



# **Department of Justice**

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**STATEMENT OF**  
**ERIN NEALY COX**  
**UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF TEXAS**

**BEFORE THE**  
**SUBCOMMITTEE ON THE CONSTITUTION**  
**COMMITTEE ON THE JUDICIARY**  
**UNITED STATES SENATE**

**AT A HEARING CONCERNING**  
**THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE:**  
**PROTECTING SPEECH BY STOPPING ANARCHIST VIOLENCE**

**PRESENTED**  
**AUGUST 4, 2020**

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Good afternoon Chairman Cruz, Ranking Member Hirono, and members of the Subcommittee. Thank you for inviting us to appear before you today to discuss how violent extremists have threatened public safety and impeded the rights of Americans to peaceably assemble.

Since our Nation's founding, the ability to speak and assemble freely has been a cornerstone right of all Americans. It is no coincidence that the First Amendment to the Constitution explicitly protects "the freedom of speech...[and] the right of the people to peaceably assemble." As the chief federal law enforcement agency, the Department of Justice ("Department") is committed to upholding these fundamental rights of all Americans.

Ongoing unlawful and often violent actions occurring across the United States have exposed a serious, growing threat to the rule of law and the rights of individuals to peaceably assemble and exercise their ability to speak. There are an unacceptable number of examples in which violent instigators and criminal actors have preyed on the protests and attempted to coopt otherwise lawful activity to pursue their own separate and violent agendas. This criminal activity, which has ranged from property destruction to theft to murder, will not be tolerated. In some instances, there is evidence to suggest individuals who support the Boogaloo (a term referencing a violent uprising or impending civil war) movement or Antifa (a moniker for anti-fascist) movement participated in violence. In other instances, it appears violence was inspired by other ideals that are antithetical to our democracy. Regardless of the reason, the Department and its components stand together to protect constitutional rights and disrupt and prosecute criminal activity. And the Attorney General's Task Force on Violent Anti-Government Extremists is intended to build on these efforts to bring focus to investigations and prosecutions related to this threat and bring resources to ensure individuals who seek to thwart our rule of law face justice.

The Department has a number of resources to prosecute domestic violent extremists. Our proactive focus on violent extremists is not on membership in particular groups or adherence to particular ideologies or beliefs, but on criminal activity and violence. And the Attorney

General's Task Force on Violent Anti-Government Extremists is intended to build on these efforts, and disrupt and dismantle organizations and criminal acts proactively.

## **Prosecuting Domestic Violent Extremists**

### Criminal Statutes

The Department has traditionally prosecuted domestic terrorism cases under a variety of statutes, from firearms or explosives offenses to civil rights offenses, arson, threats, fraud, tax violations, hate crimes, and offenses proscribing attacks on federal officials and facilities. The same investigative tools are available for these investigations as for other criminal offenses. As noted above, our focus is not on membership in particular groups or adherence to particular ideologies or beliefs, but on criminal activity and violence.

Although the potential charges available for a case involving violent extremists would depend on the facts of a specific case, the Department has prosecuted individuals whose conduct involves domestic terrorism or a threat thereof using a range of criminal statutes. These include —

- Weapons charges, e.g., 18 U.S.C. §§ 922, 924;
- Charges relating to use or possession of explosives, e.g., 26 U.S.C. §§ 5845, 5861; threat, hoax, or riot charges, e.g., 18 U.S.C. §§ 871, 875, 876, 1038, 2101;
- Charges proscribing attacks on federal officials or facilities, e.g., 18 U.S.C. §§ 111, 115, 351, 844, 930, 1114, 1361, 1751;
- Hate crimes charges, e.g., 18 U.S.C. §§ 245, 247, 249, and 42 U.S.C. § 3631, may be appropriate where individuals engage in domestic terrorism that is motivated by biases against a race, religion, ethnicity, or other specified factors.
- Arson, 18 U.S.C. § 844, or specific charges relating to violence against animal enterprises, *id.* at § 43, may apply to eco-terrorists or animal rights terrorists.

Moreover, several statutes reach conduct that may be associated with terrorism, without regard to whether the offense itself involves domestic or international terrorism. These include statutes relating to aircraft sabotage, 18 U.S.C. § 32; weapons of mass destruction, e.g., *id.* at §§ 175, 175b, 175c, 229, 831, 832, 2332a, 2332h, 2332i; arson and bombing of federal property, e.g., *id.* at §§ 844, 2332a, 2332f; and causing injury or death to a federal official, e.g., *id.* at §§ 111, 115, 351, 1114, 1751; among others. And it is a crime to provide material support or resources to another knowing or intending that they will be used in preparation for or to carry out certain terrorism-related offenses. *Id.* at § 2339A.

The criminal code also includes a definition of “domestic terrorism” that enhances our authority in cases involving this conduct. *See* 18 U.S.C. § 2331(5). The definition covers activities that —

- (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
- (B) appear to be intended—
  - (i) to intimidate or coerce a civilian population;
  - (ii) to influence the policy of a government by intimidation or coercion; or
  - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (C) occur primarily within the territorial jurisdiction of the United States[.]

Where incorporated into other authorities, this definition provides us with an array of expanded investigative tools and sentencing enhancements in domestic terrorism matters. For example, judges can issue nationwide search warrants in cases involving domestic terrorism, just as they are authorized to do in cases involving international terrorism. Typically, judges can only issue warrants pertaining to their districts. This expanded authority reduces delays and burdens on investigations with regional or national scope. *See* Fed. R. Crim. P. 41(b)(3). Additionally, investigative and law enforcement officers have enhanced authority to share intercepted communications and derivative evidence, including with appropriate federal, State, local, or foreign officials, when disclosing information revealing a threat of terrorism, including domestic terrorism. *See* 18 U.S.C. § 2517(8). Government attorneys also have additional authority to share grand jury matters, including with those same officials, when disclosing information to prevent or respond to a threat of terrorism, including domestic terrorism. *See* Fed. R. Crim. P. 6(e)(3)(D).

Some statutes, particularly those relating to conduct that impedes our investigations, carry enhanced statutory maximums if the offense involves or is intended to facilitate domestic or international terrorism. *See* 18 U.S.C. § 1001 (material false statements); *id.* at § 1505 (obstruction of justice); *see also id.* at § 1028 (fraudulent identification).

The criminal code contains a definition of “Federal crime of terrorism,” which means an offense that “is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct,” and violates one of the enumerated statutes prohibiting terrorism-related offenses, such as statutes related to weapons of mass destruction. 18 U.S.C. § 2332b(g)(5). That definition includes domestic terrorism, and it enhances our authority with respect to investigations, detention, sentencing, and supervised release. Congress has extended the statute of limitations, *id.* at § 3286, and created a rebuttable presumption of pretrial detention for the offenses listed in the definition of “Federal crime of terrorism,” *id.* at § 3142(e)(3). The Federal Sentencing Guidelines then provide a significant sentencing enhancement for offenses that involve, or are intended to promote, a “federal crime of terrorism” — often increasing the guideline range to the statutory maximum. *See* USSG § 3A1.4.

The Sentencing Guidelines provide for a similar upward departure for other offenses that were calculated to influence or affect the conduct of government by intimidation or coercion, to retaliate against government conduct, or to intimidate or coerce a civilian population. *See id.* at cmt. n.4. Further, once a sentence has been served, Congress has authorized lifetime supervised release for the offenses listed in the definition of “Federal crime of terrorism.” *See* 18 U.S.C. § 3583(j).

#### Historical Role of U.S. Attorneys’ Offices

The front lines of the Department’s efforts to prosecute domestic terrorism are the U.S. Attorneys’ Offices. Each U.S. Attorney’s Office coordinates a group of federal, State, and local law enforcement in the district, called the Anti-Terrorism Advisory Council (“ATAC”). The ATAC works in close partnership with its corresponding FBI Joint Terrorism Task Force (“JTTF”) in each FBI field office across the country.

The ATACs, in conjunction with the JTTFs, promote training and information sharing among federal, State, and local law enforcement, as well as private sector partners, in matters relating to terrorism, both international and domestic. This training and information sharing is critical because there are many more local law enforcement officers on the ground than there are federal agents, and they may be the first to come across individuals planning terrorist acts within their communities. We thus often have federal, State, and local officials evaluating the same threats, including assessing whether federal or State charges are available to disrupt them, with the goal being prevention of terrorist attacks before they occur.

Each U.S. Attorney’s Office also has designated a senior prosecutor to serve as the National Security/ATAC Coordinator. The National Security/ATAC Coordinator serves as the lead counterterrorism prosecutor for the district as well as the primary point of contact for the Department on terrorism matters.

Many U.S. Attorneys’ Offices also have designated National Security Sections or Units within the office that are specifically focused on counterterrorism and other national security matters.

The National Security/ATAC Coordinator and other prosecutors in the U.S. Attorneys’ Offices are specially trained in domestic and international terrorism matters and work closely with the JTTFs to investigate and prosecute terrorism matters.

In addition, the Domestic Terrorism Working Group of the Attorney General’s Advisory Committee of U.S. Attorneys (“AGAC”) comprises multiple U.S. Attorneys who collaborate on pertinent issues regarding domestic terrorism investigations and prosecutions and brief the AGAC on related matters of interest.

## Historical Role of the National Security Division

The National Security Division (“NSD”) combines counterterrorism, counterintelligence, export control, and cyber prosecutors with attorneys who oversee the Department’s foreign intelligence and counterintelligence operations, as well as attorneys who provide policy and legal advice on a wide range of national security issues. This organizational structure strengthens the effectiveness of the Department’s national security efforts by ensuring greater coordination and unity of purpose between prosecutors, law enforcement agencies, and other actors.

Attorneys in the NSD’s Counterterrorism Section are responsible for (1) collaborating with prosecutors nationwide on terrorism matters, cases, and threat information; (2) maintaining an essential communication network between the Department and U.S. Attorneys’ Offices for the rapid transmission of information on terrorism threats and investigative activity; and (3) managing and supporting ATAC activities and initiatives.

Counterterrorism Section attorneys are notified and available to provide assistance when any domestic terrorism investigation or prosecution is initiated and when significant developments in those cases occur. They serve as important resources and partners in litigating legal issues and can also participate actively as co-prosecutors. All Counterterrorism Section attorneys may work on domestic and international terrorism cases, as needed, in concert with U.S. Attorneys’ Offices. Within the Section, there are domestic terrorism coordinators and a Counsel for Domestic Terrorism, all of whom focus on domestic terrorism issues and provide expertise, training, and guidance to U.S. Attorneys’ Offices, the FBI, and other components of the Department that may be involved in a potential domestic terrorism case. In addition, the Counterterrorism Section also meets weekly with the FBI’s Domestic Terrorism Operations Section (“DTOS”) regarding cases.

Additionally, NSD’s Office of Law & Policy provides legal assistance and advice on matters arising under national security laws and policies, as well as overseeing the development, coordination, and implementation of Department-wide policies with regard to counterterrorism, including domestic terrorism, and other national security matters. Attorneys in the office may assist with handling appeals in domestic terrorism cases. They also provide advice and support on legislative matters involving domestic terrorism issues, including developing and commenting on legislation and supporting Departmental engagements with Members of Congress and congressional staff.

## Historical Role of Other Divisions within the Department

Other divisions of the Department play an important role in countering domestic terrorism. Specifically, the Civil Rights Division is responsible for overseeing the prosecution of hate crimes, some of which may also qualify as acts of domestic terrorism. The Tax Division is responsible for overseeing prosecution of tax offenses committed by anti-government extremists who are engaged in domestic terrorism and sometimes refuse to pay taxes. The Criminal Division’s prosecutors, including those in its Capital Case Section, prosecute violations of the

criminal statutes, some of which may qualify as acts of domestic terrorism. The Division's Office of International Affairs has the responsibility for obtaining fugitives and evidence from foreign countries in support of U.S. investigations and prosecutions around the country, including those concerning domestic terrorism.

The Department's Domestic Terrorism Executive Committee ("DTEC") exists in order to promote collaboration, communication, and information sharing among federal offices and law enforcement agencies regarding the threat of domestic terrorism. The DTEC meets multiple times a year and serves as a forum for members of the Department, the FBI, and a number of other law enforcement agencies (including from several other departments) to assess and share information about domestic terrorism threats and trends from their different vantage points. The DTEC is co-chaired by a United States Attorney, the National Security Division, and the FBI. Other Department Divisions are important members of and actively participate on the DTEC, including the Civil Rights, Criminal, Tax, and Environment and Natural Resources Divisions.

### **Examples of Violent Criminal Acts Related to Protest Activity**

The Department is prosecuting the tragic and senseless murder of Federal Protective Service Officer David Patrick Underwood by Steven Carrillo, who appears to be an adherent of the Boogaloo movement. Carrillo, with the assistance of his co-defendant Robert Alvin Justus, Jr., is alleged to have killed Officer Underwood and Santa Cruz County Sheriff's Office Sergeant Damon Gutzwiller in order to vindicate anti-government and anti-law enforcement beliefs. Carrillo is charged with the murder of Officer Underwood and attempted murder of another U.S. officer, and Justus with aiding and abetting, in the Northern District of California. Another three men, Stephen Parshall, Andrew Lynam, and William Loomis, have been indicted in the District of Nevada for conspiracy to cause destruction during protests in Las Vegas and possession of an unregistered destructive device, a so-called Molotov Cocktail. These men, also self-professed adherents of the Boogaloo movement, wanted to attack critical infrastructure and destroy U.S. government facilities.

Violent extremists, including some who identify with an anarchist ideology, have been active throughout the civil unrest. This includes a man charged with assaulting a Deputy U.S. Marshal with a hammer during the nightly violence targeting the federal courthouse in Portland, Oregon. Another man was charged with arson against a police precinct in the lawless zone of Seattle formerly known as CHOP. Another in Massachusetts, claiming to be part of an anarchist group, had an improvised incendiary device, again, a Molotov Cocktail, in his possession, and was attempting to incite a crowd to kill the police. And the Eastern District of New York is prosecuting three defendants in connection with their alleged attempts to use Molotov Cocktails to damage and destroy New York City Police Department vehicles during protests in May.

The recent civil unrest is scarcely the first time a violent anarchist extremist such as a self-proclaimed Antifa member perpetrated violence during or after a lawful protest. In July 2019, hours after an organized protest at the Northwest Immigration Detention Center in Tacoma, Washington, Willem Van Spronsen, armed with a rifle, used incendiary devices to set

fire to the building. Van Spronsen died during the event but appears to have identified with the Antifa movement and included the statement “i am antifa” in the letter he prepared for others to receive the day of the incident.

### **Task Force on Violent Anti-Government Extremists**

On June 26, 2020, Attorney General Barr signed a memo directing U.S. Attorneys Erin Nealy Cox from the Northern District of Texas and Craig Carpenito from the District of New Jersey to set up a task force to counter Violent Anti-Government Extremists (“Task Force”). The Attorney General directed the Task Force to work with the FBI to (1) develop detailed information about violent extremist individuals, networks, and movements; (2) share that information with appropriate federal, State, and local agencies; (3) provide training and identify resources to help law enforcement and prosecutors at all levels; and (4) identify, investigate, and prosecute violent acts by domestic extremists.

The Task Force is a call to redouble the Department’s efforts to better understand and fight violent anti-government extremism. This begins with a close partnership with the FBI. Working with the FBI’s DTOS, the Task Force will employ senior prosecutors from multiple districts who will directly partner with the leadership of the DTOS. These Task Force leaders will push forward the work of the Task Force, including providing training on violent anti-government extremism to the field, ensuring U.S. Attorney Offices across the country are closely coordinated with the FBI, and providing the resources and knowledge to advance investigations and charge and prosecute violent anti-government extremists.

Much of this work begins with fact gathering. The Department, including the FBI, has begun to identify what is known about violent anti-government extremists who have radicalized individuals to violence, to learn how violent anti-government extremists opportunistically coopt lawful First Amendment protected activity, and to examine current investigations and cases underway for data and information. From there, we will look for any possibility to expand the understanding through analysis of public information, such as media and other sources, utilization of novel legal tools, and the surging of resources.

The Department and the FBI are focused on ensuring that this country does not face threats from inside — or outside — its borders from any sort of terrorist, including violent anti-government extremists. Because our broad law enforcement mission provides many effective tools to investigate, disrupt, prosecute, and convict these threat actors, the Attorney General is able to change the tide of criminal activity that is threatening our communities today. In the days and weeks ahead, the Task Force will ensure that the Department’s approach to fighting violent anti-government extremism relies on comprehensive and accurate information. The Task Force’s ultimate goal is to prevent and interdict criminal acts before they cause harm to Americans and to do so in a way that ensures that the right of Americans to engage in peaceful protest is not limited.