

Sifting Domestic Terrorism from Domestic Violent Extremism and Hate Crime

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In light of the violence related to events in recent years, including the [2020 protests](#) in certain cities related to policing practices and police-community relations, the [2021 breach](#) of the U.S. Capitol, and the [2022 mass shooting](#) in Buffalo, NY, policymakers may be interested in how the concepts of domestic terrorism, domestic violent extremism, and hate crime compare with one another. Federal law enforcement agencies use these terms to categorize certain types of individuals whose unlawful actions are at least partly ideologically motivated.

Domestic Terrorism

Domestic terrorism (DT) differs from other criminal activity in key ways. Importantly, unlike most offenders—who may be driven by self-centered motives—domestic terrorists are driven by a cause or ideology. The Federal Bureau of Investigation (FBI), the agency with lead responsibility for terrorism investigations at the federal level, generally relies on two definitions of 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.” Second, [18 U.S.C. §2331\(5\)](#) more narrowly defines “domestic terrorism” as occurring primarily within U.S. territorial jurisdiction, and involving acts

- (A) ... dangerous to human life that are a violation of the criminal laws of the United States or of any State;
- (B) [that] 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...

Domestic terrorists draw from [many philosophies and worldviews](#) to justify their illegal acts. They can be motivated to commit crimes in the name of ideas such as [animal rights](#), [environmental rights](#), [racially or ethnically based ideological objectives](#), [anti-government or anti-authority beliefs](#), [abortion-related beliefs](#), and [anarchism](#), for example. Expression of these ideas—absent the commission of crimes—may involve constitutionally protected activity.

The FBI safeguards against cases focused [solely on constitutionally protected activities](#). FBI investigations must be conducted for an authorized national security, criminal, or foreign intelligence collection purpose and may not solely monitor the exercise of First Amendment rights. The FBI

conceptualizes domestic terrorism in terms of threats, not groups or ideas. FBI Director Wray has repeatedly stated in [congressional testimony](#) that the FBI requires DT investigations be based on “[activity intended to further a political or social goal](#) ... involving force, coercion, or violence, in violation of federal law” regardless of the nature of the ideology.

Domestic Violent Extremism

The FBI and Department of Homeland Security (DHS) have [categorized the DT threat](#) in terms of various forms of domestic violent extremism. Domestic violent extremists (DVEs) support achieving political or social goals, at least in part, through unlawful force or violence. [DHS asserts that](#) DVEs present the “most persistent and lethal threat” to the homeland. The [FBI made a similar assessment](#), stating that “trends 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.” According to Director Wray, the top DVE threat is from those the FBI identifies as racially/ethnically motivated violent extremists.

Law enforcement often uses the term *domestic terrorism* to describe the act while using *domestic violent extremists* to describe the actors or the alleged actors. For example, Director Wray, in [describing the January 6 attack on the U.S. Capitol](#), has referred to those who engaged in violent criminal activity as “violent extremists,” but has [classified the incident as domestic terrorism](#). The use of DVE may be due, in part, to the fact that [no federal criminal provision expressly prohibits domestic terrorism](#). Additionally, the [FBI does not designate any domestic groups as domestic terrorist groups](#).

Hate Crime

Among other things, [federal law defines “hate crimes”](#) to include conduct involving bodily injury in which certain jurisdictional prerequisites are met and in which the offender intentionally selects the victim because of the victim’s actual or perceived race, color, religion, national origin, gender, gender identity, disability, or sexual orientation. 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. The line may sometimes be blurry, and some cases may be [investigated as both](#) a hate crime and DT. This suggests that sorting DT from hate crimes may depend on the suspect’s intent. Did the suspect articulate an ideology, belong to a domestic terrorist group, or follow an extremist movement? The grey area between DT and hate crime implies that in some instances, suspects with links to domestic terrorist movements or ideologies supporting DT may be charged with hate crimes.

While an individual’s actions may be consistent with the definition of DT, it is not a chargeable offense on its own. There is no federal criminal statute that establishes criminal penalties solely for domestic terrorism, although it may be an element of other federal crimes or [provide an enhanced sentence](#). Unlike domestic terrorism, there are federal criminal statutes that allow individuals to be charged with hate crimes and that establish penalties for individuals convicted of hate crimes.

The Buffalo Shooting

On May 14, 2022, [Payton Gendron allegedly shot 13 individuals](#) (who were predominantly Black; 10 were killed) in a supermarket in Buffalo, NY. 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](#), [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, or distinguishing between them. In describing the investigation, DOJ and 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 domestic terrorism.

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