-for-restorative-justice-principles-and-strategies>.

<sup>45</sup> PETE WALLIS, UNDERSTANDING RESTORATIVE JUSTICE 4 (2014).