

# The FBI Has a Racism Problem and it Hurts Our National Security



*Photo Credit: The Federal Bureau of Investigation*

As stories of ISIS brutality in the Middle East began filling news cycles in 2014, there was an uptick in coverage describing foiled ISIS plots in the United States. The FBI seemed to be finding young men about to fly to Syria, blow up parades, or take hostages at a bar every few weeks. Sensationalist media coverage and headlines tended to obscure that there was often no ISIS involvement at all. Instead, FBI agents posing as ISIS online or in-person helped men (who were often mentally-ill) concoct and buy supplies for domestic terror attacks. In 2016 the *New York Times* found that about 2/3 of prosecutions involving suspected ISIS supporters included evidence from undercover operations.<sup>[i]</sup>

These undercover sting operations are clear cases of entrapment, with far reaching implications. They obscure the actual level of the international terrorist threat in the United States, lead to miscalculations in foreign policy, and minimize the terrorist threat posed by domestic far-right groups. FBI sting operations perpetuate the Agency's long history of minority and immigrant targeting, expand its unjust monitoring and surveillance program, blur the line between programs aimed at improving law enforcement's relationship with minorities, and reinforce racial biases in American law enforcement at a time when far-right and white supremacist violence is increasing. The best solution to address these challenges may not be to extend law enforcement to white populations, but instead to rethink what we believe about the process of radicalization, and limit law enforcement surveillance and encroachment on free speech rights.

## FBI Sting Operations and Entrapment

Many of the FBI's sting operations target people who would never have been a threat if not coaxed by FBI agents. Take the case of Emmanuel Lutchman, a Black panhandler with a long history of mental health problems. An FBI informant at a local mosque sought him out shortly after he converted to Islam. The FBI agents posing as ISIS concocted a plot with Lutchman to conduct a stabbing and hostage-taking operation at a restaurant in Rochester, New York on New Year's Eve. To have sufficient cause for arrest and then charge him, law enforcement had to catch him with the equipment needed to carry out this attack. Lutchman did not have the money to buy the zip ties, duct tape, ski mask, and knives required for the plan. The FBI informant gave him \$40 and drove him to Walmart to buy the supplies.<sup>[iii]</sup> So although Lutchman was never actually in contact with ISIS, he was sentenced to 20 years in prison.<sup>[iii]</sup> News coverage of an ISIS New York's plot rocked the nation, although those who did not read beyond most headlines never had a chance to see that ISIS played no role in this plot. Instead, a man who couldn't afford a ride to Walmart became another reason for Americans to fear ISIS attacks on the homeland.

FBI informants have repeatedly targeted young men of color at the margins of their communities. In 2015, an FBI informant reached out to Harlem Suarez – a Cuban American who had suffered multiple head injuries – on Facebook and helped him plan a bombing in Florida. When Suarez tried to back out, the FBI informant continued to pressure him. Suarez was eventually caught with the equipment to carry out the bombing and now serves a life sentence.<sup>[iv]</sup> In another 2015 case, Peyton Pruitt, an 18-year old who had been diagnosed with autism and couldn't tie his own shoe, was charged with terrorism for sending bomb-making instructions to someone he believed was a member of ISIS.<sup>[v]</sup> In 2013, FBI informants posing as jihadis online worked with a 17-year-old high school student to attack a bar in Chicago.<sup>[vi]</sup>

In 2009, the Newburgh Four, a group of four Black Muslims in New York were sentenced to 25 years in prison after an FBI informant helped them concoct a plan to fire Stinger missiles at US military planes and bomb a synagogue. The four men were impoverished and had previous histories of drug

charges and mental illness. Laguerre Payen, one of the Newburgh Four kept bottles of his own urine in his apartment. The FBI informant had promised one of the men, James Cromitie, a quarter of a million dollars, a new BMW, a trip to Puerto Rico, and a barbershop if he carried out the plot.<sup>[vii]</sup> The judge who sentenced the four criticized the FBI's tactics stating, "Only the government could have made a terrorist out of Mr. Cromitie, a man whose buffoonery is positively Shakespearean in its scope... I believe beyond a shadow of a doubt that there would have been no crime here except the government instigated it, planned it and brought it to fruition."<sup>[viii]</sup> The four had little knowledge of Islam, and the informant often took to coaching them on the tenants of Islamic concepts. The FBI informant had fraud convictions in the United States and had earned \$100,000 from the FBI for this operation.<sup>[ix]</sup> In 2014, the four men lost their appeal to have their case considered a case of legal entrapment.<sup>[x]</sup>

Some informants used by the FBI have attempted murder, fraud, and drug distribution on their criminal records. They can be paid up to hundreds of thousands of dollars if they find potential terrorists. Some allegedly go on "fishing expeditions" jumping from mosque to mosque hoping to find a terrorist sympathizer. Many have been turned in to local authorities or have faced restraining orders by the Muslim communities where they operate due to their erratic behavior or their inflammatory violent comments as the attempt to attract terrorist sympathizers.<sup>[xi]</sup> Muslim civil rights groups have complained about the suspicions and paranoia being sown into their communities because of these agents.

Moreover, FBI informants not only profile Muslims, but have disproportionately targeted the mentally ill and converts. This is a small, but consistent way that American law enforcement continues to target Black Americans, many of whom convert to Islam in American prisons, and re-funnel them into the prison pipeline.

The FBI will often recruit native informants in Muslim communities by exploiting the citizenship process. An FBI training presentation recommended that agents exploit "immigrant vulnerabilities" to recruit informants. Muslims in the visa process have blamed their deportation on their refusal to work with the FBI as informants.<sup>[xii]</sup> Other US citizens were barred from flying back to the United States after international travel after refusing to act as informants.<sup>[xiii]</sup> FBI special agents are promoted and rewarded based on the negative information they provide on the communities they are monitoring. Information that exonerates people from suspicion is not similarly rewarded. Suspicious activity is created that otherwise would not have existed.<sup>[xiv]</sup> Preconceived biases against Muslim communities are confirmed in this manner.

Defenders of these methods may claim that although specific cases may not have been credible threats, the heavy-handed monitoring and enforcement practices raise distrust amongst would-be-terrorists and creates a hostile environment for potential terrorist recruiters and operators. Heavy-handed prosecution is intended to act as a deterrent.<sup>[xv]</sup> But these methods are highly problematic.

They utilize racist practices that result in heavy prison sentences, sow mistrust in communities that the FBI relies on for cooperation, are costly, and are not proven to deter.

This is not only a civil rights issue, but a danger to national security. Entrapment and surveillance isolates Muslim communities and makes them fearful of authorities. If the community members or family of a mentally ill individual have reasons to suspect their activity, they are less likely to report the activity to authorities if they believe he will be entrapped in a fabricated plot or have guilt presumed rather than get access to treatment.

And although there are dozens of cases of FBI sting operations targeting and encouraging marginalized citizens to plan out terror plots, no terrorism case since 2001 has been thrown out because of entrapment. The collective fear in the American imagination towards ISIS and terrorism at large often results in sentences seemingly disproportional to the threat. As Susanne Borday, a defense attorney for a man implicated in an FBI sting operation stated: "When the government supplies a fake bomb and then thwarts the plot, this is insanity. This is grandstanding."<sup>[xvi]</sup>

This also misinforms the American public about the extent of the ISIS threat to the United States in the bid to drum up support for extending American presence in the Middle East. ISIS outreach to Americans was not as extensive as the headlines made it seem.

Over 40% of the FBI's 2020 operating budget is devoted to counterterrorism.<sup>[xvii]</sup> Almost half of the 500 federal counterterrorism convictions between 2001 and 2014 resulted from informant-based cases.<sup>[xviii]</sup> These sting operations are costly and arguably target people who would never concoct and follow through on a plot on their own. Samuel Braverman, another New York defense attorney, said FBI informants in sting operations are "picking off the dumbest we have to offer".<sup>[xix]</sup>

## The Failures of Countering Violent Extremism Programs

American law enforcement has practiced preemptive community engagement through Countering Violent Extremism (CVE) to prevent would-be terrorists from arising. CVE is supposed to be a step ahead of counter-terror efforts that collect evidence and arrest those with concrete terror plans.<sup>[xx]</sup> CVE efforts, as defined by the Obama White House, do not include gathering intelligence for the purpose of criminal prosecution. Instead, CVE activities are intended to include: informing community members on how to identify suspicious activity, encouraging anti-extremist messaging online, and emphasizing community-led intervention through social workers and mental health professionals. In 2014, the Department of Justice partnered with the White House, the Department of Homeland Security, and the National Counterterrorism Center to create pilot CVE programs in Boston, Los Angeles, and Minneapolis that were intended to be models for the rest of the country. In 2016, the

DHS budget included \$50 million to address violent extremism. \$10 million went to grants for the CVE program and \$39 million went to the existing Homeland Security program that uses traditional methods to combat terrorism. The implementation of these programs has been inconsistent and costly. The US Government Accountability Office could not determine the extent to which the US is better off six years after the implementation of a nationwide coordinated CVE effort. It also notes the lack of a cohesive strategy which includes timeframes, desired outcomes, or indicators of success.<sup>[xxi]</sup>

In 2018, the Brennan Center for Justice at NYU Law found that over 85% of the Trump Administration's Department of Homeland Security CVE grants to state and local governments explicitly targeted minority groups –chiefly Muslims, Black Lives Matter activists, immigrants, and refugees.<sup>[xxii]</sup> This implicitly suggests that diversity is a national security threat. The Trump administration nearly tripled CVE funding for law enforcement agencies. Programs included funding for police departments targeting Somali and other East African populations in Minneapolis, and targeting refugee, LGBTQ, and Black Lives Matter youth in schools in Denver.<sup>[xxiii]</sup>

The Brennan Center has found that community outreach programs presented as CVE efforts were used by the FBI and local law enforcement to collect intelligence on the Somali-American community in Minnesota. Although FBI directives forbade information gathering as part of these CVE programs to preserve community trust in law enforcement, the Specialized Community Outreach Team (SCOT) officially working under the Department of Justice, sent intelligence to the FBI's Counterterrorism Division. Somali community members who cooperated with the SCOT team were unaware that intelligence gathering was one of the primary goals of the CVE program.<sup>[xxiv]</sup> The FBI's Countering Violent Extremism Task Force has repeatedly enlisted social workers, teachers, and other community leaders to spy on their communities.

Some of the FBI's most targeted surveillance efforts have been witnessed in Minneapolis, home to a large Somali American community which faces the agency's double biases against Muslims and Black Americans. In neighboring St. Paul the "African Immigrant Muslim Coordinated Outreach Program" was also an apparent preemptive community outreach CVE program that served as a front for intelligence gathering. The 2009 grant proposal stated that the program "...will first seek to gain the trust of the Somali immigrants... During this period, the team will also identify radicalized individuals... This intensive prevention period will last for six months and once completed, the officers will move to the enforcement mode...." The St. Paul Police Department claimed that the intelligence-gathering aspect of the project was carried out, but community leaders assert the police asked them to keep track of attendees at outreach meetings.<sup>[xxv]</sup>

In 2011, Anders Folk, the Assistant US Attorney for the District of Minnesota, testified before the Committee on Homeland Security stating, "It is important to ensure that they [the Somali community] understand the government's interest in them is not limited to putting their name on an indictment.

Additionally, law enforcement will be more effective in its ability to detect and prevent extremist behavior if the Somali community trusts the FBI enough to make contact with the FBI or other law enforcement if the community has concerns.”<sup>[xxvi]</sup>

In December 2010, the FBI issued a new policy attempting to “maintain an appropriate separation between outreach activities conducted to build trust and confidence, and those conducted with a specification operational or intelligence purpose.”<sup>[xxvii]</sup> The directive forbade community outreach personnel from reporting to the Field Intelligence Group. However, these directives contained multiple loopholes, including conduct by local organizations receiving community outreach grants.

## A Long History of FBI Racial Profiling

The FBI not only has a long history of civil rights abuses, but also a long history of acknowledging the abuses, promising to change, and rarely coming through on meaningful reforms.

In 1919, eleven years after its creation, the Bureau of Investigation (BOI)—the precursor of the FBI—systematically raided houses and language learning centers of Russian immigrants in New York City in what became known as the “Palmer Raids.” Thousands were detained on accusations of being communist.<sup>[xxviii]</sup> The FBI website states that these raids “were certainly not a bright spot for the young Bureau,” but that it taught the Bureau to “learn important lessons about the need to protect civil liberties and constitutional rights.”<sup>[xxix]</sup> This led to the first efforts to place checks on the FBI, few of which have succeeded.

In the 1960s and 1970s, the Counter Intelligence Program (COINTELPRO), crafted by then-FBI director J. Edgar Hoover, targeted anti-war, Black liberation movements and civil rights leaders, including Martin Luther King JR. The Director of the FBI, Christopher Wray, has called COINTELPRO “one of the darker moments in FBI’s history... It’s something we are not proud of, but it’s also something we have learned from.”

In the 70s, the FBI introduced procedural reforms. The Attorney General required the FBI to have a criminal predicate before opening investigations. Preliminary investigations were given time and technical limits. FBI guidelines continued to be tightened and amended, until 9/11 when FBI intelligence-gathering limits were quickly reversed.<sup>[xxx]</sup> The FBI could now issue secret demands for “any tangible things” that were considered “relevant” to terrorism cases under the Patriot Act.<sup>[xxxi]</sup> The agency regularly used “exigent letters” which claimed false emergencies in order to gain phone records of Americans. The Bush administration lowered the evidentiary threshold for the FBI to initiate investigations four separate times.<sup>[xxxii]</sup> And while the Attorney General emphasized that FBI investigations could not be conducted “solely” on race, it asserted that FBI agents could use race and ethnicity to map, collect demographics, and assess threats.<sup>[xxxiii]</sup>

William Gawthrop, a Bureau employee, gave FBI training materials and elective presentations on Islam and Islamic just war in 2011 that included the assertion that “there may not be a ‘radical’ threat as much as it is simply a normal assertion of the orthodox ideology,” and that “main stream” American Muslims are likely terrorist sympathizers.<sup>[xxxiv]</sup> He claimed that Islamic insurgency techniques include “immigration” and “law-suits.” The same Bureau employee then gave presentations on Islam to dozens of law enforcement officials at an event sponsored by the FBI in New York City where he told the audience that the fight against al Qaeda is a “waste” compared to the threat of Islam as an ideology.<sup>[xxxv]</sup> A 2006 FBI intelligence report cites frequent mosque attendance and growing facial hair as “indicators” that a person is on the path to becoming a terrorist.<sup>[xxxvi]</sup>

In 2011, Independent Senator Joe Lieberman and Republican Senator Susan Collins wrote a letter to Obama warning that law enforcement lacked “meaningful standards” to prevent bigoted information and anti-Islam material in counter-terror training.<sup>[xxxvii]</sup> Mike German, a Policy Counsel at the American Civil Liberties Union and former FBI agent stated in an interview, “Seeing the materials FBI agents are being trained with certainly helps explain why we’ve seen so many inappropriate FBI surveillance operations broadly targeting the Muslim-American community...”<sup>[xxxviii]</sup> In 2012, the FBI purged hundreds of instructional materials about Muslims from its presentations including materials with “factual errors” or presenting information that “lacked precision.”<sup>[xxxix]</sup>

In 2005, FBI agents secretly and without warrants scanned hundreds of Muslim-owned businesses, homes, and mosques with radiation detection equipment in at least six cities. No nuclear weapons were found.<sup>[xl]</sup> Michael Mason, a former executive assistant director and one of the highest-ranking Black men in the Bureau, told *The Intercept* that he would sometimes call off investigations he found problematic, telling an agent he couldn’t run someone’s license plate because there was a Quran in the backseat.

Post 9/11, FBI surveillance became increasingly heavy in Muslim communities, but also used its expanded privileges to target Keystone protest groups, Occupy Wall Street activists, Standing Rock organizers,<sup>[xli]</sup> antiwar activists, and activists against police violence in Ferguson, Missouri, and Baltimore.<sup>[xlii]</sup>

Officials at the DHS and the DNI supported drawing a connection between those advocating against police brutality, including Black Lives Matter activists, and foreign terrorism. DHS officials were worried that the Islamic State would “use the situation in Ferguson as a recruitment tool.” In 2016 the Office of the Director of National Intelligence sent an internal memo warning that about an Al Qaeda Facebook user urging “Black Americans to.... start armed war against the US government.”<sup>[xliii]</sup>

Six months into the Trump administration, the FBI’s Domestic Terrorism analysis Unit created the category of Black Identity Extremists (BIE). Local law enforcement around the country were warned of this threat to national security. The most serious and one of the only cases that was tried using this

category, was a case against two men- Olajuwon Davis and Brandon Baldwin – who were arrested in a sting operation and accused of planning to plant bombs targeting law enforcement and blow up the St. Louis Gateway Arch. They were acting independently. The attorney of the Eastern District of Missouri said that Davis and Baldwin’s plans were “totally unrealistic and impractical.” Davis’s father stated that FBI agents befriended his son and encouraged him to carry out the bombing plots. The contact who arranged the sale of the fake pipe bombs was an undercover FBI agent.<sup>[xliiv]</sup> Davis could not pay the FBI informer the full sum to buy the bombing material, saying he was out of money and was waiting to receive his unemployment benefits.<sup>[xlv]</sup> In this situation, the FBI targeted ideas rather than actual violence using the justification of the BIE designation. Ideas considered fringe were sought out, and then agents tried to coax violent action to establish pretext for prosecution.

Of the six Black Identity Extremism cases cited by the FBI’s Domestic Terrorism Analysis Unit, three are nonfatal attacks on police in Arizona, Indiana, and New York. The other two were the fatal shootings of police officers in Dallas and Baton Rouge in 2016 that followed the killings of Philando Castile and Alton Sterling by law enforcement.<sup>[xlvii]</sup> None of these six incidents were conducted by perpetrators who knew each other or were directed by a higher steering committee. Two of the cases included military veterans who had previously sought treatment for Post-traumatic stress disorder.<sup>[xlviii]</sup>

The FBI continues to surveil Black activists within the framework of BIE, even though it testified to Congress that BIE designations were no longer in use.<sup>[xlviii]</sup> Calls by civil rights organizations to Congress to investigate racial profiling at the FBI have gone unanswered.<sup>[xlix]</sup>

## Racism within the FBI

Terry Albury, the only Black FBI agent in the Minneapolis field office, pled guilty to federal charges of violating the Espionage Act after taking classified FBI documents to the press. Albury was disturbed both by the racism he had witnessed within the agency and how the agency interacted with local communities in Minneapolis. His lawyers argued that his objective was to alert the American public about the FBI’s departure from its mission and “abuses of the enormous investigative authority the FBI has been granted since 9/11.” An online fundraiser for his legal fees stated that “Terry was required to implement FBI investigative directives that sanctioned the use of race and religion as basis for targeting wide swaths of communities.” In Minnesota, he was given the job of using community outreach as a front for intelligence gathering, a task Albury viewed as “unjustified and ineffective.” Albury’s lawyers argued that his leaks were tactical and put no agent or source at risk, but instead “his goal was to expose abuses and counterproductive strategies in the FBI’s counter-terrorism initiatives.”<sup>[li]</sup> Albury, who viewed himself as a patriot attempting to correct injustices at the FBI, was sentenced to four years in prison. David Petraeus served no jail term for sharing highly classified journals with his biographer-turned- mistress and lying to the FBI about it. In his memoir, Comey wrote that “Petraeus was treated under a double standard based on class. ... A poor person, an

unknown person – say a young Black Baptist minister from Richmond – would be charged with a felony and sent to jail.”<sup>[li]</sup>

Muslim special agents and intelligence analysts have reported coming under increased scrutiny at the agency. Sam Barodi – a twice-fired<sup>[lii]</sup> FBI analyst – has stated that there was a wider purge of Muslims from the US intelligence community in the Trump administration.<sup>[liii]</sup> Arab-American agents have described wide-spread discrimination at the Bureau. While the Human Resources division attempts to attract diverse hires, on the inside the agency is accused of never fully trusting them or treating them as equal.<sup>[liv]</sup>

The Former Director of the FBI James Comey has labeled the FBI’s lack of racial diversity as a “crisis.”<sup>[lv]</sup> The FBI has only grown less diverse since 9/11 despite attempts to diversify the agency. The agency stopped officially publishing its data on the number of Black and Latino agents as numbers dwindled.<sup>[lvi]</sup> In 2018, 83% of FBI agents are white, 4.4% are Black. In 1991, when 5.3% of the force was Black, a group of Black agents filed a class-action racial discrimination lawsuit alleging they were regularly denied promotions. A judge ruled in their favor, and the FBI promised change. Emmanuel Johnson, the lead plaintiff of the lawsuit, who served in the Bureau for 26 years, stated that “essentially nothing” has changed since, “actually it is worse now than when we did the lawsuit.”

## Minority Free Speech Treated as a National Security Threat

The FBI’s monitoring of civil society raises questions about the stifling of First Amendment rights of progressive groups. Freedom of Information Act (FOIA) requests by journalists and activists have uncovered that the FBI has repeatedly monitored racial justice movements including BLM, Occupy Wall Street, environmentalist, Palestinian, and anti-ICE activists and protestors. The FBI tends to cite counterterrorism duties to justify this monitoring or the possibility of future violence from these groups. But this monitoring has effects on the freedom activists have to operate openly out of fear of repercussions and mistrust due to suspicions towards informants.<sup>[lvii]</sup> This monitoring is based on the biases of the FBI along racial and ideological lines.

The Black Identity Extremist (BIE) title has been used to trace and arrest those who have not committed acts of violence. Rakem Bologun, a former Marine who is a member of the Huey P. Newton Gun Club, which pushes African Americans to take advantage of their Second Amendment rights, was arrested in 2017 and charged with a single illegal firearms possession charge. Officers in riot gear pulled him and his 15-year old son out of their house and handcuffed them in their underwear. Prosecutors tried to connect Bologun to terrorism charges, and the FBI testified that he had been under surveillance for two years. Special agent Aaron Keighly testified<sup>[lviii]</sup> that investigators began tracking Bologun from a video of protestors on *Infowars*, a far right site that often spews conspiracy

theories—most notoriously that Newton false flag. A federal judge eventually dismissed the gun charge against him.<sup>[lx]</sup>

In contrast, federal authorities did not attempt to prosecute Stephen Paddock—the white man with links to far-right groups, who shot 58 people in a Las Vegas crowd in 2017—on terror charges. James Fields, the white supremacist who drove into a crowd of protestors killing one in Charlottesville, VA was not charged as a terrorist.

Half of the amendments in the Bill of Rights are about limiting police power. The Founding Fathers intended to set up a criminal justice system to challenge government overreach. Yet the FBI, especially since 9/11 has acted beyond these principles by concluding that it is conducting “intelligence” and “national security” rather than criminal investigations that are based on reasonable suspicion. When intelligence is prioritized over law enforcement and when crime is seen as primarily the result of certain ideologies, the biases of law enforcement organizations enter the scene. Former FBI agent Mike German has described that the FBI is at its best when doing law enforcement, but once it enters the domain of intelligence and national security, there has been an increasing deterioration for civil rights.

Beyond the ethical and legal issues attached to racial and ethnic profiling and heavy-handed FBI surveillance, the excess in data has not necessarily made the FBI smarter about investigations. Between 2009 and 2013, in five separate terrorist attacks in the United States, the suspect was known to the FBI.<sup>[lx]</sup> The National Counterterrorism Center (NCTC) Director Michael Leiter recognized that the abundance of data coming into the intelligence community was part of the explanation for the failure to identify the underwear bomber, even though the suspect’s father had warned authorities about him repeatedly. Leiter stated that the NCTC received over 5,000 pieces of information daily.<sup>[lxii]</sup>

## The Forgotten Threat

In 2017, the majority of murders caused by extremists were committed by right-wing extremists, primarily white supremacists. This has been true for most years in the past two decades.<sup>[lxiii]</sup> According to a former FBI agent and former ACLU lobbyist Mike German, the FBI does not track how many people white supremacists kill in the United States.

In 2009, DHS and FBI co-wrote a study warning of the resurgence of rightwing extremism after Obama’s election. The report caused widespread uproar in conservative circles, and DHS Secretary Janet Napolitano disavowed the document.<sup>[lxiii]</sup> In 2015, twenty House Democrats sent a letter to the DHS urging them to issue an updated report on domestic right-wing extremism and to reopen the Extremism and Radicalization Branch of the Homeland Environment Threat Analysis Division.<sup>[lxiv]</sup> In

2017, after the murder of Heather Heyer by a white supremacist in Charlottesville, Congressman Steve Cohen re-upped this request which fell on deaf ears.<sup>[lxv]</sup>

According to the Anti-Defamation League, white supremacists are responsible for the majority of extremism-related murders in the United States almost every year.<sup>[lxvi]</sup> Most of these cases were not referred to as acts of domestic terrorism and the accused were not prosecuted under anti-terrorism laws. Only 34 of 268 right-wing extremists prosecuted by the Department of Justice were deemed to meet the legal definition of domestic terrorism.<sup>[lxvii]</sup> White supremacists have been responsible for nearly 75% of deadly extremist attacks since 2001.<sup>[lxviii]</sup>

The way the Department of Justice labels a crime is important because it affects the resources that can go into investigating it. Under current guidelines terrorism investigations are prioritized by the FBI, so when far-right attacks against civilians get characterized as hate crimes they are not given the same level of attention as attacks against civilians by officially designated terrorist groups. The vast majority of these far-right hate crimes are instead deferred to state and local law enforcement which may not have specific bias-motivated crime legislation or may not reinforce it. Six states do not have hate crime laws in their books, and the differences in standards for proving bias across states can lead to a wide variation in how crimes are prosecuted.<sup>[lxix]</sup> Only eight of the 981 reported hate crimes in Texas between 2010 and 2015, were successfully prosecuted using hate crime statutes.<sup>[lxv]</sup> This can happen without investigators at the federal level assessing if the perpetrators are part of a larger far-right group or movement. A 2018 murder of a gay Jewish man by a neo-Nazi in California, the 2017 murder of a Black man by a white supremacist in New York, and a 2016 homicide of a Black man by a member of a white supremacist gang in Oregon were charged in state courts as hate crimes and were not accounted by the Justice Department as domestic terrorism.<sup>[lxxi]</sup> Then-FBI Director James Comey refused to label the 2015 murder of nine Black churchgoers by Dylan Roof as an act of terrorism. The FBI investigated James Fields' murder of Heather Heyer in Charlottesville, Virginia as a civil rights investigation rather than an act of domestic terror. Because Fields was charged with a hate crime rather than terrorism, his links to other individuals and organizations who may have conspired with him or materially funded him were not investigated.<sup>[lxxii]</sup>

Congress defines domestic terrorism as illegal acts that are "dangerous to human life" and "appear to be intended to intimidate or coerce a civilian population."<sup>[lxxiii]</sup> Informally the FBI and Justice Department have their own definitions of domestic and international terrorism. The FBI characterizes domestic terrorism as "Americans attacking Americans based on U.S.-based extremist ideologies," and international terrorism as acts perpetrated by those affiliated with a designated foreign terrorist organization.<sup>[lxxiv]</sup>

This distinction between external and internal ideologies is not as clear cut as usually characterized. White supremacists are often influenced by and coordinate with similar groups in Europe. Conversely, many of those targeted in Islamist terror entrapment plots are never in contact with anyone overseas.

The Justice Department characterizes American Muslims who plot violence in the U.S. with no assistance from foreign groups as international terrorists.<sup>[lxv]</sup> This is not simply an issue of semantics. In Europe, this categorization has prevented European ISIS fighters from facing justice at home. It is more popular for domestic audiences to strip them of their citizenships and look at them as a foreign fighting problem rather than thinking about the way people get radicalized domestically. If someone is linked to an “international” terrorist group, the FBI has a wider range of surveillance and investigation tools to pursue them.<sup>[lxvi]</sup> Especially problematic is the material support statute that can charge people for providing material support for people or individuals connected to international designated groups. This law does not apply to material support to domestic groups due to fears of limiting First Amendment rights.<sup>[lxvii]</sup>

The legislation exists to categorize far-right and white supremacist crimes under the banner of terrorism, but the Department of Justice has repeatedly opted to not do so and prosecute these crimes as hate crimes. Instead protests, civil disobedience, and vandalism by minority groups and leftists have been under FBI terror investigation. For years the FBI categorized “eco-terrorism” – which has not produced any US fatalities in decades – as the primary domestic terrorism threat.<sup>[lxviii]</sup>

A former FBI agent Michael German stated that those at the agency “view terrorism through a distorted lens that overemphasizes nonviolent acts by groups opposed to government policy over acts of violence against marginalized groups here in the United States.”<sup>[lxix]</sup> Only 20% of the FBI’s counterterrorism field agents work domestic cases, a number that is vastly disproportional to the number of potential domestic terror threats to the United States.<sup>[lxix]</sup> The Southern Poverty Law Center has decried the limited resources the FBI has to investigate right-wing terrorism, as federal law enforcement has become increasingly aware of right-wing extremists infiltrating state and local law enforcement agencies.

Charging domestic terrorists is more difficult than charging those part of an international terrorist group. Proven support (even if not violent) towards an international group that has been designated by the State Department as a foreign terrorist organization still falls under terrorism. Due to First Amendment concerns, domestic groups are not given the same designations, in fear of policing unpopular domestic ideas. So an individual not connected to an internationally designated terror group (like most white nationalist groups) must otherwise kill or attempt to kill a US government employee, destruct US government property, or conduct an attack involving a bomb or radiological technology to be charged with terrorism. These same limits are not in place if the attacker is affiliated with an international terrorist organization who can be charged with terror for a much wider range of attacks.<sup>[lxxi]</sup>

## Extending Surveillance or Reassessing Radicalization Theory?

Civil rights groups like the Brennan Center for Justice and other well-meaning groups argue that far-right violence and groups should be more consistently investigated and prosecuted under the banner of terrorism.<sup>[lxvii]</sup> The recognition of far-right and white-supremacist violence as a legitimate threat has become more widespread amongst security experts and the general public. But considering the failings of current law enforcement techniques, is this really the best option?

There is no consensus within the field as to what leads someone with “extreme” ideologies to actually engage in political violence.<sup>[lxviii]</sup> The ultimate decision to use violence is context-specific and particular to the individual.

Radicalization theory has become the dominant framework for understanding terrorism and counterterrorism in the Western world.<sup>[lxix]</sup> Radicalization theory explains that terrorism is the result of a predictable path with clear indicators. The march towards acts of terror is singular, and it is up to experts, political scientists, and policymakers to measure and understand these indicators to prevent future acts of terror. Radicalization theory, however, has multiple problems. It promotes a zero tolerance for acts of terror. Citizens and electorates will view any act of terror as preventable, foreseeable, and a failure in the government’s role to provide security. Other violent crimes including homicides and domestic violence are not treated in a similar way. The Extremist Crime Database found that international and domestic terrorism fatalities made up .095% of all criminal homicides from 2002-2016.<sup>[lxvi]</sup> Radicalization theory also implicitly criminalizes ideologies and limits free speech. There are certain ideas that are viewed as inherently more violent and as likely indicators that someone will become violent.

Viewing the threat of terrorism solely through the lens of security is limiting. Terror as a political tactic is intended to disseminate fear, and fear propagates a willingness to engage in violence in the name of security. Citizens tend to see their desires for security as being beyond partisan political opinion. This can allow them to ignore the biases and exclusion that discourses of fear reproduce.<sup>[lxvii]</sup> Once terrorism is established in fear and vocabulary, counterterrorism becomes the only acceptable option to most citizens. Security becomes synonymous with sovereignty and national identity.<sup>[lxviii]</sup> In an odd catch-22, counterterrorism efforts within the social contract suddenly give terrorists more leverage to instill fear in their target victim populations.

A reassessment of terror studies may be required. After 9/11, explanations around jihadism and Islamist terrorism centered around the language of evil and an inexplicable hatred for America.<sup>[lxix]</sup> The rise of anti-intellectualism in the field post-2001 condemned academics who looked for political or structural explanations for Islamist terror instead of taking on directed moral standings on it. The popular construction of terror as irrational and evil produced a schism between experts and policymakers.<sup>[lxviii]</sup> The popular counter-terror fight and the trillions of dollars involved to fund it are contingent upon an ambiguity in its definition and the potential for the threat to come from anywhere at any time. The natural result is that counterterrorism is treated as a witch hunt.<sup>[xc]</sup> The

enemy who threatens your security is anywhere and everywhere, and certain types of speech and political ideologies are seen as inherently dangerous and inevitably leading to nonsensical violence. Preemptive policing that curtails liberties is required if one follows the logical conclusions of radicalization theory.

For an individual to partake in an act of terror, a unique combination of personal and structural factors combine with that individual's decision. No empirical formula can serve as a predictive model. There are fundamental dissimilarities in why a French citizen who grew up in the ghettos of Paris, a Syrian teenager, and an Afghan warlord would commit violent acts against civilians. There will also inevitably be overlaps between why a white nationalist and an Islamist will commit acts of domestic terrorism. But the solution is not to extend CVE and other surveilling, monitoring, and infiltrating tactics into the far-right space.

The current approach to counterterrorism is unsustainable and has chipped away at the civil liberties of American citizens. The time is ripe to imagine new counter-terror strategies and new frameworks for thinking about terrorism.

For the sake of resource allocation and the preservation of freedoms, we must first reflect on why terrorism consumes such a large part of our nation's fears, resources, and attention. Terror is fundamentally about terrifying civilian populations beyond the actual level of the threat. The widespread culture of fear lends power to those who are inclined to commit acts of terror. And it is fundamentally connected to who we implicitly fear in society—whether that be brown and Black men, women in headscarves, poor “deplorables,” or the mentally disabled. We must stop disproportionately fearing ideas espoused by those at the margins of society and instead craft a more proportionate response to the violence that these ideologies may evoke. We should avoid framing and portraying terrorism in a way that disproportionately elevates fear in American society and ask ourselves: why do we treat terrorism as a distinctly evil action compared to other violent acts like gun violence, domestic violence, and homicide? Perhaps our differentiation may be due to the implicit and explicit demonization of different racial and religious groups, which in turn fuels underlying biases and heightens fear of the “other.”

Second, policymakers should move away from radicalization theory, which centers ideas as the source of threats. Instead intelligence gathering and surveillance should focus on those who have voiced desires to actually enact violence. Those who have expressed interests in terror groups or violent acts should be deradicalized as opposed to being encouraged to commit violent acts so they can be prosecuted.

Thirdly, the lines between community engagement and policing should not be blurred. There should be a zero-tolerance policy for community engagement and CVE programs that include surveillance, sting operations, and informing. If law enforcement wants to build trust with communities that have

been sources of extremism, communities must be assured that troubled members will not have their guilt presumed.

Fourth, the distinction between domestic and international terror may need to be reexamined. It is problematic that the threshold for violent white supremacist to be considered 'terrorism' is so much higher than other groups. There is a fundamental problem when those who give as little as four hundred dollars to a designated group are charged as terrorists, but when a white man kills nine Black churchgoers, he is not officially charged as a terrorist. This requires a change in legislation and in Department of Justice and FBI procedures.

Terrorism should absolutely be viewed as a punishable act and something the citizen should be protected from. Yet, the current approach that permits hunts and freedom curtailment does little to foster peace and security. It is in our national interest to pursue more just and sustainable options.

## Bibliography

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