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# Understanding and Conceptualizing Domestic Terrorism: Issues for Congress

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## Understanding and Conceptualizing Domestic Terrorism: Issues for Congress

The federal government defines *domestic terrorism* (DT) as ideologically driven crimes committed by individuals in the United States that are intended to intimidate or coerce a civilian population or influence the policy or conduct of a government. Federal definitions of DT are found in the USA PATRIOT Act (18 U.S.C. §2331), the Homeland Security Act (6 U.S.C. §101), and Title 28 of the Code of Federal Regulations (§0.85). Aside from the statutory and regulatory definitions of DT, the Federal Bureau of Investigation (FBI) has historically emphasized particular qualities inherent to the actors who engage in DT. According to the FBI, domestic terrorists are Americans who commit violence to achieve their goals that stem from domestic, extremist ideological influence, and lack foreign direction or influence. This conceptualization excludes ideologically driven crimes committed in the United States by individuals whose actions are directed or motivated by foreign groups.

How the federal government defines and conceptualizes DT shapes the nation's understanding of it as criminal conduct and as a policy issue. Domestic terrorists (and the crimes they commit) are labeled as such because their actions are directed against the civilian population and/or U.S. government within the boundaries of the United States. Like foreign terrorism, domestic terrorism involves ideologically driven criminal acts aimed at influencing the government or coercing the population.

Unlike foreign terrorism, the federal government does not have a mechanism to formally charge an individual with DT, which sometimes makes it difficult (and occasionally controversial) to formally characterize someone as a domestic terrorist. Further, domestic terrorists may adhere to the ideologies of certain extremist movements or belong to hate or extremist groups, but unlike the formal process involved in designating foreign terrorist organizations, DT movements and groups are not officially labeled as such by the federal government, thereby making it difficult to categorize the threat presented by any group or movement as a DT threat. While some observers may look to terrorism-related incidents, investigations, and arrests to help understand the scope of the DT threat, these data are limited.

DT incidents have a low occurrence rate but high impact, and the federal government has a significant role in combatting the threat of DT. In 2021, the FBI and the Department of Homeland Security (DHS) issued the nation's first national strategy for countering the DT threat. The strategy identifies DT threats to include potentially unlawful use or threats of force or violence in furtherance of ideological agendas from racially or ethnically motivated violent extremists, anti-government or anti-authority violent extremists (further broken down to include militia violent extremists, anarchist violent extremists, and sovereign citizen violent extremists), animal rights/environmental violent extremists, and abortion-related violent extremists.

How the government defines and combats DT and extremism is complicated for many reasons. Believing in or expressing extremist ideals and/or vocalizing support for DT incidents are not violations of federal law. If an individual in the United States espouses extremist beliefs, such as anarchy or the superiority of the white race, that behavior is generally protected speech under the First Amendment. Expressions of these beliefs sometimes precede DT incidents, and in hindsight some may question why these incidents could not be prevented. Crossing the line from First Amendment-protected activity, such as a peaceful protest, to DT-related violence can happen quickly; however, there is often little law enforcement can do in response to extremist but protected speech.

Despite the statutory definition of DT in Title 18 of the U.S. Code, no federal criminal provision expressly prohibits "domestic terrorism." While DT is defined in federal statute, the term *domestic terrorist* is not used to officially label any group (as it is with foreign terrorist organizations). However, federal law enforcement has referred (in some instances such as congressional testimony) to individuals as domestic terrorists and their crimes as DT.

Going forward, Congress may consider any number of legislative options regarding the federal government's approach to defining and confronting DT, including (1) enactment of a DT charging statute; (2) the utility and consequences of applying the DT label in federal policy; (3) allocation of additional, less, or equivalent appropriations to address DT; and (4) adjustments to DT data collection requirements for federal agencies.

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## Introduction

How the federal government defines and conceptualizes *domestic terrorism* (DT)<sup>1</sup> shapes the nation’s understanding of it as a federal crime and policy issue. Domestic terrorists (and the crimes they commit) are labeled as such because their criminal actions are directed against the civilian population and/or government and intended to influence the conduct of government within the boundaries of the United States. Like foreign terrorism, DT involves ideologically driven criminal acts aimed at influencing the government or coercing the population. But unlike with foreign terrorism, the federal government currently cannot formally charge individuals with DT, which sometimes makes it difficult (and occasionally controversial) for the federal government to formally characterize any individual as a domestic terrorist. Further, domestic terrorists may adhere to certain extremist ideologies or belong to hate or extremist groups, but unlike the formal process involved in designating foreign terrorist organizations, the federal government does not have a formal process to label domestic terrorist movements or groups, thereby making it difficult to categorize the threat presented by groups or movements as a DT threat. Some observers may look to terrorism-related incidents, investigations, and arrests to help them understand the scope of the DT threat, but these data are limited (see the “Domestic Terrorism Data” section).

Over the past several years, Congress has addressed DT through hearings, appropriations, and legislation. Further, Congress experienced an act of DT at the U.S. Capitol while Members were in session on January 6, 2021.<sup>2</sup> This report examines DT as a federal policy issue, analyzes DT threats and incidents, and discusses issues Congress may consider as it deliberates the federal government’s approach to defining and confronting DT.

## Defining Domestic Terrorism and Extremism

In addition to statutory definitions of DT, the federal government has further defined and conceptualized DT through policy. The Federal Bureau of Investigation (FBI) has defined DT as ideologically driven crimes committed by individuals in the United States that lack foreign direction or influence.<sup>3</sup> This conceptualization excludes individuals directed or motivated by foreign groups such as Al Qaeda or the Islamic State.<sup>4</sup> Further, the U.S. government does not provide a precise, comprehensive, and public explanation of any particular groups it might consider to be domestic terrorist organizations. Listing groups in this way may infringe on First Amendment-protected free speech—or the act of belonging to an ideological group, which in and of itself is not a crime in the United States. Instead, the FBI and Department of Homeland Security (DHS) have identified a number of general DT threats, and they categorize the threats according to specific extremist beliefs. The ideological concepts underlying such threats may

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<sup>1</sup> This report largely focuses on DT as a federal crime.

<sup>2</sup> See comments made by FBI Director Wray in U.S. Congress, Senate Committee on the Judiciary, *Oversight of the Federal Bureau of Investigation: the January 6 Insurrection, Domestic Terrorism, and Other Threats*, hearing, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., March 2, 2021. For CRS analysis of the attack on the U.S. Capitol on January 6, 2021, see CRS Insight IN11573, *Domestic Terrorism and the Attack on the U.S. Capitol*.

<sup>3</sup> James F. Jarboe, then-Domestic Terrorism Section Chief, Counterterrorism Division, FBI, Testimony Before the House Resources Committee, Subcommittee on Forests and Forest Health, February 12, 2002; and Council on Foreign Relations, *A Conversation with Christopher Wray*, April 26, 2019, <https://www.cfr.org/event/conversation-christopher-wray-0>.

<sup>4</sup> For more information about Al Qaeda, see CRS In Focus IF11854, *Al Qaeda: Background, Current Status, and U.S. Policy*. For more information about the Islamic State, see CRS In Focus IF10328, *The Islamic State*.

inspire criminal activity, such as hate crimes, that does not rise to the level of terrorism—but occasionally they do. The threshold for when a hate crime incident rises to the level of DT and the government decision to label it as such are not always clear (see “Hate Crimes as Domestic Terrorism Incidents”).

In the National Defense Authorization Act for Fiscal Year 2020 (NDAA FY2020; P.L. 116-92), Congress directed the FBI Director and DHS Secretary, in consultation with the Director of National Intelligence, to develop uniform definitions of DT and other related terms for the purpose of recordkeeping and tracking related data. The NDAA FY2020 also required that the FBI and DHS issue an annual strategic intelligence assessment and report on DT. These definitions and assessments are referenced throughout this CRS report.

## Federal Definitions of Domestic Terrorism

In general statutory terms, a domestic terrorist engages in terrorist activity that occurs in the United States. The FBI and DHS rely on statutory and regulatory definitions to identify incidents as DT or individuals as domestic terrorists. The FBI generally relies on two fundamental sources to define DT. First, the Code of Federal Regulations characterizes *terrorism* as including “the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”<sup>8</sup> Second, 18 U.S.C. §2331(5) more narrowly defines *domestic terrorism* and differentiates it from international terrorism and other criminal activity. This definition comes from Section 802 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001 (P.L. 107-56).

According to 18 U.S.C. §2331(5), DT occurs primarily within U.S. territorial jurisdiction and involves:

### Federal Agencies Responsible for Countering Domestic Terrorism

The FBI has lead responsibility for federal terrorism investigations.<sup>5</sup> Its Counterterrorism Division has a DT Operations Section comprised of special agents, intelligence analysts, and professional staff. Other federal agencies such as the Bureau of Alcohol, Tobacco, Firearms, and Explosives and other Department of Justice (DOJ) agencies; the Internal Revenue Service; and agencies within DHS also play a role in enforcement efforts to counter DT. These agencies—as well as state and local law enforcement representatives—typically cooperate within the framework of Joint Terrorism Task Forces (JTTFs), multiagency investigative units led by DOJ and the FBI across the country.<sup>6</sup>

Federal agencies such as those within DHS also support community-level and individual-level resilience to DT and extremist violence. They provide financial, technical, and educational assistance to those who are “well placed to recognize and address possible domestic terrorism recruitment and mobilization to violence.”<sup>7</sup>

<sup>5</sup> 28 C.F.R. §0.85. The FBI exercises lead agency responsibility in investigating all crimes for which it has primary or concurrent jurisdiction and that involve terrorist activities or acts in preparation of terrorist activities within the statutory jurisdiction of the United States.

<sup>6</sup> FBI and DHS, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, June 2023, p. 28, <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report-2023.pdf> (hereinafter, “*Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2023”). For more information on JTTFs, see FBI, *Joint Terrorism Task Forces*, <https://www.fbi.gov/investigate/terrorism/joint-terrorism-task-forces>; and DHS, U.S. Immigration and Customs Enforcement, *Joint Terrorism Task Force: Supporting the Global Fight Against Terrorism*, <https://www.ice.gov/partnerships-centers/jttf>.

<sup>7</sup> The White House, National Security Council, *National Strategy for Countering Domestic Terrorism*, June 2021, p. 20, <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf> (hereinafter, *National Strategy for Countering Domestic Terrorism*).

<sup>8</sup> 28 C.F.R. §0.85.

- (A) ... 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....

In their 2022 report to Congress containing strategic intelligence assessment and DT data (in describing its methodology for classifying acts of DT), the FBI described DT as “an ideologically-driven criminal act, including threats made to or acts of violence against specific victims, in furtherance of a domestic political and/or social goal.”<sup>9</sup> In their 2023 report, the FBI removed “ideologically-driven” from this definition among other changes: “[t]he FBI defines a ‘DT incident’ as a criminal act, including threats or acts of violence to specific victims, made in furtherance of a domestic political and/or social goal, which has occurred and can be confirmed.”<sup>10</sup>

Aside from the statutory and regulatory definitions of DT, the FBI has historically emphasized particular qualities inherent to the actors who engage in it. According to the FBI, domestic terrorists are Americans who commit violence to achieve their goals that stem from domestic, extremist ideological influences.<sup>11</sup> The FBI identifies and categorizes certain extremist ideological influences to define and describe the DT threat.

For its use of the term *domestic terrorism*, DHS relies on the definition of *terrorism* from the Homeland Security Act (HSA; 6 U.S.C. §101(18)), which is substantially similar, but not identical, to 18 U.S.C. §2331(5). It states that terrorism is any activity that:

- (A) involves an act that—
  - (i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and
  - (ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and
- (B) appears 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.

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<sup>9</sup> FBI and DHS, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, October 2022, p. 5, [https://www.dhs.gov/sites/default/files/2022-10/22\\_1025\\_strategic-intelligence-assessment-data-domestic-terrorism.pdf](https://www.dhs.gov/sites/default/files/2022-10/22_1025_strategic-intelligence-assessment-data-domestic-terrorism.pdf) (hereinafter, “*Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2022”).

<sup>10</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2023, p. 5.

<sup>11</sup> Michael C. McGarrity, *Statement Before the House Homeland Security Committee*, FBI, May 8, 2019, <https://www.fbi.gov/news/testimony/confronting-the-rise-of-domestic-terrorism-in-the-homeland> (hereinafter, “FBI McGarrity testimony, May 2019”); FBI, “Domestic Terrorism in the Post-9/11 Era,” September 7, 2009; James F. Jarboe (then Domestic Terrorism Section Chief, Counterterrorism Division), FBI, Testimony Before the House Resources Committee, Subcommittee on Forests and Forest Health, February 12, 2002.

Unlike the USA PATRIOT Act, this definition from the HSA specifically includes acts that are potentially destructive to critical infrastructure and does not specifically refer to *domestic* terrorism.

In describing its methodology for classifying acts of DT, the DHS Office of Intelligence and Analysis (I&A) defines a *DT attack* as “an incident motivated by a DVE [domestic violent extremist] ideology in which a weapon or tactic is purposefully deployed against a target for the purpose of causing injury, death, or property destruction.”<sup>12</sup> In distinguishing DHS’s methodology from the FBI’s, both the FBI and DHS explain:

these ideologically driven criminal acts must be dangerous to human life or potentially destructive to critical infrastructure or key resources to meet the definition of DT. A single incident may be part of a spree of criminal or violent activity conducted by the same perpetrator(s) using the same tactic(s), which are carried out against multiple locations in short succession.<sup>13</sup>

DHS’s inclusion of physical threats to “critical infrastructure or key resources” sets it apart from the FBI’s definition of DT.

## Federal Definitions of Domestic Violent Extremism

In recent years, both the FBI and DHS have categorized the DT threat by types of extremism, and more specifically, domestic violent extremism. In *Domestic Terrorism: Definitions, Terminology, and Methodology*, released in 2020, they list and describe the DT threat categories as follows:

**Racially or Ethnically Motivated Violent Extremism:** This threat encompasses the potentially unlawful use or threat of force or violence in furtherance of ideological agendas derived from bias, often related to race or ethnicity, held by the actor against others or a given population group. Racially or Ethnically Motivated Violent Extremists purport to use both political and religious justifications to support their racially- or ethnically-based ideological objectives and criminal activities.

**Anti-Government or Anti-Authority Violent Extremism:** This threat encompasses the potentially unlawful use or threat of force or violence in furtherance of ideological agendas, derived from anti-government or anti-authority sentiment, including opposition to perceived economic, social, or racial hierarchies, or perceived government overreach, negligence, or illegitimacy.

**Animal Rights/Environmental Violent Extremism:** This threat encompasses the potentially unlawful use or threat of force or violence in furtherance of ideological agendas by those seeking to end or mitigate perceived cruelty, harm, or exploitation of animals and/or the perceived exploitation or destruction of natural resources and the environment.

**Abortion-Related Violent Extremism:** This threat encompasses the potentially unlawful use or threat of force or violence in furtherance of ideological agendas relating to abortion, including individuals who advocate for violence in support of either pro-life or pro-choice beliefs.

**All Other Domestic Terrorism Threats:** This category encompasses threats involving the potentially unlawful use or threat of force or violence in furtherance of ideological agendas which are not otherwise defined under or primarily motivated by one of the other Domestic Terrorism threat categories. Such agendas could flow from, but are not limited to, a combination of personal grievances and beliefs, including those described in the other

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<sup>12</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2023, p. 6.

<sup>13</sup> *Ibid.*



Domestic Terrorism threat categories. Some actors in this category may also carry bias related to religion, gender, or sexual orientation.<sup>14</sup>

In their 2023 annual report, *Strategic Intelligence Assessment and Data on Terrorism* (hereinafter referred to as *Strategic Intelligence Assessment*, with the respective year of the report), the FBI and DHS rely on and amend/update the language in these categories to describe the DT threat, and also define the term *domestic violent extremist* (DVE). The report defines a DVE as follows:

an individual based and operating primarily within the United States or its territories without direction or inspiration from a foreign terrorist group or other foreign power who seeks to further political or social goals, wholly or in part, through unlawful acts of force or violence dangerous to human life.<sup>15</sup>

One apparent difference between the definitions of a DVE and domestic terrorist is that a DVE *seeks to* further political or social goals through unlawful violence while a domestic terrorist goes so far as *to plan or commit* acts of violence. In the aforementioned report, the FBI and DHS stress that “mere advocacy of political or social positions, political activism, use of strong rhetoric, or generalized philosophic embrace of violent tactics does not constitute extremism, and is constitutionally protected.”<sup>16</sup> The FBI and DHS acknowledge that the I&A uses the term *domestic terrorist* interchangeably with *domestic violent extremist*.<sup>17</sup>

In the *Strategic Intelligence Assessment*, 2021, the FBI and DHS further break down the anti-government/anti-authority violent extremism (-ist) category as follows:

**Militia Violent Extremists:** DVEs who take overt steps to violently resist or facilitate the overthrow of the US Government in support of their belief that the US Government is purposely exceeding its Constitutional authority and is trying to establish a totalitarian regime; oppose many federal and state laws and regulations, particularly those related to firearms ownership.

**Anarchist Violent Extremists:** DVEs who oppose all forms of capitalism, corporate globalization, and governing institutions, which are perceived as harmful to society.

**Sovereign Citizen Violent Extremists:** DVEs who believe they are immune from government authority and laws.<sup>18</sup>

The FBI and DHS have added further details about these extremists, but did not again define them in subsequent *Strategic Intelligence Assessment* reports. For example, in the *Strategic Intelligence Assessment*, 2023, the FBI and DHS add the following details for abortion-related violent extremists: “[a]bortion-related violent extremists (AbRVEs) – both pro-life and pro-choice – have threatened, vandalized, and impeded access to facilities that provide reproductive health services or counseling, which can violate the Freedom of Access to Clinic Entrances Act.”<sup>19</sup>

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<sup>14</sup> FBI and DHS, *Domestic Terrorism: Definitions, Terminology, and Methodology*, November 2020, <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-definitions-terminology-methodology.pdf/view>.

<sup>15</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2023, p. 4.

<sup>16</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2023, p. 4; and *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2022, p. 4. In the 2021 report, the FBI and DHS less affirmatively say that advocacy may not constitute extremism and may be constitutionally protected. See FBI and DHS, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, May 2021, p. 4, <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf> (hereinafter, “*Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2021”).

<sup>17</sup> FBI and DHS, *Domestic Terrorism: Definitions, Terminology, and Methodology*, November 2020, <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-definitions-terminology-methodology.pdf>, p. 2.

<sup>18</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2021, p. 5.

<sup>19</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2023, p. 10.



Law enforcement officials often use the term *domestic violent extremists* to describe the actors (or the alleged actors) while using *domestic terrorism* to describe the acts. For example, FBI Director Christopher Wray, in describing the January 6, 2021, attack on the U.S. Capitol, has referred to the individuals who engaged in violent criminal activity as violent extremists and has described the incident as DT:

Certainly the Capitol attack involved violent extremist[s]. As I said we the FBI consider this a form of domestic terrorism. It included a variety of backgrounds, certainly there were quite a number—we are seeing quite a number as we are building out the cases on the individuals we have arrested for the violence quite a number who what we would call sort of militia violent extremists so we've got a number who self-identify with you know the Proud Boys or the Oath Keepers, things like that. And we also have a couple of instances where we have already identified individuals involved in the criminal behavior who we would put in the racially motivated violent extremists who advocate for what you would call CERT of white supremacy so there have been some of those individuals as well.<sup>20</sup>

### **The National Strategy for Countering Domestic Terrorism**

In June 2021, President Biden and the National Security Council released the first U.S. strategy to address DT. The strategy points to the statutory definition of DT in Title 18 of the U.S. Code and highlights that federal DT law does not distinguish between political views.<sup>21</sup> In noting violent domestic terrorist attacks by individuals motivated by a range of ideologies, the strategy emphasizes that “racially or ethnically motivated violent extremists (principally those who promote the superiority of the white race) and militia violent extremists are assessed as presenting the most persistent and lethal threats.”<sup>22</sup>

## **Federal Domestic Terrorism Laws**

DT is not a chargeable federal offense. While an individual may commit crimes that are widely considered to be acts of DT, they cannot be *charged* at the federal level with committing an act of DT because there is no federal criminal provision expressly prohibiting *domestic terrorism*. For example, Timothy McVeigh, widely considered a domestic terrorist in the United States,<sup>23</sup> was never charged with or convicted of DT. Instead, he was convicted of murder, conspiracy, and using a weapon of mass destruction in the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City that killed 168 people.<sup>24</sup> Some states have DT laws,<sup>25</sup> and individuals who commit certain offenses in those states may face prosecution for DT under state law.<sup>26</sup> For

<sup>20</sup> Comments made by FBI Director Wray in U.S. Congress, Senate Committee on the Judiciary, *Oversight of the Federal Bureau of Investigation: the January 6 Insurrection, Domestic Terrorism, and Other Threats*, hearing, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., March 2, 2021.

<sup>21</sup> *National Strategy for Countering Domestic Terrorism*, p. 13.

<sup>22</sup> *Ibid.*, p. 6.

<sup>23</sup> For more information on Timothy McVeigh and the Oklahoma City DT incident in 1995, see FBI, *Oklahoma City Bombing*, <https://www.fbi.gov/history/famous-cases/oklahoma-city-bombing>; and Lou Michel and Dan Herbeck, *American Terrorist: Timothy McVeigh and the Oklahoma City Bombing* (Harper, 2001).

<sup>24</sup> Lois Romano and Tom Kenworthy, “McVeigh Guilty on All 11 Counts,” *The Washington Post*, June 3, 1997.

<sup>25</sup> For a comprehensive list of state DT laws, see International Center for Not-For-Profit Law, *State Domestic Terrorism Laws in the United States*, October 2023, <https://www.icnl.org/post/analysis/state-domestic-terrorism-laws-in-the-united-states>.

<sup>26</sup> Shirin Sinnar, *Separate and Unequal: The Law of “Domestic” and “International” Terrorism*, 117 MICH. L. REV. 1333, 1353–54 (2019): “In practice, state-level prosecutions for conduct that could be classified as terrorism generally proceed using conventional criminal charges.”

example, in 2019 James Jackson was convicted of DT as well as other crimes in New York for the “white supremacist murder” of Timothy Caughman.<sup>27</sup>

While there is no federal criminal offense that expressly prohibits DT, several federal statutes and the U.S. Sentencing Guidelines provide for increased penalties if DT is involved in a chargeable offense. For example, Section 111 of Title 18 of the U.S. Code authorizes various prison terms<sup>28</sup> for forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with certain federal officers or employees.<sup>29</sup> If an individual commits such an offense, and it involves acts of international or domestic terrorism as defined in 18 U.S.C. §2331(5), federal law authorizes imprisonment for up to an additional eight years.<sup>30</sup> For a discussion of how the courts have applied this and other DT-related sentence enhancements, see CRS Report R46829, *Domestic Terrorism: Overview of Federal Criminal Law and Constitutional Issues*.

Despite the absence of a specific federal DT charging statute, the FBI describes some acts as DT, some investigations as DT investigations, and some individuals as “DT subjects” arrested for applicable criminal violations or “subjects included within the domestic terrorism program.”<sup>31</sup> As mentioned previously, FBI Director Wray is quoted as saying that the attack on the U.S. Capitol on January 6 was DT: “That attack—that siege, was criminal behavior, plain and simple, and it was behavior that we, the FBI, view [as] domestic terrorism.”<sup>32</sup> To date, most federal charges<sup>33</sup> against accused participants in the attack range from vandalism of government property<sup>34</sup> to seditious conspiracy,<sup>35</sup> and most do not include DT nor any sentencing enhancement related to DT.<sup>36</sup> In some cases, judges have rejected prosecutors’ requests for a DT sentencing enhancement.<sup>37</sup> However, in May 2023 Stewart Rhodes (founder of the Oath Keepers, a militant

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<sup>27</sup> Manhattan District Attorney’s Office, *D.A. Vance Secures Domestic Terrorism Conviction of James Jackson For White Supremacist Murder of Timothy Caughman*, January 23, 2019.

<sup>28</sup> Acts under the statute that qualify as only “simple assault” are punishable by up to one year in prison, while acts that “involve physical contact with the victim of that assault or the intent to commit another felony” are punishable by imprisonment for up to eight years. 18 U.S.C. §111(a). Use of a deadly or dangerous weapon or infliction of bodily injury enhances the applicable penalty to up to 20 years in prison. 18 U.S.C. §111(b).

<sup>29</sup> 18 U.S.C. §111.

<sup>30</sup> For more information on this offense, see CRS Report RL34303, *Obstruction of Justice: An Overview of Some of the Federal Statutes That Prohibit Interference with Judicial, Executive, or Legislative Activities*.

<sup>31</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2023, p. 26; and *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2022, p. 21.

<sup>32</sup> Comments made by FBI Director Wray in U.S. Congress, Senate Committee on the Judiciary, *Oversight of the Federal Bureau of Investigation: the January 6 Insurrection, Domestic Terrorism, and Other Threats*, hearing, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., March 2, 2021.

<sup>33</sup> For more information on charges against the accused participants in the January 6, 2021, attack on the U.S. Capitol, see DOJ, *Capitol Breach Investigation Resource Page*, <https://www.justice.gov/usao-dc/capitol-breach-cases>. For legal discussion of three specific categories of federal criminal statutes that may have been violated by some of the participants, see CRS Legal Sidebar LSB10564, *Federal Criminal Law: January 6, 2021, Unrest at the Capitol*.

<sup>34</sup> See 18 U.S.C. §1361.

<sup>35</sup> See 18 U.S.C. §2384.

<sup>36</sup> For one of the accused participants in the January 6 attack on the U.S. Capitol, the FBI and DOJ used a DT provision in Section 219 of the USA PATRIOT Act (P.L. 107-56) to request a search warrant from a U.S. magistrate judge outside of the district where the suspect and property in question reside. See *In the Matter of the Search of One Apple iPhone Smartphone that is Currently Being Carried on the Person of Undisclosed Name, Under Rule 41*, Case No. 21-sw-253 (ZMF) Under Seal (United States District Court for the District of Columbia). According to the opinion, Section 219 of the USA PATRIOT Act “empowers a judge to issue an extraterritorial warrant ‘in an investigation of domestic terrorism or international terrorism’ so long as ‘activities related to the terrorism may have occurred’ in the issuing district.”

<sup>37</sup> Kyle Cheney and Josh Gerstein, “Judge rejects ‘terrorism’ sentencing enhancement for leader of Jan. 6 tunnel (continued...)”

group as described by Director Wray)<sup>38</sup> was sentenced for crimes committed on January 6, and his sentence was enhanced for involving acts of DT; Judge Amit Mehta noted that Rhodes' actions met the legal definition of terrorism.<sup>39</sup> Since Rhodes' sentencing, the DT sentence enhancement has been applied several times more for crimes related to January 6.<sup>40</sup>

## Domestic Terrorism Threats

The FBI and DHS do not officially designate domestic terrorist organizations,<sup>41</sup> but they openly delineate domestic terrorist *threats*. As discussed previously, the U.S. Department of Justice (DOJ) identifies DT threats to include potentially unlawful use or threat of force or violence in furtherance of ideological agendas from racially or ethnically motivated violent extremists, anti-government or anti-authority violent extremists (further broken down to include militia violent extremists, anarchist violent extremists, and sovereign citizen violent extremists), animal rights/environmental violent extremists, and abortion-related violent extremists.<sup>42</sup>

In explaining to the public how they investigate terrorism, the FBI describes the DT threat as persistent, with actors “crossing the line from exercising First Amendment-protected rights to committing crimes in furtherance of violent agendas.”<sup>43</sup> Crossing the line from First Amendment-protected activity, such as a peaceful protest, to DT-related violence can happen quickly. In 2020, for example, violence and rioting broke out at protests across the country (many occurring in Portland, OR) that had previously been peaceful.<sup>44</sup> Then-Attorney General William P. Barr said at the time, “The violence instigated and carried out by Antifa and other similar groups in connection with the rioting is domestic terrorism and will be treated accordingly.”<sup>45</sup> DOJ

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confrontation,” *Politico*, February 27, 2023, <https://www.politico.com/news/2023/02/27/judge-rejects-terrorism-sentencing-jan-6-00084592>; and Daniel Barnes and Ryan J. Reilly, “Capitol rioter Guy Reffitt gets longest Jan. 6 sentence, but no terrorism enhancement,” *NBC News*, August 1, 2022, <https://www.nbcnews.com/politics/justice-department/capitol-rioter-guy-reffitt-gets-longest-jan-6-sentence-no-terrorism-en-rcna40664>.

<sup>38</sup> U.S. Congress, Senate Committee on the Judiciary, *Oversight of the Federal Bureau of Investigation: the January 6 Insurrection, Domestic Terrorism, and Other Threats*, hearing, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., March 2, 2021.

<sup>39</sup> For more information on this case, see DOJ, Court Sentences Two Oath Keepers Leaders to 18 Years in Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach, May 25, 2023, <https://www.justice.gov/usao-dc/pr/court-sentences-two-oath-keepers-leaders-18-years-prison-seditious-conspiracy-and-other>.

<sup>40</sup> DOJ, Two Leaders of the Proud Boys Sentenced to 17 and 15 Years in Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach, August 31, 2023, <https://www.justice.gov/opa/pr/two-leaders-proud-boys-sentenced-17-and-15-years-prison-seditious-conspiracy-and-other>.

<sup>41</sup> While the government does not provide an official and public list of domestic terrorist organizations, it does include known or suspected terrorists (to include international and domestic terrorists) in its Threat Screening System (formerly known as the Terrorist Screening Database and commonly known as the Terrorist Watchlist.) See FBI, Terrorist Screening Center, “Frequently Asked Questions,” <https://ucr.fbi.gov/nsb/tsc/terrorist-screening-center-frequently-asked-questions-032416.pdf>; and FBI, *Terrorist Screening Center*, <https://www.fbi.gov/investigate/terrorism/tsc>.

<sup>42</sup> In recent years, the FBI switched from using the term *anti-abortion* to *abortion-related* extremism, thus including individuals who may commit crimes to protect abortion rights. For an example of how the FBI previously applied the term *anti-abortion extremism* or *extremist*, see FBI, *Terrorism 2002/2005*, <https://www.fbi.gov/stats-services/publications/terrorism-2002-2005>. For an example of how FBI applies the term *abortion-related violent extremism*, see *Strategic Intelligence Assessment and Data on Domestic Terrorism, 2023*.

<sup>43</sup> FBI, *What We Investigate*, <https://www.fbi.gov/investigate/terrorism> (accessed on November 15, 2023).

<sup>44</sup> For a discussion of federal law enforcement and the Portland, OR, protests in 2020, see CRS Legal Sidebar LSB10529, *Federal Law Enforcement and the Portland Protests: Legal Considerations*.

<sup>45</sup> DOJ, *Attorney General William P. Barr's Statement on Riots and Domestic Terrorism*, May 31, 2020, <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-riots-and-domestic-terrorism>.

responded by engaging its JTTFs and charging many of those who engaged in violence with violations of federal law.<sup>46</sup>

## Former Methods of Describing Threats

The FBI's descriptions of DT have evolved. In previous descriptions of the DT threat, the FBI has used the terms *ecoterrorists*, *black separatists*, *white supremacists*, and *abortion extremists*.<sup>47</sup> Also in past descriptions of the DT threat, the FBI distinguished between *special interest terrorism* and *traditional right-wing and left-wing terrorism*. For instance, in congressional testimony in 2002, James Jarboe, former Domestic Terrorism Section Chief of the FBI's Counterterrorism Division, described special interest terrorism as follows:

Special interest terrorism differs from traditional right-wing and left-wing terrorism in that extremist special interest groups seek to resolve specific issues, rather than effect widespread political change. Special interest extremists continue to conduct acts of politically motivated violence to force segments of society, including the general public, to change attitudes about issues considered important to their causes. These groups occupy the extreme fringes of animal rights, pro-life, environmental, anti-nuclear, and other movements.<sup>48</sup>

It is unclear whether any FBI materials currently use the categories of *special interest*, *left-wing*, and *right-wing* terrorism, but they have not appeared in recent FBI reports or testimony. Labeling terrorism in such a manner is discussed further in the “Utility of Using the Domestic Terrorism Term” section.

## Current Threats—Extremists and Lone Actors

According to the FBI, the DT threat “expanded significantly” in 2021 and 2022.<sup>49</sup> As it had in previous years, the FBI concluded that the increase is largely attributable to an escalating threat from DVEs and an increase in anti-government or anti-authority violent extremism. DHS has echoed this conclusion and states that DVEs present the “most persistent and lethal threat” to the homeland, and it has designated domestic violent extremism as a “national priority area” for its Homeland Security Grant Program (HSGP).<sup>50</sup> FBI Director Wray stated that “[t]rends may shift, but the underlying drivers for domestic violent extremism—such as perceptions of government or law enforcement overreach, sociopolitical conditions, racism, anti-Semitism, Islamophobia, misogyny, and reactions to legislative actions—remain constant.”<sup>51</sup>

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<sup>46</sup> Ibid; and DOJ, “74 People Facing Federal Charges for Crimes Committed During Portland Demonstrations: Charges Include Assaulting Federal Officers, Arson, Failing to Obey Lawful Orders, and Damaging Government Property,” August 27, 2020, <https://www.justice.gov/usao-or/pr/74-people-facing-federal-charges-crimes-committed-during-portland-demonstrations>.

<sup>47</sup> DOJ, *Counterterrorism White Paper*, June 22, 2006, p. 59. See also FBI, “What Are Known Violent Extremist Groups?”. The FBI's former website was captioned “Don't Be a Puppet,” and addressed teenagers. It succinctly described numerous violent extremist groups or ideologies, but is no longer publicly available.

<sup>48</sup> James F. Jarboe (then Domestic Terrorism Section Chief, Counterterrorism Division), FBI, Testimony Before the House Resources Committee, Subcommittee on Forests and Forest Health, February 12, 2002.

<sup>49</sup> FBI, *FY2023 President's Budget Request*, March 2022, p. 68.

<sup>50</sup> DHS, *Homeland Threat Assessment*, October 2020, p. 17; and DHS, *Summary of the Terrorism Threat to the United States*, National Terrorism Advisory System Bulletin, June 7, 2022, [https://www.dhs.gov/sites/default/files/ntas/alerts/22\\_0607\\_S1\\_NTAS-Bulletin\\_508.pdf](https://www.dhs.gov/sites/default/files/ntas/alerts/22_0607_S1_NTAS-Bulletin_508.pdf). For more information about the HSGP, see DHS, *Homeland Security Grant Program*, <https://www.dhs.gov/homeland-security-grant-program-hsgp>.

<sup>51</sup> FBI Director Christopher Wray, *Worldwide Threats to the Homeland: Statement for the Record*, Statement Before (continued...)

In the *Strategic Intelligence Assessment and Data on Domestic Terrorism*, budget documents, and FBI testimony regarding the DT threat over the last several years, the FBI has stated that it is most concerned about lone actors and small groups of individuals, primarily using firearms and easily accessible weapons.<sup>52</sup> According to the FBI, these individuals “act without a clear group affiliation or guidance, making them challenging to identify, investigate, and disrupt” and they often radicalize online.<sup>53</sup> The decentralized and fluid nature of the threat from lone actors who may quickly mobilize to action presents a significant challenge to law enforcement in seeking to prevent terrorist incidents.<sup>54</sup>

## Domestic Terrorism Incidents

As compared to other violent crimes, DT incidents occur less frequently,<sup>55</sup> but when they do occur they often have high impact. Federal law enforcement officials and researchers generally agree that the number of DT incidents has risen in recent years, but government statistics on these incidents are limited (see the “Domestic Terrorism Data” section).<sup>56</sup> In 2021 and 2022, the FBI published data on DT-related charges from 2015-2021 as required by the National Defense Authorization Act for Fiscal Year 2020 (NDAA FY2020; P.L. 116-92). While these data show the number of referrals to the FBI for possible DT incidents pending FBI DT investigations, and the number of subjects arrested for DT-related charges (see **Table 1**), they do not provide a comprehensive understanding of DT in the United States. Additional details, such as which underlying offenses precisely qualify as DT-related charges,<sup>57</sup> the location of incidents, and the relevant category of extremism would help provide a more comprehensive understanding of the nature and extent of DT-related crimes in the United States.

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the House Homeland Security Committee, September 17, 2020, <https://www.fbi.gov/news/testimony/worldwide-threats-to-the-homeland-091720>.

<sup>52</sup> In the *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2021, the FBI and DHS called the threat from lone offenders the “greatest terrorism threat to the Homeland we face today.” In subsequent assessments in 2022 and 2023, they labeled the threat as “one of the most significant terrorism threats to the United States we face today.” See *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2023, p. 2; *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2022, p. 2; and *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2021, p. 2.

<sup>53</sup> *Ibid.*; FBI, McGarrity testimony, May 2019; and FBI, *FY2023 President’s Budget Request*, March 2022, p. 68.

<sup>54</sup> *National Strategy for Countering Domestic Terrorism*, p. 9.

<sup>55</sup> While DT data are limited in several ways (see the “Domestic Terrorism Data” section of this report), based on what is known about violent crime in the United States, DT incidents occur less frequently than most other violent crimes.

<sup>56</sup> FBI Director Christopher Wray, *Federal Bureau of Investigation Budget Request for Fiscal Year 2023*, Statement Before the Senate Appropriations Committee, Subcommittee on Commerce, Justice, Science, and Related Agencies, May 25, 2022, <https://www.fbi.gov/news/testimony/federal-bureau-of-investigation-budget-request-for-fiscal-year-2023>; and William Braniff, *Countering Domestic Terrorism: Examining the Evolving Threat*, National Consortium for the Study of Terrorism and Responses to Terrorism (START), Testimony before the House Homeland Security and Governmental Affairs Committee, September 25, 2019, p. 3.

<sup>57</sup> The FBI and DHS provide examples of federal statutes that reach conduct associated with DT depending on the circumstances of the crimes. They state that some federal criminal statutes on their face relate to DT (such as aircraft sabotage and bombing of federal property) while others do not. See *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2023, p. 26.

**Table I. Number of Individuals Arrested with DT-Related Charges, Pending DT Investigations, and Referrals of Possible DT Incidents**  
FY2015–FY2022

	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022
Number of DT subjects arrested by or in coordination with FBI with federal charges <sup>a</sup>	130	169	109	61	65	NA	NA	NA
Number of DT subjects arrested by or in coordination with FBI charged with state/local charges <sup>a</sup>	81	60	77	59	44	NA	NA	NA
<b>Total number of subjects with state or federal DT-related charges<sup>b</sup></b>	211	229	186	113	107	180	800	400
Number of referrals to FBI of possible DT incidents <sup>c</sup>	NA	NA	NA	NA	675	5,669	8,375	5,772
Number of referrals of possible DT incidents from FBI to federal and/or SLTT <sup>d</sup> partners	NA	NA	NA	NA	NA	1,287	1,399	1,118
Number of DT incidents the FBI converted to preliminary or full DT investigations	NA	NA	NA	NA	NA	747	1,525	394
Approximate number of pending FBI DT investigations <sup>e</sup>	NA	NA	1,000	1,000	1,000	1,400	2,700	2,700

**Source:** Federal Bureau of Investigation and U.S. Department of Homeland Security, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, June 2023, pp. 25-27, <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf>; Federal Bureau of Investigation and U.S. Department of Homeland Security, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, October 2022, pp. 20-25, [https://www.dhs.gov/sites/default/files/2022-10/22\\_1025\\_strategic-intelligence-assessment-data-domestic-terrorism.pdf](https://www.dhs.gov/sites/default/files/2022-10/22_1025_strategic-intelligence-assessment-data-domestic-terrorism.pdf); and Federal Bureau of Investigation and U.S. Department of Homeland Security, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, May 2021, pp. 20-25, <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf>.



**Notes:** NA = not available. In the *Strategic Intelligence Assessment, 2023*, the FBI and DHS state that a “litany of federal and state charges are used to charge DT subjects for applicable criminal violations.” They describe federal charges as including “those related to weapons, explosives, threats, attacks on federal officials or facilities, hate crimes, arson, violence against animal enterprises, and material support to terrorists.” The FBI and DHS specifically refer to 18 U.S.C. §2339A, and state “it is a crime to provide material support or resources to another knowing or intending they will be used in preparation for or carrying out certain terrorism-related offenses. Unlike a violation of 18 U.S.C. §2339B, the recipient of the material support need not be a designated foreign terrorist organization.” See FBI and DHS, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, June 2023, p. 25.

- a. For FY2020 to FY2022, the FBI did not break down the arrest data for federal, state, and local charges, but instead more generally stated that arrests were often in coordination with partner agencies.
- b. In FY2018, seven subjects were charged with both federal and state/local charges, and in FY2019, two subjects were charged with both federal and state/local charges. Therefore, the number of subjects charged federally and the number of subjects charged with state/local charges do not sum to the total number of subjects charged for those fiscal years. For FY2020 to FY2022, the FBI provided the approximate number of subjects. In FY2023, the FBI began referring to the subjects as “subjects included within the domestic terrorism program.”
- c. In 2019, the FBI began tagging reports of possible DT incidents to enhance program management and operational oversight. The process is manual and user-dependent, and may not accurately capture the number of DT referrals.
- d. SLTT refers to state, local, territorial, and tribal law enforcement agencies.
- e. The FBI did not provide the number of pending DT investigations for FY2015 and FY2016.

As shown in **Table 1**, the total number of subjects with DT-related charges decreased each year from FY2016 to FY2019, before increasing by more than four times from 180 in FY2020 to 800 in FY2021 and then decreasing to 400 in FY2022. The increase in DT-related charges filed from FY2020 to FY2021 is largely attributable to the DOJ investigation of the January 6, 2021, attack on the U.S. Capitol. As of December 6, 2023, more than 1,237 defendants have been charged with crimes related to the Capitol breach. While the FBI considers the incident itself to be DT, it is unclear how many of these charges are considered to be DT-related.<sup>58</sup>

In recent years, the FBI and DHS have elaborated on DT-related arrests and incidents in congressional testimony and other public statements. In 2019, FBI Director Wray informed Congress that a majority of the DT cases that the FBI had investigated by that point in FY2019 were motivated by white supremacist violence.<sup>59</sup> The FBI reportedly later clarified that Director Wray meant that a majority of the DT cases *involving a racial motive* were thought to be motivated by white supremacy.<sup>60</sup> More recently, in the 2022 *Strategic Intelligence Assessment and Data on Domestic Terrorism*, the FBI stated that the primary investigative classification for DT investigations had shifted from racially or ethnically motivated violent extremism at the end of FY2020 to anti-government or anti-authority violent extremism by the end of FY2021 (see **Table 2**).

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<sup>58</sup> DOJ, U.S. Attorney’s Office, District of Columbia, *35 Months Since the Jan. 6 Attack on the Capitol*.

<sup>59</sup> U.S. Congress, Senate Committee on the Judiciary, *Oversight of the Federal Bureau of Investigation*, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., July 23, 2019.

<sup>60</sup> Matt Zapotosky, “Wray says FBI has recorded about 100 domestic terrorism arrests in fiscal 2019 and many investigations involve white supremacy,” *Washington Post*, July 23, 2019.

**Table 2. Percentage Breakdown of FBI DT Investigations by Investigative Classification**  
FY2020 – FY2022

Investigative Classification	End of FY2020	End of FY2021	End of FY2022
Racially or Ethnically Motivated Violent Extremism	40%	19%	19%
Anti-Government or Anti-Authority Violent Extremism	37%	38%	31%
Animal Rights/Environmental Violent Extremism	1%	1%	1%
Abortion-Related Violent Extremism	1%	0%	1%
All Other DT Threats	4%	11%	13%
Anti-Riot Laws/Civil Unrest <sup>a</sup>	17%	31%	35%

**Source:** Federal Bureau of Investigation and U.S. Department of Homeland Security, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, June 2023, p. 25, <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf>; and Federal Bureau of Investigation and U.S. Department of Homeland Security, *Strategic Intelligence Assessment and Data on Domestic Terrorism*, October 2022, p. 20, [https://www.dhs.gov/sites/default/files/2022-10/22\\_1025\\_strategic-intelligence-assessment-data-domestic-terrorism.pdf](https://www.dhs.gov/sites/default/files/2022-10/22_1025_strategic-intelligence-assessment-data-domestic-terrorism.pdf).

**Notes:** In presenting these data, the FBI noted that a significant portion of the FY2021 investigations (included in this table) were “directly related to the unlawful activities during the January 2021 siege on the U.S. Capitol” but does not indicate the investigative classification for each investigation. The FBI provides percentages for the investigative classifications, but does not provide all numbers.

- a. In their 2023 *Strategic Intelligence Assessment*, the FBI added an asterisk to this category, and labeled it as a “non-DT threat” category classification that is covered under the DT Program. In the assessment, the FBI explains that “[a]lthough civil unrest and anti-riot investigations may not be directly aligned to the DT threat categories, these investigations are part of the FBI’s DT Program for multiple reasons, including: because investigation of these matters may be closely related to separate terrorism investigations; because this criminal activity may be motivated by similar ideologies as those that appear in the DT threat categories; and/or for other administrative or organizational matters.” See *Strategic Intelligence Assessment and Data on Domestic Terrorism*, June 2023, p. 18, <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf>.

Another trend highlighted by the FBI has been online radicalization of domestic extremists and terrorist incidents related to their radicalization. Former Assistant FBI Director McGarrity noted in testimony to Congress that radicalization to violence is increasingly taking place online where “social media is used for the distribution of propaganda, recruitment, target selection, and incitement to violence.”<sup>61</sup>

Former Assistant FBI Director McGarrity further explained that the global nature of the threat has enabled extremists to engage with other like-minded individuals without having to join organized groups. For example, a 2019 incident (highlighted by FBI Director Wray in congressional testimony)

involved the online radicalization of a U.S. Coast Guard officer who has been accused of plotting a domestic terrorist attack. Christopher Hasson is said to have researched online information on Hitler, Nazis, and the number of Jewish people living in the United States, and he allegedly plotted a large-scale terrorist attack to assassinate Democratic Members of Congress, journalists, and others.<sup>62</sup>

<sup>61</sup> FBI, McGarrity testimony, May 2019.

<sup>62</sup> Lynh Bui, “‘I am dreaming of a way to kill almost every last person on earth’: A self-proclaimed white nationalist planned a mass terrorist attack, the government says,” *Washington Post*, February 20, 2019; Lynn Bui, “Coast Guard (continued...)”

## Hate Crimes as Domestic Terrorism Incidents

Recent mass violence events in the United States and the federal response have illustrated the conceptual overlap between DT and hate crimes. When characterizing ideologically inspired criminal actors for investigative purposes, the FBI occasionally confronts suspects who can be viewed either as domestic terrorists or as perpetrators of hate crimes, or both. As noted previously, DT is not a chargeable federal offense, but hate crimes are,<sup>67</sup> and these two categories are not mutually exclusive.

Among other things, federal law defines hate crimes to include conduct involving bodily injury in which certain jurisdictional prerequisites are met and the offender intentionally selects a victim because of their actual or perceived race, color, religion, national origin, gender, gender identity, disability, or sexual orientation.<sup>68</sup> Hate crimes may appear to involve ideological issues; however, as described by one former FBI official, a hate crime “generally involve[s] acts of personal malice directed at individuals” and is missing the broader motivations driving acts of DT.<sup>69</sup> The line may sometimes be blurry, and some cases may be investigated as both a hate crime and DT.

Government officials’ statements regarding certain violent incidents illustrate the challenges officials face in characterizing acts as hate crimes or DT, or distinguishing between them. On

### Social Media and the DT Threat<sup>63</sup>

Social media plays an important role in the radicalization and mobilization of extremists in the United States.<sup>64</sup> Extremists of various beliefs and backgrounds use social media to share and consume content; foster relationships with like-minded individuals; and, in some instances, facilitate violent attacks. While extremists use mainstream platforms (e.g., Facebook, X), mainstream social media companies’ efforts to remove content that violates their policies, and if necessary remove the account responsible for the content from their platforms, may cause extremists to switch to less-moderated and more encrypted social media platforms.<sup>65</sup> In its *National Strategy for Countering Domestic Terrorism*, the Biden Administration stated that DOJ is examining whether new legislative authorities that balance safety and the protection of civil rights and liberties are “necessary and appropriate.”<sup>66</sup>

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officer accused of plotting terrorist attack to remain jailed, judge says,” *Washington Post*, May 13, 2019; and Thomas Cullen, *Opinion: The Grave Threats of White Supremacy and Far-Right Extremism*, DOJ, *New York Times* (published February 22, 2019, by the *New York Times* and republished by DOJ on February 25, 2019).

<sup>63</sup> For more information about social media and the DT threat, see CRS Insight IN11999, *Law Enforcement Investigations of Extremist Calls to Action on Social Media*.

<sup>64</sup> The National Consortium for the Study of Terrorism and Responses to Terrorism, *The Use of Social Media by United States Extremists*, research brief, July 2018, [https://www.start.umd.edu/pubs/START\\_PIRUS\\_UseOfSocialMediaByUSExtremists\\_ResearchBrief\\_July2018.pdf](https://www.start.umd.edu/pubs/START_PIRUS_UseOfSocialMediaByUSExtremists_ResearchBrief_July2018.pdf).

<sup>65</sup> U.S. Congress, House Committee on Energy and Commerce, Subcommittee on Communications and Technology, *Disinformation Nation: Social Media’s Role in Promoting Extremism and Misinformation*, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., March 25, 2021; and Ellen Nakashima, Mark Berman, and Matthew D. LaPlante, “Purges force extremists off social media sites. That can complicate investigators’ work,” *Washington Post*, January 17, 2021.

<sup>66</sup> *National Strategy for Countering Domestic Terrorism*, p. 25.

<sup>67</sup> A number of federal criminal statutes expressly prohibit certain types of bias-motivated conduct. One prominent example is the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009 codified at 18 U.S.C. §249, which among other things makes it a crime to “willfully cause bodily injury to any person or, through the use of ... a dangerous weapon,” or attempt to “cause bodily injury to any person” due to certain actual or perceived characteristics of any person. That said, a number of federal criminal statutes historically used to prosecute hate crimes do not expressly require proof of bias nor do they specifically refer to *hate crimes*. For example, see 18 U.S.C. §§241, 242. For a further overview of these statutes see CRS In Focus IF12333, *Hate Crimes: Key Federal Statutes*.

<sup>68</sup> See the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, 18 U.S.C. §249.

<sup>69</sup> U.S. Congress, Senate Committee on Environment and Public Works, *Eco-Terrorism Specifically Examining the Earth Liberation Front and the Animal Liberation Front*, Responses of John E. Lewis to Additional Questions from Senator Obama, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., May 18, 2005.

May 14, 2022, Payton Gendron shot 13 individuals (who were predominantly Black; 10 were killed) in a supermarket in Buffalo, NY.<sup>70</sup> Prior to this incident, Gendron reportedly wrote a document and made various online statements outlining his plans to murder Black people and supporting a racist theory. The DOJ description of the incident, FBI Director Wray’s statement, and President Biden’s remarks at the crime site may illustrate the challenges officials face in characterizing acts as hate crimes, violent extremism, or DT, and distinguishing between them. In describing the investigation, DOJ and FBI Director Wray stated they are treating the incident as a “hate crime and an act of racially-motivated violent extremism,” while President Biden described the incident as DT.<sup>71</sup>

While the data are not directly comparable,<sup>72</sup> reported hate crime incidents and related federal investigations appear to occur more frequently than reported DT incidents and their associated investigations. As required by the Hate Crime Statistics Act (HCSA; P.L. 101-275), the FBI collects data on hate crimes reported to the police, which are voluntarily reported by law enforcement agencies across the country. As required by the NDAA FY2020, the FBI reports data for “each completed or attempted incident of domestic terrorism” that has occurred in the United States and is reported to a law enforcement agency.<sup>73</sup> According to the FBI, reported hate crime incidents increased 6.5%—from 10,891 in 2021 to 11,643 in 2022.<sup>74</sup> In FY2022, the FBI reported receiving 5,772 referrals of possible DT incidents—31.0% less than the number of referrals (8,375) in FY2021 (see **Table 1**). While the NDAA FY2020 requires the FBI to report the number

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<sup>70</sup> Gendron pleaded guilty to 10 counts of first-degree murder and one count of domestic terrorism motivated by hate (state charges). The federal case against Gendron, which includes 10 counts of hate crimes resulting in death, among other charges, is still pending. For more information, see Bill Hutchinson and Aaron Katersky, “Judge says ‘no mercy,’ victim’s families vent their anger as Buffalo mass shooter sentenced to life,” *ABC News*, February 15, 2023; and DOJ, *Victim Notification – United States v. Payton Gendron*, <https://www.justice.gov/usao-wdny/victim-notification-united-states-v-payton-gendron>.

<sup>71</sup> DOJ, Justice Department Statement on the Mass Shooting in Buffalo, NY, May 14, 2022; FBI, Statement on the FBI Response to the Shooting in Buffalo, New York, May 16, 2022, <https://www.fbi.gov/news/press-releases/press-releases/statement-on-the-fbi-response-to-the-shooting-in-buffalo-new-york>; and The White House, Remarks by President Biden and First Lady Biden Honoring the Lives Lost in Buffalo, New York, and Calling on All Americans to Condemn White Supremacy, May 17, 2022, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/05/17/remarks-by-president-biden-and-first-lady-biden-honoring-the-lives-lost-in-buffalo-new-york-and-calling-on-all-americans-to-condemn-white-supremacy/>.

<sup>72</sup> The FBI’s methodology for collecting and recording hate crime data is vastly different from the way it records DT incidents. For hate crimes, the FBI collects data from law enforcement agencies across the country and requires them to use a two-step process for investigating hate crimes before reporting them to the FBI’s Hate Crime Statistics Program. In the first step, the law enforcement officer that initially responds to a potential hate crime incident is responsible for determining whether there is any indication that the offense was motivated by bias against an individual’s perceived membership in one of the groups specified in the Hate Crime Statistics Act (HCSA). If there is an indication of a bias motivation, the incident is designated as a suspected bias-motivated crime and forwarded to an investigator. In the second step, the investigator is responsible for reviewing the facts of the incident and making the final determination as to whether the crime meets the HCSA definition of a hate crime. According to the FBI, an agency should only report an incident as a hate crime when a law enforcement investigation reveals sufficient evidence to lead a reasonable and prudent person to conclude that the offender’s actions were motivated, in whole or in part, by his or her bias. For more information, see CRS Report R46318, *Federal Data on Hate Crimes in the United States*. In recording the referrals of DT incidents or possible DT incidents, the FBI relies on its case management system (eGuardian) for handling suspicious activity reports from federal, state, and local law enforcement agencies and the Department of Defense related to counterterrorism, counterintelligence, cyber incidents, criminal complaints, and weapons of mass destruction. A report is transferred to the FBI’s internal Guardian system where it is “further evaluated by the appropriate squad or JTTF for any action deemed necessary.” See *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2023, p. 27.

<sup>73</sup> See Section 5602 of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92) and *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2023.

<sup>74</sup> FBI, *Hate Crime Statistics*, 2022, <https://cde.ucr.cjis.gov>.

of FBI investigations with a nexus to DT initiated as a result of a referral or investigation by a federal, state, local, tribal, territorial, or foreign government of a hate crime, the FBI states that it is unable to do this because “there is no mandatory reporting requirement to identify hate crime incidents that are also considered criminal activity that appears motivated by a political and/or social goal consistent with the DT threat categories.”<sup>75</sup>

### Political Violence and Domestic Terrorism

Some but not all political violence may be classified as DT, and it may be difficult for law enforcement to determine the ultimate motivations in these crimes and classify them accordingly. For example, in 2017 Representative Steve Scalise and five others were shot by a DVE, but several years passed before the FBI officially classified the incident as DT.<sup>76</sup> In another example of the complicated nature of classifying political violence, Secretary of Homeland Security Alejandro Mayorkas stated that the violent assault on Paul Pelosi (husband of Speaker Nancy Pelosi) in October 2022 would be difficult to label as DT because this would have “legal implications for particular proceedings in a court of law” and that he would “let that process play out in a court of law.”<sup>77</sup>

## Going Forward in Understanding Domestic Terrorism: Issues Facing Congress

Congress may consider any number of legislative and oversight options in considering the federal government’s approach in defining and confronting DT, including (1) enactment of a DT charging statute; (2) the utility and consequences of applying the DT label in federal policy; (3) allocation of additional, less, or equivalent appropriations to address DT; and (4) adjustments to DT data collection requirements for federal agencies.

### Considering a Federal Domestic Terrorism Charging Statute

Some observers argue in support of creating a federal criminal statute that would make DT a chargeable federal offense under Title 18 of the U.S. Code, the main criminal code of the federal government. Others argue against this idea.<sup>78</sup> Overall, some believe a specific criminal statute could help deter future terrorist attacks,<sup>79</sup> while others believe it could alienate those who may be sympathetic to domestic extremist causes and possibly lead to an increase in DT incidents.<sup>80</sup>

<sup>75</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2023, p. 26.

<sup>76</sup> Rebecca Beitsch, *FBI Reclassifies 2017 Baseball Field Shooting as Domestic Terror*, *The Hill*, May 17, 2021, <https://thehill.com/policy/national-security/553958-fbi-reclassifies-2017-baseball-field-shooting-as-domestic-terror/>. For the FBI’s discussion of classification of the incident as DT, see *Strategic Intelligence Assessment and Data on Domestic Terrorism*, 2021, p. 35.

<sup>77</sup> Comments by Secretary Mayorkas during interview on *The Situation Room with Wolf Blitzer*, CNN, October 31, 2022. See also discussion of interview in Zach Schonfeld, “Mayorkas Says its ‘Difficult’ Legally to Label Paul Pelosi Attack ‘Domestic Terrorism,’” *The Hill*, October 31, 2022, <https://thehill.com/policy/national-security/3713382-mayorkas-says-its-difficult-legally-to-label-paul-pelosi-attack-domestic-terrorism/>.

<sup>78</sup> Some of these arguments are outlined in Charlie Savage, “What Could a Domestic Terrorism Law Do?,” *New York Times*, August 7, 2019; and Mike Bebernes, “Does the U.S. need a domestic terrorism law to fight extremism?” *Yahoo News 360*, January 16, 2021.

<sup>79</sup> Adam Maruyama, “Terrorism is a tactic—not a color or ideology,” *The Hill*, January 8, 2021.

<sup>80</sup> Emerson T. Brooking and Jacob Shapiro, “Americans Were Worried About the Wrong Threat,” *The Atlantic*, January 10, 2021.



## Arguments in Support of a Domestic Terrorism Law

Arguments in support of making DT a chargeable federal offense include that (1) it would elevate the seriousness of the crime to reflect its threat to national security, (2) it would lead to an increase in the tools available to law enforcement to address the threat of DT and prevent future incidents, and (3) it would lead to a more accurate understanding of the nature and scope of DT incidents, among other arguments.<sup>81</sup>

### *Reflecting the Threat of Domestic Terrorism to National Security*

Some argue that a chargeable DT statute would allow for DOJ to appropriately charge an individual who has committed a DT offense with a crime to reflect an issue of national security.<sup>82</sup> While some who commit DT-related offenses are charged with crimes that reflect national security concerns, such as seditious conspiracy, other DT incidents do not necessarily include charges that clearly reflect issues of national security. The FBI Agents Association<sup>83</sup> advocates for the creation of a DT law for this reason. In a public statement, the association argues that “domestic terrorism is a threat to the American people and our democracy. Acts of violence intended to intimidate civilian populations or to influence or affect government policy should be prosecuted as domestic terrorism regardless of the ideology behind them.”<sup>84</sup>

### *Effect on the Tools Available to Federal Law Enforcement*

Some argue that a chargeable DT statute would expand the tools available to federal law enforcement in enforcing DT-related crimes. Proponents of a DT law have said that it would appropriately integrate the crime into U.S. counterterrorism operations for both prevention and response purposes. Mary McCord, former Acting Assistant Attorney General for National Security and former Principal Deputy Assistant Attorney General for the National Security Division, supports this argument:

It ... would integrate the investigation and prosecution of all terrorism, not just “international” terrorism, more fully into the national counterterrorism program—a program designed to prevent terrorist attacks by aggressive use of law-enforcement tools like online undercover personas and sting operations, and more coordinated sharing of information between the U.S. government and foreign allies and between the U.S. government and state and local law enforcement.<sup>85</sup>

McCord points to the case of Christopher Hasson as an example of why federal prosecutors could use more tools such as a DT law. In 2019, Hasson was arrested and accused of gathering an arsenal and plotting to murder lawmakers and journalists in hope of inciting a race war. In 2020,

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<sup>81</sup> See, for example, Mary McCord and Jason Blazakis, “A Road Map for Congress to Address Domestic Terrorism,” *Lawfare*, February 27, 2019.

<sup>82</sup> See, for example, Thomas O’Connor, “It is time to make domestic terrorism a federal crime,” *The Hill*, September 13, 2017.

<sup>83</sup> The FBI Agents Association has a membership of over 14,000 active and retired FBI special agents, and advocates for their interests. See <https://www.fbiaa.org>.

<sup>84</sup> The FBI Agents Association, *FBI Agents Association Statement on Bipartisan Domestic Terrorism Legislation*, August 15, 2019, <https://www.fbiaa.org/fbiaa-press-releases-list/fbi-agents-association-statement-bipartisan-domestic-terrorism-legislation>.

<sup>85</sup> Mary B. McCord, *Filling the Gaps in Our Terrorism Statutes*, Program on Extremism, George Washington University, August 2019, p. 5.



Hasson was sentenced to over 13 years in prison for various federal firearms and drug offenses.<sup>86</sup> McCord described the federal charges as “weak” compared to what she feels would have been a more commensurate response—a federal charge of domestic terrorism.<sup>87</sup>

### *Effect on Data Collection*

Some argue that a new DT law would lead to improvements in the public and lawmakers’ understanding of the nature and extent of DT through expanded data collection.<sup>88</sup> Much of what Congress and the public know about the DT threat stems from the FBI’s congressional testimony and the annual *Strategic Intelligence Assessment* reports issued by the FBI and DHS. Research and public understanding of DT trends and the nature of current threats may be improved by knowing how many people have been arrested for, charged with, and convicted of DT—a determination made in court with due process of law. (For further discussion, see the “Domestic Terrorism Data” section.)

### **Arguments Against a Domestic Terrorism Law**

Arguments against a DT law include that (1) it is unnecessary due to existence of other federal laws used to target DT-related offenses, (2) it may violate the First Amendment of the Constitution in practice, and (3) it might be used by law enforcement to unjustly target certain groups, among other arguments.<sup>89</sup>

### *It Is Unnecessary As There Are Other Available Statutes*

Some argue that a DT law is unnecessary because law enforcement already has the tools it needs to arrest, prosecute, and punish those who commit or attempt to commit DT-related offenses. For example, Christopher Hasson was prosecuted under existing federal laws and was sentenced to more than 13 years in prison.<sup>90</sup> Some argue that additional DT charges would be unnecessary to further punish individuals like Hasson. One scholar argues that “[n]o ‘terrorist’ has gone unpunished for want of a law.”<sup>91</sup>

Further, some states have DT laws, and individuals who commit DT-related offenses in those states may face prosecution under state law. The ability of some states to prosecute individuals as domestic terrorists, some argue, further makes the case that a federal DT statute may not be necessary. For example, in 2023 five individuals were arrested and charged with domestic

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<sup>86</sup> United States Attorney’s Office, District of Maryland, *Christopher Hasson Sentenced to More Than 13 Years in Federal Prison on Federal Charges of Illegal Possession of Silencers, Possession of Firearms by an Addict to and Unlawful User of a Controlled Substance, and Possession of a Controlled Substance*, January 31, 2020.

<sup>87</sup> Charlie Savage, “What Could a Domestic Terrorism Law Do?,” *New York Times*, August 7, 2019.

<sup>88</sup> Mary McCord and Jason Blazakis, “A Road Map for Congress to Address Domestic Terrorism,” *Lawfare*, February 27, 2019.

<sup>89</sup> See, for example, David Stebbins and Douglas Ligor, “Why labeling domestic extremists ‘terrorists’ could backfire,” *The Hill*, March 1, 2021; and Moustafa Bayoumi, “No, We Do Not Need New Anti-Terrorism Laws to Combat Right-Wing Extremists,” *The Nation*, January 11, 2021.

<sup>90</sup> United States Attorney’s Office, District of Maryland, *Christopher Hasson Sentenced to More Than 13 Years in Federal Prison on Federal Charges of Illegal Possession of Silencers, Possession of Firearms by an Addict to and Unlawful User of a Controlled Substance, and Possession of a Controlled Substance*, January 31, 2020.

<sup>91</sup> Brian Michael Jenkins, “Five Reasons to Be Wary of a New Domestic Terrorism Law,” *The RAND Blog*, February 24, 2021.

terrorism as well as other crimes in Georgia for violent crimes committed at the site of the future Atlanta Public Safety Training Center.<sup>92</sup>

### ***It May Violate the First Amendment of the U.S. Constitution***

Some argue that a new DT law may encroach on free speech protected by the First Amendment of the Constitution.<sup>93</sup> There is concern that law enforcement would unlawfully investigate the activity of individuals and groups that adhere to certain ideologies. The FBI has repeatedly expressed that it is careful not to encroach on First Amendment protected activity, but it has been clear that it does “not tolerate violent agitators and extremists who use the guise of First Amendment-protected activity to incite violence and wreak havoc.”<sup>94</sup> It is a delicate balance for the FBI even without a chargeable DT statute. For example, the FBI field office in Norfolk, VA, issued a situational information report that warned of violence at the U.S. Capitol on January 6, 2021; the FBI discovered the threat through statements made on an online message board. Even with the threat of violence, the FBI expressed concern over First Amendment protected speech in its report (as obtained by and quoted in the *Washington Post*):

“Individuals/Organizations named in this [situational information report] have been identified as participating in activities that are protected by the First Amendment to the U.S. Constitution,” the document says. “Their inclusion here is not intended to associate the protected activity with criminality or a threat to national security, or to infer that such protected activity itself violates federal law.... However,” it continues, “based on known intelligence and/or specific historical observations, it is possible the protected activity could invite a violent reaction towards the subject individual or others in retaliation or with the goal of stopping the protected activity from occurring in the first instance. In the event no violent reaction occurs, FBI policy and federal law dictates that no further record be made of the protected activity.”<sup>95</sup>

Regardless of support for a DT law, some have expressed further the First Amendment-related concern that enforcement of a DT law would lead to the unlawful targeting of the protected activity of certain groups depending on the balance of political power at the time.<sup>96</sup>

### ***Enforcement Might Unjustly Target Certain Groups***

Some individuals who oppose a DT law have looked to the past to point out how enforcement of such a law might be used to unjustly target certain groups based on any number of factors including race, ethnicity, and political beliefs. Examples provided include the federal government’s use of the Alien Registration Act of 1940 (also known as the Smith Act) to allegedly target communists during the so-called *Red Scare*<sup>97</sup> and currently existing terrorism authorities to allegedly target Black civil rights activists, individuals from Muslim, Arab, Middle Eastern, and South Asian communities, animal rights and environmental rights activists, and

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<sup>92</sup> Georgia Bureau of Investigation, *Five Arrested for Domestic Terrorism Charges at Site of Future Atlanta Public Safety Training Center*, June 23, 2023, <https://gbi.georgia.gov/press-releases/2023-06-23/five-arrested-domestic-terrorism-charges-site-future-atlanta-public>.

<sup>93</sup> For legal discussion of the Free Speech Clause of the First Amendment, see CRS In Focus IF11072, *The First Amendment: Categories of Speech*.

<sup>94</sup> FBI, *Director Wray’s Statement on Violent Activity at the U.S. Capitol Building*, January 7, 2021.

<sup>95</sup> The FBI field office in Norfolk, VA, as quoted in Devlin Barrett and Matt Zapposky, “FBI report warned of ‘war’ at Capitol, contradicting claims there was no indication of looming violence,” *Washington Post*, January 12, 2021.

<sup>96</sup> Richard B. Zabel, “Domestic terrorism is a national problem. It should also be a federal crime,” *Washington Post*, February 2, 2021.

<sup>97</sup> *Ibid.*

members of other groups viewed as having controversial beliefs.<sup>98</sup> In another example, a former FBI agent and Brennan Center fellow claimed the FBI wrongly identified eco-terrorism as the top terrorist threat in the United States from 2004-2008.<sup>99</sup> Some who argue against a DT law claim that a new authority would be used in similar discriminatory ways.

## **Utility of Using the Domestic Terrorism Term**

If individuals who commit DT-related offenses cannot be charged with DT, some observers may question the utility of federal law enforcement labeling threats, incidents, and investigations as DT and referring to individuals as domestic terrorists. Congress may consider how the DT label is applied and how the term *domestic terrorism* is used in federal law enforcement activities (and the consequences of applying the term) and data collection.

## **Understanding the Threat and the Data**

Labeling individuals who have committed an act of DT according to the category of extremism they adhere to helps lawmakers, law enforcement agencies, and researchers understand the nature and extent of the DT threat and how to address it. Congress may consider whether to direct the FBI and DHS regarding the manner in which they categorize and label DT threats. There remains some confusion as to how the FBI and DHS establish DT threat categories and how or why some categories may be added or removed.

The labeling and recognition of extremist beliefs as a way to describe and categorize the DT threat as well as the labeling of certain crimes as DT or groups as domestic terrorist groups have caused controversy among the public and lawmakers.<sup>100</sup> Even when an incident precisely fits the definitions of DT provided in statute, the use of DT as a label for the incident and the perpetrators can be controversial. Congress may consider whether revising DT statutes should include further detail as to what qualifies as DT and whether the responsibility of labeling incidents as DT and individuals as domestic terrorists belongs with government agencies or with judges and juries.

## ***Consequences of Being Labeled a Domestic Terrorist***

If the FBI or other federal agency conclude that an individual's actions (or suspected actions) qualify as DT, then that individual could be added to the FBI's Threat Screening System (formerly known as the Terrorist Screening Database and commonly known as the Terrorist Watchlist.) The Terrorist Watchlist is the U.S. government's consolidated database containing sensitive (but unclassified) law enforcement and national security information regarding those who are known to be or are reasonably suspected of being involved in terrorist activities (both domestic and international). Portions of the Watchlist are exported to data systems in federal agencies that perform screening activities. These data systems<sup>101</sup> include the No Fly, Selectee, and

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<sup>98</sup> American Civil Liberties Union, *Written Statement of the Record, American Civil Liberties Union*, Written Statement submitted to the U.S. Senate Committee on Homeland Security and Governmental Affairs for the hearing entitled, *Countering Domestic Terrorism: Examining the Evolving Threat* on September 25, 2019, pp. 3-4, <https://www.aclu.org/hearing-statement/aclu-written-statement-record-emerging-domestic-terrorism-threat>.

<sup>99</sup> Michael German, "Why New Laws Aren't Needed to Take Domestic Terrorism More Seriously," *Brennan Center for Justice*, December 14, 2018.

<sup>100</sup> Michael Murray, "CPAC Dallas panel proclaims 'We are all domestic terrorists'," *Chron*, August 8, 2022, <https://www.chron.com/politics/article/CPAC-Dallas-we-are-all-domestic-terrorists-banner-17359959.php>; Charlie Savage, "Was the Jan. 6 Attack on the Capitol an Act of 'Terrorism'?", *New York Times*, January 7, 2022; and Betsy Woodruff Swan, "Trump says he's naming antifa a 'Terrorist Organization.' Can he do that?", *Politico*, May 31, 2020.

<sup>101</sup> For a brief discussion of such databases, see the "Exporting of Information" section of this CRS report.

Expanded Selectee lists for airline passenger screening.<sup>102</sup> Watchlist information is also used by select foreign governments for screening purposes and to assist in coordination of terrorist threat awareness, assessment, analysis, or response. Watchlist data are also shared with certain private entities (both domestic and foreign) for the same purposes.<sup>103</sup>

Congress may wish to review the federal government's existing authorities that allow the FBI to include known or suspected domestic terrorists on the Watchlist.<sup>104</sup>

## **Addressing the Threat**

Understanding the nature and extent of the DT threat may help Congress and federal agencies effectively allocate resources to secure the homeland. For example, in congressional testimony, FBI Director Wray has highlighted the evolving DT threat and said the FBI was dealing with “lone domestic violent extremists radicalized by personalized grievances ranging from racial and ethnic bias to anti-government, anti-authority sentiment to conspiracy theories.”<sup>105</sup> Wray went on to explain this was why the FBI was dedicating more resources to DT investigations.

## **Allocation of Resources to Address Domestic Terrorism**

Until recently, federal agencies, such as DHS and the FBI, did not specifically address the DT threat in their budgets. Instead, these agencies used existing funding streams to address the DT threat. For example, the FBI generally handled DT as part of its overall counterterrorism program and did not seem to dedicate specific resources to countering DT. Today, federal agencies describe the nature and extent of DT threats in their budget requests to Congress and allocate resources according to these threats, including the following examples:

- In 2021, DOJ began to summarize its budgetary requests specific to DT for the next fiscal year.<sup>106</sup> DOJ also emphasized the need for additional resources due to the increasing number of cases and defendants related to the January 6, 2021, attack on the U.S. Capitol.<sup>107</sup>
- In a FY2022 congressional budget hearing, DHS Secretary Mayorkas stated that DT is “the most lethal and persistent terrorism-related threat to the United States today,” and explained that this was the reason for DHS requesting “\$131 million to support innovative methods to prevent domestic terrorism while respecting privacy, civil rights, and civil liberties.”<sup>108</sup>

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<sup>102</sup> DOJ, Office of Inspector General, “Audit of the Federal Bureau of Investigation’s Management of Terrorist Watchlist Nominations,” March 2014, footnote 10, p. 4. For broader discussion of this issue, see CRS In Focus IF11731, *Aviation Security Measures and Domestic Terrorism Threats*.

<sup>103</sup> FBI, “Terrorist Screening Records System (TSRS),” 72 *Federal Register* 47073, August 22, 2007; FBI, Terrorist Screening Center, “Frequently Asked Questions,” <https://ucr.fbi.gov/nsb/tsc/terrorist-screening-center-frequently-asked-questions-032416.pdf>; and FBI, Terrorist Screening Center, <https://www.fbi.gov/investigate/terrorism/tsc>.

<sup>104</sup> For a legal discussion of the issues surrounding the Terrorist Watchlist, see CRS Legal Sidebar LSB11009, *Legal Challenges to the Terrorist Screening Database*.

<sup>105</sup> Christopher Wray, *Threats to the Homeland: Evaluating the Landscape 20 Years After 9/11*, Federal Bureau of Investigation, Statement Before the Senate Homeland Security and Governmental Affairs Committee, September 21, 2021.

<sup>106</sup> See DOJ, *FY2022 Budget Request: Addressing Domestic Terrorism*, fact sheet.

<sup>107</sup> *Ibid.*

<sup>108</sup> Secretary Alejandro Mayorkas, *Secretary Alejandro N. Mayorkas Testimony to the Senate Homeland Security and Governmental Affairs Committee*, DHS, July 27, 2021.

- For FY2024, the FBI requested a budget increase “to counter the increasing acts of domestic terrorism across the United States.”<sup>109</sup>

Similarly, until recently Congress did not specifically address the DT threat in appropriations. Today, Congress specifically appropriates resources to address the DT threat, including the following examples:

- In FY2022, Congress appropriated additional resources for the FBI to counter DT and required the FBI to provide (in future expenditure plans) details on DT threats and the resources to address them.<sup>110</sup> Further, Congress directed the FBI “to provide the Committees on Appropriations with terrorism threat category descriptions and assessments as part of the normal budget review process, as well as when requested or as new threat scenarios develop, to ensure the Committees have the necessary insight into the alignment of threats and resource allocation.”<sup>111</sup>
- In FY2022, Congress directed DHS to coordinate with DOJ and the FBI to promote information sharing and a collaborative effort to combat DT.<sup>112</sup>
- In FY2023, Congress made similar provisions for DOJ and DHS to address DT.<sup>113</sup>

Congress may consider various options when addressing the DT threat through allocation of resources. It may choose to rely on a broader strategy (such as that outlined in the *National Strategy for Countering Domestic Terrorism*) and appropriate funds according to the strategy, and possibly across a broader range of federal agencies. Alternatively, policymakers could choose to reduce the scope of DT resources allocated (e.g., request fewer resources be dedicated to the issue) and/or remove references to DT from appropriations language and other legislative direction. Through appropriations law, Congress may also request more data and transparency from agencies that address DT and collect additional data to more fully understand the DT threat.

## Domestic Terrorism Data

Domestic terrorists have orchestrated numerous attacks over the last several decades, and collective knowledge of these incidents is more limited than knowledge of crime more generally. There are several reasons for this. First, unlike other federal crimes, the federal government does

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<sup>109</sup> DOJ, *Statement of Christopher A. Wray, Director, Federal Bureau of Investigation Before the Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, United States House of Representatives at a Hearing Entitled “Federal Bureau of Investigation Budget Request for Fiscal Year 2024*, April 27, 2023.

<sup>110</sup> U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2022 (H.R. 2471; P.L. 117-103): Provisions Applying to All Divisions of the Consolidated Appropriations Act*, committee print, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., pp. 257-258.

<sup>111</sup> *Ibid.*, p. 258.

<sup>112</sup> *Ibid.*, p. 1207.

<sup>113</sup> See U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Commerce, Justice, Science, and Related Agencies Appropriations Bill, 2023*, H.Rept. 117-395, To accompany H.R. 8256, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., p. 57; and U.S. Congress, House Committee on Appropriations, Subcommittee on Homeland Security, *Department of Homeland Security Appropriations Bill, 2023*, H.Rept. 117-396, To accompany H.R. 8257, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., p. 7.

not publish annual data on DT-related prosecutions and sentencing.<sup>114</sup> For example, the public can find the number of defendants prosecuted in federal court for drug offenses in recent years through the Bureau of Justice Statistics, Federal Justice Statistics Program,<sup>115</sup> but the public cannot do the same for DT offenses. Part of the reason for this is the absence of a federal DT charging statute. However, as required by the NDAA 2020, the FBI now provides data on the “number of federal charges with a DT nexus” (see **Table 1**), but the data are still not as robust as those for other federal crime categories. For example, the U.S. Sentencing Commission does not identify sentencing outcomes for convictions related to DT but rather the specific federal statutes that were violated and the associated sentence. Congress could consider placing additional reporting requirements on other federal agencies such as the U.S. Sentencing Commission.

Another reason that knowledge of DT incidents and threats is limited is because federal agencies label some of these data as For Official Use Only. For example, in August 2022 I&A at DHS released data on DVE attacks and disrupted plots in the United States from 2010-2021, but released it as For Official Use Only. If broader disclosure is sought, Congress could require that additional DT data be released to the public, and consider conducting oversight of the internal processes of classifying data as For Official Use Only and other processes such as classifying information as Law Enforcement Sensitive.

While the NDAA FY2020 required the FBI and DHS to report DT data, there is no mandatory incident reporting requirement for DT incidents to be reported to the federal government. As the *Strategic Intelligence Assessment, 2022*, notes, “many DT incidents are rooted in state and local level criminal activity,”<sup>116</sup> and a complete understanding of the prevalence of DT in the United States is not possible without state and local DT incident data. Congress could consider encouraging states and localities to report DT incident data by incentivizing states, if necessary, to report these data through vehicles such as grant conditions.

Finally, the NDAA FY2020 required the *Strategic Intelligence Assessment* reports to be updated annually for five years. Should Congress decide to continue to require the FBI and DHS to publish these reports, it could renew this requirement in subsequent legislation and ask for additional DT data and information from these agencies.

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<sup>114</sup> The U.S. Sentencing Commission publishes the number of federal offenders receiving terrorism-related sentencing guidelines adjustments (§3A1.4) but does not indicate whether it is international or domestic terrorism. See U.S. Sentencing Commission, *2022 Annual Report and Sourcebook of Federal Sentencing Statistics*, <https://www.ussc.gov/research/sourcebook-2022>.

<sup>115</sup> See DOJ, *Federal Criminal Case Processing Statistics*.

<sup>116</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism, 2022*, p. 20.



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