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An Analysis of Domestic and Foreign Legal Mechanisms to Counter the Rise of White Nationalism

John C. Jankosky II*

INTRODUCTION

White nationalist activity has surged in the United States since Donald Trump was elected President, presenting itself in the form of anti-Semitic, anti-immigrant, and racist violence.¹ In the first three years of Trump's presidency, the number of white nationalist groups inside the United States has risen by 55%.² Some of these groups aim to dismantle and rebuild the Republican party around white nationalist ideas, while other groups are more radical and violent with aims of removing, deporting, or murdering non-whites in their communities.³

StormFront was the first large online community promoting and encouraging white nationalist ideologies, consisting of over 300,000 registered users at its peak.⁴ Among these registered users, nearly

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¹ See Brian Levin, *Why White Supremacist Attacks Are on the Rise, Even in Surprising Places*, TIME (Mar. 21, 2019 12:00 PM), <https://time.com/5555396/white-supremacist-attacks-rise-new-zealand/> (detailing the trends that underlie the rise in white supremacist attack in recent years); see also *The Year in Hate 2019: White Nationalist Groups Rise For A Second Year in A Row – Up 55% Since 2017*, S. POVERTY L. CTR. (Mar. 18, 2020), <https://www.splcenter.org/presscenter/year-hate-2019-white-nationalist-groups-rise-second-year-row-55-2017>.

² See *The Year in Hate 2019*, *supra* note 1.

³ See *White Nationalist*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist> (last visited May 9, 2021); see also Simon Clark, *How White Supremacy Returned to Mainstream Politics*, CENTER FOR AMERICAN PROGRESS (July 1, 2020 9:02 AM), <https://www.americanprogress.org/issues/security/reports/2020/07/01/482414/white-supremacy-returned-mainstream-politics/> (detailing the history of white supremacy in politics and how white supremacy has re-entered American politics, notable in the political right).

⁴ See *StormFront*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/group/stormfront> (last visited May 9, 2021); see also *Stormfront*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/education/references/hate-symbols/stormfront> (last visited May 9, 2021).

100 individuals were eventually charged with murder.⁵ Patriot Front, founded in 2017, was formed to appear less threatening than previous fascist organizations, but was ultimately formed for the purpose of promoting a white ethno-state in the United States.⁶ While Patriot Front prioritizes online propaganda which promotes a white America which should remove foreign immigrants,⁷ organizations like The Base are more violent in their intentions.⁸ Formed in 2018, The Base is an anti-Semitic group which explicitly aims to train members so that they might act as a militia and combat the government to form a white ethno-state in the Pacific Northwest.⁹ These three are just a few among many white nationalist groups that have proliferated in the United States.¹⁰ As numbers of hate groups have risen, so have numbers of violent attacks perpetuated in the name of white nationalist hate.¹¹

Shortly after Donald Trump was elected, a white nationalist rally took place in Charlottesville, Virginia, on August 2017.¹² The rally prompted counter protestors to march in opposition, raising concerns for potential clashes to the heightened level that the Governor declared a state of emergency.¹³ Clashes occurred when James Field Jr., a neo-Nazi, crashed his car into a group of people, killing counter protestor Heather Heyer and wounding many others.¹⁴ In response to the crisis, President Trump condemned both protestors and counter protestors.¹⁵

In October 2018, Robert Bowers, a white nationalist who believed that Jewish people were committing a genocide against “his people,”¹⁶ entered a Pittsburg synagogue with “an AR-15-style assault

⁵ *Id.*

⁶ *Patriot Front*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/group/patriot-front> (last visited May 9, 2021).

⁷ *Id.*

⁸ *The Base*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/group/base>.

⁹ *Id.*

¹⁰ *The Year in Hate 2019*, *supra* note 1; *White Nationalist*, *supra* note 3.

¹¹ *Id.*

¹² See Sasha Ingber, *Neo-Nazi James Fields Gets 2nd Life Sentence for Charlottesville Attack*, NPR (July 15, 2019), <https://www.npr.org/2019/07/15/741756615/virginia-court-sentences-neo-nazi-james-fields-jr-to-life-in-prison> (detailing the Unite the Right rally held in August 2017).

¹³ See Andrew Katz, *Unrest in Virginia*, TIME, <https://time.com/charlottesville-white-nationalist-rally-clashes/> (last visited May 9, 2021).

¹⁴ Ingber, *supra* note 12.

¹⁵ *Id.*

¹⁶ Lois Beckett, *Pittsburgh Shooter was Fringe Figure in Online World of White Supremacist Rage*, THE GUARDIAN

rifle and at least three handguns.”¹⁷ Yelling anti-Semitic slurs, Bowers opened fire against the congregation and killed 11 congregants, wounded two congregants, and wounded an additional four police officers.¹⁸ This massacre would be the deadliest attack “against the Jewish community in the United States”.¹⁹

In April 2019, John T. Earnest, a white supremacist inspired by Hitler who believed he had no choice but to kill Jewish people,²⁰ opened fire inside a Jewish synagogue in Poway California.²¹ There were 54 congregants at the time of the shooting and Earnest killed one and wounded three others before his arrest.²²

In August 2019, Patrick Crusius killed 22 people in a Walmart in El Paso Texas.²³ Prior to Crusius’ massacre, which would become “one of the deadliest mass shootings in U.S. history,”²⁴ Crusius posted an anti-immigrant manifesto online claiming that Hispanics were invading the United States and replacing white people.²⁵ Crusius hoped that “if we can get rid of enough people, then our way of life can be more sustainable.”²⁶

In June 2020, Steven Carrillo, and accomplice Robert Alvin Justus Jr., were charged for two

(Oct. 30, 2018), <https://www.theguardian.com/us-news/2018/oct/30/pittsburgh-synagogue-shooter-was-fringe-figure-in-online-world-of-white-supremacist-rage>.

¹⁷ Campbell Robertson et al., *11 Killed in Synagogue Massacre; Suspect Charged With 29 Counts*, N.Y. TIMES (Oct. 27, 2018), <https://www.nytimes.com/2018/10/27/us/active-shooter-pittsburgh-synagogue-shooting.html>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Joel Shannon, et al., *California Synagogue Shooting: Suspect Known as Quiet, Smart While Authorities Question if He was Hateful*, USA TODAY (Apr. 18, 2019), <https://www.usatoday.com/story/news/nation/2019/04/28/california-synagogue-shooting-who-suspect-john-t-earnest/3608583002/> (providing a description of the shooter).

²¹ Kristina Davis, *Attorney General is Weighing Federal Death Penalty in Poway Synagogue Shooting*, SAN DIEGO-UNION TRIBUNE (Oct. 23, 2020), <https://www.sandiegouniontribune.com/news/courts/story/2020-10-23/suspect-poway-synagogue-shooting-earnest-federal-court>.

²² *Id.*

²³ See Cedar Attanasio, *El Paso Mass Shooting Suspect Pleads Not Guilty in 22 Deaths*, AP (Oct. 10, 2019), <https://apnews.com/article/3fd473325d17429784e91a3c8c7b3909>.

²⁴ Chris Francescani et al., *Mass Shooting That Killed 20 in El Paso Investigated as 'Domestic Terrorism': Officials*, ABC NEWS (Aug. 4, 2020), <https://abcnews.go.com/US/police-el-paso-issue-report-active-shooter/story?id=64753896>.

²⁵ Tim Arango, Nicholas Bogel-Burroughs & Katie Benner, *Minutes Before El Paso Killing, Hate-Filled Manifesto Appears Online*, N.Y. TIMES (Aug. 3, 2020), <https://www.nytimes.com/2019/08/03/us/patrick-crusius-el-paso-shooter-manifesto.html>.

²⁶ *Id.*

separate murders.²⁷ First, the murder of federal security officer Pat Underwood in a drive-by shooting, and second, the murder of police officer Sgt. Damon Gutzwiller and wounding of four other officers resulting from Carrillo's use of pipe bombs.²⁸ Carrillo had strong associations with the right-wing Boogaloo movement and hoped that his actions might further ferment chaos in the midst of George Floyd protests.²⁹ The Boogaloo movement has strong ties to neo-Nazis and white supremacists which hopes to incite a second civil war.³⁰

This paper aims to analyze the current state of domestic and international terrorism law and compare and contrast United States legal mechanisms with legal mechanisms used abroad. Section One will apply 18 U.S.C Chapter 113B to white nationalist activities. Section Two will assess how foreign organizations are designated as terrorist organizations. Section Three will describe how foreign nations have set up and applied their own terrorist laws. Finally, this paper aspires to recommend how the United States might better designate and prosecute white nationalists who harshly impact the United States.

I. APPLICATION OF DOMESTIC UNITED STATES LAW TO WHITE NATIONALIST ACTIONS

Escalating and consistent incidents of violence from white nationalists have lead politicians and the public alike to call for domestic groups, such as the Klu Klux Klan, to be designated as terrorist organizations.³¹ However, there is simply no such authority for United States leadership to designate a domestic organization a terrorist one.³² Current terrorism statutes require a relationship between the actor and a terrorist organization designated from the Foreign Terrorist Organization (FTO) list,³³ to be

²⁷ Tommy Beer, *Accused Killer of California Cops Was Associated with Right-Wing 'Boogaloo Movement'*, FORBES (Jun. 16, 2020), <https://www.forbes.com/sites/tommybeer/2020/06/16/accused-killer-of-california-cops-was-associated-with-right-wing-boogaloo-movement/?sh=61ab518f59bd>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Khrysgiana Pineda, *The Boogaloo Movement is Gaining Momentum. Who are the Boogaloo 'Bois' and What do They Want?*, USA TODAY (June 19, 2020), <https://www.usatoday.com/story/news/nation/2020/06/19/what-is-boogaloo-movement/3204899001/>.

³¹ Anna Meier, *What Does a "Terrorist" Designation Mean?*, LAWFARE (July 19, 2020), <https://www.lawfareblog.com/what-does-terrorist-designation-mean>.

³² *Id.*

³³ Mary McCord, *Filling the Gap in Our Terrorism Statutes, 2*, GW PROGRAM ON EXTREMISM (Aug. 2019), <https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/Filling%20The%20Gap%20in%20Our%20Terrorism%20Statutes.pdf>.

discussed in Part II.

So, if a mass shooting is in connection with a foreign organization on the FTO list, then it is considered an act of terror, but if a mass shooting is done in the name of a domestic organization, the domestic organization will not be placed on the FTO list due to its domestic nature.³⁴ There have been calls to restructure the current domestic terror legal regime so that organizations acting within the United States without a relationship to a foreign group might be designated as terrorists,³⁵ however, such recommendations have not been put into action. Public leaders have called for the creation of terrorist designations applicable to domestic organizations, but there are concerns that some public designations aim only to undermine certain organizations in order to signal “what kinds of political behavior cross the line from nonideal to unacceptable...”³⁶

Although this gap is disheartening for those who want to legally label groups such as The Base or The Boogaloo as terrorist groups, there is still a potential remedy available to prosecute individuals for egregious acts. 18 U.S.C Chapter 113B, titled “Terrorism,” is the most applicable authority in determining if an act might be charged with domestic terrorism. Within this Chapter, 18 U.S. Code § 2331 provides the definition for activities that might qualify as domestic terrorism. Accordingly, domestic terrorism must “occur primarily within the territorial jurisdiction of the United States,” must “involve acts dangerous to human life that are a violation of the criminal laws of the United States or any State” and must “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.”³⁷

Thus, although the government lacks the ability to designate an entire group as domestic terrorists as a proactive measure, 18 U.S.C. Chapter 113B teases opportunities to charge an individual in a reactive

³⁴ *Id.*

³⁵ Mary McCord, *It's Time for Congress to Make Domestic Terrorism a Federal Crime*, LAWFARE (Dec. 5, 2020), <https://www.lawfareblog.com/its-time-congress-make-domestic-terrorism-federal-crime>.

³⁶ *Antifa: Trump Says Group Will be Designated 'Terrorist Organisation'*, BBC (May 31, 2020) <https://www.bbc.com/news/world-us-canada-52868295>.

³⁷ 18 U.S.C. § 2331(5).

manner. Unfortunately, this opportunity is nothing more than a series of definitions.³⁸ Prosecutors and politicians will both often claim that domestic terrorism charges should be placed against white nationalist criminals, but there is no corresponding criminal charge that refers to the definitions laid out in 18 U.S.C. Chapter 113B.³⁹ Whenever a white nationalist commits a crime, the public calls for terrorism charges, yet hate crimes are put forth instead.⁴⁰

James Fields was threatened with charges of domestic terrorism for a murder in Charlottesville but was eventually sentenced by a federal judge to life in prison plus 419 years and \$480,000 in fines.⁴¹ Without an opportunity for parole, Fields pled guilty to 29 federal hate crimes in a plea agreement so that prosecutors would drop charges leading to the death penalty.⁴² Fields was also convicted in State court for first-degree murder, “multiple counts of aggravated malicious wounding, malicious wounding and leaving the scene of an accident.”⁴³

Robert Bowers was similarly decried a terrorist⁴⁴ but was never charged as one.⁴⁵ Instead, Bowers was federally charged 29 criminal counts including the hate crime of obstructing the free exercise of religious beliefs.⁴⁶ In addition to federal charges, Bowers faced “state charges, including 11 counts of criminal homicide, six counts of aggravated assault and 13 counts of ethnic intimidation.”⁴⁷

While victims of John T. Earnest called him a terrorist,⁴⁸ Earnest was charged with 113 counts in

³⁸ Eric Cortellessa, *Why the Pittsburg Shooter Is Not Being Prosecuted for Terrorism*, THE TIMES OF ISRAEL (Oct. 28, 2018), <https://www.timesofisrael.com/why-the-pittsburgh-shooter-is-not-being-prosecuted-for-terrorism/>.

³⁹ 18 U.S.C. § 2331-2339D; Eric Cortellessa, *supra* note 50.

⁴⁰ Rashwan Ray, *Why is it so Hard for America to Designate Domestic Terrorism and Hate Crimes?*, BROOKINGS (Mar. 18, 2021), <https://www.brookings.edu/blog/how-we-rise/2021/03/18/why-is-it-so-hard-for-america-to-designate-domestic-terrorism-and-hate-crimes/>.

⁴¹ Ingher, *supra* note 12.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Idean Salehyan, *Should Robert Bowers, the Pittsburgh Synagogue Shooting Suspect, Be Called a Terrorist?*, WASH. POST (Nov. 1, 2018), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/11/01/should-robert-bowers-the-pittsburgh-synagogue-shooting-suspect-be-called-a-terrorist/>.

⁴⁵ Robertson, *supra* note 17.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Jonathan Zimmerman, *Poway Shooting: When a White American Attacks, Call It by Its True Name: Terrorism*, USA TODAY (Apr. 29, 2019), <https://www.usatoday.com/story/opinion/2019/04/29/poway-synagogue-shooting-white-americans-hate-crimes-terrorism-column/3619171002/>.

his case under an indictment including “charges of a hate crime and obstruction of free exercise of religious beliefs using a dangerous weapon resulting in death, bodily injury and attempts to kill.”⁴⁹ Additionally, Earnest was “charged with four counts of discharging a firearm during a crime of violence.”⁵⁰

After Patrick Crusius murdered 22 people, the U.S. Attorney for the Western District of Texas declared that Crusius’ actions would be investigated as an act domestic terrorism because Crusius’ intent was to coerce and intimidate a civilian population.⁵¹ However, despite any investigation under pretenses of domestic terrorism, charges would include hate crimes and federal firearms charges which carry the penalty of death.⁵² “We’re going to do what we do to terrorists in this country, which is to deliver swift and certain justice,” the Attorney General said, but no actual terrorist charges could be made because there are no convening authority which discusses domestic terrorism.⁵³ Eventually, Crusius was indicted on “90 federal charges, including 22 counts of committing a hate crime resulting in death, 22 counts of use of a firearm to commit murder, 23 counts of a hate crime involving an attempt to kill and 23 counts of use of a firearm during a crime.”⁵⁴

Steven Carrillo, who murdered a federal security officer and a police officer, was “charged with one count of murder of a person assisting an officer or employee of the United States Government, in violation of 18 U.S.C. §§ 1114(1) and 1114(3) and one count of attempted murder under the same statutes.”⁵⁵ In this instance, Carrillo intended to coerce the civilian population into civil war,⁵⁶ an act of

⁴⁹ Davis, *supra* note 21.

⁵⁰ *Id.*

⁵¹ Francescani, *supra* note 24.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Bill Hutchinson & Alexander Mallin, *Alleged El Paso Mass Shooting Suspect Hit with Federal Hate-Crime Charges*, ABC NEWS (Feb. 6, 2020), <https://abcnews.go.com/US/alleged-el-paso-mass-shooting-suspect-hit-federal/story?id=68807098>.

⁵⁵ *Two Defendants Charged with Murder and Aiding and Abetting in Slaying of Federal Protective Service Officer at Oakland Courthouse Building*, DEP’T OF JUSTICE (June 16, 2020), <https://www.justice.gov/opa/pr/two-defendants-charged-murder-and-aiding-and-abetting-slaying-federal-protective-service>.

⁵⁶ Brandy Zadrozny, Ben Collins & Andrew Blankstein, *Man Charged in Deputy Ambush Scrawled Extremist 'Boogaloo' Phrases in Blood*, NBC NEWS (Jun. 11, 2020), <https://www.nbcnews.com/news/us-news/man-charged-deputy-ambush-scrawled-extremist-boogaloo-phrases-blood-n1230321>.

domestic terrorism according to 18 U.S.C. § 2331(5).⁵⁷

While acts that might constitute domestic terror are instead charged as hate crimes, the public has still used the word terrorist to describe such activities. People are being shot in churches for their faith, in shopping stores for the color of their skin, or for their service. While these shootings confuse and instigate further violence, the current legal regime is unable to designate the domestic groups that conduct such activities as terrorist ones and the criminal system is limited from prosecuting these criminals as terrorists. However, there are instances where white nationalist groups have strong foreign influences and are properly designated terrorist organizations.

II. THE FOREIGN TERRORIST ORGANIZATION LIST AND OTHER TERRORIST DESIGNATION MECHANISMS

While no legal mechanisms exist for designation or prosecution of domestic white nationalists in the U.S., there are mechanisms such as the Foreign Terrorist Organization (FTO) list and Executive Order 13224 which provide opportunities for United States law enforcement officials to combat other sources of white nationalism.⁵⁸ The FTO list, a tool of the United States State Department, is most commonly used and works to combat terrorism by criminalizing “anyone who provides support to any organization on the list.”⁵⁹ An organization on the list has limited operational capacity because designated FTOs suffer threats of having “representatives and members of a designated FTO” removed and barred from the United States.⁶⁰ Additionally, being placed on the FTO list imposes a responsibility on U.S. financial institutions to “retain possession of or control over the funds” of such an FTO if that U.S. financial institution is holding any money sourced from an FTO.⁶¹

In order to be designated an FTO, the organization must first be a foreign organization.⁶² Second,

⁵⁷ See generally 18 U.S.C. § 2331(5).

⁵⁸ Meier, *supra* note 31.

⁵⁹ Meier, *The U.S. Labeled a White Supremacist Group As ‘Terrorists’ for The First Time. It’s Less Significant Than You Think*, WASH. POST (Apr. 30, 2020), <https://www.washingtonpost.com/politics/2020/04/30/us-labeled-white-supremacist-group-terrorists-first-time-its-less-significant-than-you-think/>.

⁶⁰ *Id.*

⁶¹ *Foreign Terrorist Organizations*, DEP’T OF STATE, <https://www.state.gov/foreign-terrorist-organizations/> (last visited May 9, 2021).

⁶² *Id.*

the organization must also engage in terrorist activity, for which there are three definitions. The first definition is sourced from the Immigration and Nationality Act (INA) §212 which requires that an organization

“ . . . commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity; to prepare or plan a terrorist activity; to gather information on potential targets for terrorist activity; (or) to solicit funds or other things of value for— . . . a terrorist activity.”⁶³

Additionally, the INA §212 applies to organizations which solicit individuals to engage in previously described activity and to individuals who “... commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications ...” for the purpose of assisting terrorist organizations.⁶⁴

The second definition that the State Department uses when designating an organization an FTO references Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, which defines terrorism as "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents."⁶⁵ The third and final definition is more broad, requiring that the organization “retain the capability and intent to engage in terrorist activity or terrorism.”⁶⁶ If an organization engages in terrorist activities as defined by any of the three definitions, then the final requirement to be placed on the FTO list is “the organization’s terrorist activity or terrorism must threaten the security of U.S. nationals or the national security (national defense, foreign relations, or the economic interests) of the United States.”⁶⁷

Designation as an FTO, has significant financial consequences in the form of imposed financial impediments and restrictions, but requires multiple determinations to be made by a motivated State Department. Due to political consequences of being placed on the FTO list, the State Department is

⁶³ *Fact Sheet: Immigration and Nationality Act Section 212*, DEP’T OF STATE (Apr. 8, 2008), <https://2001-2009.state.gov/s/ct/rls/fs/08/103399.htm>.

⁶⁴ *Id.*

⁶⁵ *Fact Sheet: Foreign Relations Authorization Act, Fiscal Years 1988 and 1989: Terrorism Definition*, DEP’T OF STATE (Apr. 8, 2008), <https://2001-2009.state.gov/s/ct/rls/fs/08/103401.htm>.

⁶⁶ *Id.*

⁶⁷ *Id.*

judicious in designating organizations. For example, organizations most recently listed as FTOs include Jama'at Nusrat Al-Islam wal-Muslimin (JNIM), Al-Ashtar Brigades (AAB), and ISIS.⁶⁸ When an organization does not qualify as an FTO according to the State Department, there are other designations that can impact the operations of a terrorist foreign organization.

The State Department also has the authority to designate a foreign organization a “specially designated global terrorist” (SDGT) under Executive Order 13224.⁶⁹ Within this SDGT designation, the U.S. Treasury’s Office of Foreign Assets Control is authorized to apply financial sanctions to both the organization designated an SDGT and to individuals associated with the SDGT.⁷⁰ In determining whether an organization may qualify as an SDGT, the Secretary of State, the Secretary of Treasury, and the Attorney General are given power to “designate foreign individuals or entities that he determines have committed, or pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.”⁷¹

The Russian Imperial Movement (RIM), a foreign white supremacy movement, recently received SDGT designation.⁷² While there were rumors that RIM would be designated an FTO, RIM was instead designated an SDGT which is arguably a softer designation as it hampers the finances of organizations but does not allow for prosecution of being a member of such an organization, which the FTO does.⁷³ While RIM’s designation under SDGT is damaging to this white supremacist organization, it is worth noting that this was the first instance of a white supremacist organization designated as a terrorist group.⁷⁴ Prior to RIM’s designation, the majority of individuals and organizations designated under SDGT were Islamic terror groups.⁷⁵ Such designations have been attacked to an estimated “7,700 foreign persons and

⁶⁸ Congressional Research Service, Foreign Terrorist Organization (FTO), 2 (Jan. 15, 2019), <https://fas.org/sgp/crs/terror/IF10613.pdf>.

⁶⁹ Meier, *supra* note 71.

⁷⁰ *Id.*

⁷¹ *Terrorism Designation FAQs*, DEP’T OF STATE (Feb. 27, 2018), <https://www.state.gov/terrorism-designations-faqs/>.

⁷² Meier, *supra* note 71.

⁷³ *Id.*

⁷⁴ Meier, *supra* note 31.

⁷⁵ *Id.*

entities.”⁷⁶

Of note, RIM has not made any attacks on the United States or made any high-profile attacks internationally but has been loosely linked with foiled bomb plots in Sweden.⁷⁷ Regardless, State Department Coordinator for Counterterrorism Ambassador, Nathan Sales, states that due to evidence of RIM “facilitating terrorist attacks by providing weapons and combat training,” RIM met the designation standards.⁷⁸

Where there is concern for the effectiveness of an SDGT designation, there is equal concern for the effectiveness of the FTO.⁷⁹ In 2018, former Director of National Intelligence, James Clapper stated “I can’t think of a case where somehow that [designation] facilitated our ability to track them better.”⁸⁰ While both FTO and SDGT designations may have weaknesses, such designations, according to research, still have been effective at cutting off funds to organizations and reducing the number of attacks these organizations commit.⁸¹

Each of these mechanisms have elements which are comparable to the activities such as The Base and The Boogaloo, though the most important element is currently not met. For those that are met under the FTO list, members of The Base and The Boogaloo have indicated an intention to cause death or serious bodily in the instance of Carrillo’ shooting and use of pipe bombs and the intention to commit a terrorist act in the instance of The Base members who aim to wage war with the United States. These acts fit the first requirement of the Immigration and Nationality Act §212. The disruption that white nationalists have caused within the U.S. government by murdering and assaulting U.S. citizens, evidenced by white nationalists such as Fields, Bowers, Crusius, and others also satisfies the third requirement of the FTO list which requires a threat to “the security of U.S. nationals or the national security.”⁸² The actions

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Tim Legrand, “*More Symbolic—More Political—Than Substantive*”: *An Interview with James R. Clapper on the U.S. Designation of Foreign Terrorist Organizations*, 30 *TERRORISM AND POL. VIOLENCE* 356 (2018).

⁸¹ Meier, *supra* note 31.

⁸² Meier, *supra* note 31.

of white nationalist groups and actors are also applicable to an SDGT designation in acts that have been committed have ended and risked the lives of U.S. nationals. However, both the FTO list and SDGT have a critical component that groups such as The Base and The Boogaloo do not meet; the organization must be foreign. Because these white nationalist groups are located and operate within the United States, their activities would not be applicable or considerable for an FTO or SDGT designation.

Although these groups and actors are not listed as foreign terrorists or chargeable as terrorists, there is still an ability for these organizations to be investigated domestically as terrorists. In March 2020, the Federal Bureau of Investigation's (FBI) Director Christopher Wray announced to the House of Representatives' Judiciary Committee "that the agency had upgraded its assessment of the threat posed by racially motivated extremists to a 'national threat priority.'"⁸³ This declaration followed a late 2019 declaration to the Senate Homeland Security Committee that "a majority of domestic terror attacks are 'fueled by some type of white supremacy.'"⁸⁴

Although the FBI lacks the ability to charge domestic terrorists with domestic terrorist crimes, the FBI still investigates specific crimes and organizations as if they were domestic terrorists.⁸⁵ In May 2019, the FBI defined domestic terror to exist within four categories; "racially motivated violent extremism, anti-government/anti-authority extremism, animal rights/environmental extremism, and abortion extremism."⁸⁶ Groups like StormFront demonstrate racially motivated violent extremism, evident in their online activities and members' arrests and groups like Patriot Front have demonstrated anti-government extremism. Other groups like The Base and The Boogaloo have demonstrated both racially motivated violent extremism and anti-government extremism. All four of these groups could and should be investigated and considered as domestic terrorist groups.

While the United States has its own legal mechanisms to investigate and charge domestic and

⁸³ *Executive Summary: 2019 Year in Hate*, S. POVERTY L. CTR. (Mar. 18, 2020), <https://www.splcenter.org/news/2020/03/18/executive-summary-2019-year-hate>.

⁸⁴ *Id.*

⁸⁵ Michael C. McGarrity, *Confronting the Rise of Domestic Terrorism in the Homeland*, FBI (May 8, 2019), <https://www.fbi.gov/news/testimony/confronting-the-rise-of-domestic-terrorism-in-the-homeland>.

⁸⁶ *Id.*

international terrorists, other countries in Europe and further abroad have legal mechanisms worth investigating.

III. A SURVEY OF FOREIGN LAWS DESIGNATING AND PROSECUTING TERROR

White nationalism is not unique to the United States but is rather a global problem. As such, there is value in analyzing how other states have been handling white nationalism. In addition to Norway, both the UN and EU have provided valuable definitions, New Zealand, England, and Germany also provide examples of effective counter-domestic terrorism legal regimes that the United States might consider in its own legal reform.

A. *International and Regional Terrorism Definitions*

The United States is not the only nation to have suffered from white nationalist attacks. To combat white nationalism European states and New Zealand, each state has legal mechanisms for preventing and reacting to such white nationalist attacks. Since all of these states are members of the United Nations (UN), there are resolutions to guide how to define and address these attacks⁸⁷. In particular, the UN General Assembly Resolution 49/60 (1994), titled “Measures to Eliminate International Terrorism” states:

“Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.”⁸⁸

While this resolution condemns and lists acts of terror, it does not explicitly define terrorism. Hesitancy from the UN General Body to create a blanket label for terrorism is often considered to be a precaution to avoid labelling a state actor as a terrorist when another [country’s] viewpoint might view that actor as a just and legal rebellious freedom fighter.⁸⁹ Although not formally adopting a definition of terrorism, in March 2005 of a UN panel described terrorism as any act "intended to cause death or serious

⁸⁷ UN General Assembly Resolution 49/60 (1994).

⁸⁸ *Id.*

⁸⁹ *Various Definitions of Terrorism*, ARIZ. DEP’T OF EMERGENCY AND MILITARY AFFAIRS, <https://dema.az.gov/sites/default/files/Publications/AR-Terrorism%20Definitions-BORUNDA.pdf> (last visited May 9, 2021).

bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act.”⁹⁰

Additionally, the UN Security Council (UNSC) which has offered a definition under UNSC 1566 (2004) for terrorism as:

“criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.”⁹¹

Under all of these statutes, described white nationalist attacks are determinable as terrorist attacks. The intentions to cause terror, to cause death, or to intimidate the government are all self-evident in published manifestos and online activity and in the death and destruction caused. Where these actions are condemnable by the UN but not formally designated as terrorist attacks, there are other regional sources of international law providing definitions of terrorism.

The European Union (EU), in contrast to the UN, has formally defined terrorism in Art.1 of its Framework Decision on Combating Terrorism (2002). As a regional framework, it warrants referencing, as within it, terrorist offenses are those deriving from a list criminal offenses...

“given their nature or context, may seriously damage a country or an international organization where committed with the aim of: seriously intimidating a population; or unduly compelling a Government or international organization to perform or abstain from performing any act; or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.”⁹²

It bears repeating that white nationalist attacks resulting in death and destruction inherently intimidate populations. Referring both to UNSC and EU definitions, acts of violence from white nationalists are acts of terror.⁹³ When looking into individual terrorism regulations from foreign states, there are subtle differences that allow for actual acts of terror to be charged as such.

⁹⁰ *Id.*

⁹¹ S.C. Res. 1566, ¶ 3 (Oct. 8, 2004).

⁹² Council Framework Decision (EC) of 13 June 2002 on Combatting Terrorism, 2002/475/JHA, art. 1.

⁹³ ARIZ. DEP’T OF EMERGENCY AND MILITARY AFFAIRS, *supra* note 100.

B. Norway and Domestic Terrorism

In July 2011, Anders Behring Breivik placed and set off a bomb in Oslo near Prime Minister Jens Stoltenberg’s office and the Norwegian Oil and Energy Department building.⁹⁴ The blast murdered eight people and injured 15 others.⁹⁵ Dressed in a policeman uniform, Breivik took advantage of the ensuing chaos to travel to the small island Utøya only 90 minutes after the Oslo blast.⁹⁶ Utøya, in the middle of hosting a summer camp for the Norwegian Workers’ Youth League (AUF), was filled with unprepared and politically active youth.⁹⁷ Breivik, met with little resistance, massacred 69 people on the island, the majority of which were teenagers.⁹⁸

Breivik, prior to carrying out his massacre, posted a manifesto online titled “2083 – A European Declaration of Independence.”⁹⁹ In this manifesto, Breivik condemned multiculturalism and wrote about the need to prevent Islamic culture from overtaking Europe.¹⁰⁰ For Breivik’s actions, he received 21 years in prison, then the maximum permitted term under Norwegian law with extensions of up to five years available for an indefinite number of times.¹⁰¹

In August 2019, inspired by white nationalist attacks in New Zealand and Texas,¹⁰² Phillip Manhaus murdered his Chinese stepsister and then drove to a nearby Islamic Center with the intention to commit mass murder.¹⁰³ Manhaus would claim that the murder of his stepsister and his attack on the

⁹⁴ *Norway: Extremism & Counter-Extremism*, COUNTER EXTREMISM PROJECT, <https://www.counterextremism.com/countries/norway> (last visited May 9, 2021).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See COUNTER EXTREMISM PROJECT, NORWAY: EXTREMISM & COUNTER-EXTREMISM 4, https://www.counterextremism.com/sites/default/files/country_pdf/NO-05222020.pdf (setting the scene for Breivik’s massacre).

⁹⁸ See *id.* (describing the casualties of Breivik’s attack on the Norwegian Workers’ Youth League).

⁹⁹ *Id.* (stating that Breivik released his manifesto “[h]ours prior” to the Oslo and Utøya attacks).

¹⁰⁰ *Factbox: Excerpts from 1,500-page Norway Killer Manifesto*, REUTERS (July 24, 2011), <https://www.reuters.com/article/us-norway-manifesto-factbox/factbox-excerpts-from-1500-page-norway-killer-manifesto-idUSTRE76N14J20110724>.

¹⁰¹ NORWAY: EXTREMISM & COUNTER-EXTREMISM, *supra* note 109.

¹⁰² See Jan M. Olsen & Vanessa Gera, *Suspect in Norway Mosque Attack Smirks in Court Appearance*, ASS’D PRESS (Aug. 12, 2019), <https://apnews.com/article/ab4b776547d544409d0a22c567be2fa5> (reporting that Norwegian media stated that the New Zealand and El Paso attacks inspired Manhaus).

¹⁰³ See *Norwegian White Nationalist Who Killed Stepsister and Launched Failed Attack on Mosque Sentenced to 21 Years’ Jail*, ABC NEWS AUSTRALIA (June 11, 2020), <https://www.abc.net.au/news/2020-06-11/norwegian-white-nationalist-philip-manhaus-guilty-sentenced/12346618> (stating the events leading up to the mass shooting attempt).

Islamic Center were acts of “‘emergency justice’ and that he was ‘ashamed’ that he did not cause more harm.”¹⁰⁴ He pled not guilty, claiming his actions were just under his beliefs, beliefs visible on an online presence presenting anti-immigrant views, and faced murder charges as well a “breaching anti-terrorism law by spreading fear among the population.”¹⁰⁵

Norway’s white nationalist organizations are limited and mostly unorganized with exception to the Nordic Resistance Movement (NRM).¹⁰⁶ The NRM formed in 1997, as a neo-Nazi organization with chapters throughout Nordic states of Sweden, Finland, and Norway.¹⁰⁷ Ultimately, “the NRM seeks to merge all Nordic countries into a single, nationalist-socialist state, either by elections or through revolution” and harbors strong “racist, anti-immigrant, anti-Semitic, and pro-Hitler” sentiments.¹⁰⁸

To combat terrorism, Norway has criminalized the terrorist training activities.¹⁰⁹ Additionally, “conducting or planning to conduct a terrorist attack and providing support to a terrorist organization with money, material, recruitment, fighting, and related crimes” are fully criminal acts.¹¹⁰ Norway has also removed burdens of proof of conspiracy which previously existed as difficult hurdles for terrorist convictions.¹¹¹ Travel laws have also been strengthened with criminal penalties imposed on those who travel or attempt to travel for the purpose of participating in armed conflict to aid non-state actors.¹¹² Due to the terrorist attacks Norway has suffered since Breivik’s actions, the maximum prison sentence was raised from 21 years to 30 years.¹¹³

C. *New Zealand and Domestic Terrorism*

In March 2019, Australian Brenton Tarrant, a white supremacist, armed himself with semi-

at Baerum, including the killing of his stepsister Johanne Zhangjia Ihle-Hansen).

¹⁰⁴ NORWAY: EXTREMISM & COUNTER-EXTREMISM, *supra* note 109.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See NORWAY: EXTREMISM & COUNTER-EXTREMISM, *supra* note 109, at 6 (describing how Norway’s 2013 provisions prohibit the “receipt” of terrorist training).

¹¹⁰ *Id.*

¹¹¹ See *id.* (mentioning how Norway’s 2013 provisions were aimed at “clos[ing] the ‘lone offender’ loophole”).

¹¹² *Id.*

¹¹³ See *id.* (contextualizing the change in prison sentences with the larger changes in Norwegian criminal laws).

automatic weapons and livestreamed via Facebook an attack on two mosques, killing 51 people.¹¹⁴ Tarrant was on his way to a third mosque to continue his massacre before he was apprehended by police.¹¹⁵ Immediately, the only remorse he was willing to express was that he had not killed more people.¹¹⁶ Prior to the attack, Tarrant had spent time online visiting far-right social media pages and sharing their content as well as donating money to far-right causes.¹¹⁷ Tarrant would eventually be sentenced to life in prison.¹¹⁸

Although Tarrant was an Australian launching an attack in New Zealand, New Zealand still has had problems with white nationalist groups.¹¹⁹ Since the state was founded, European settlers have discriminated against indigenous Maori, represented in historical “land confiscations, wage discrimination, and social discrimination.”¹²⁰ Notions of cultural superiority by white citizens transformed against Chinese foreign workers and today has turned into general distrust towards Asian neighbors immigrating into New Zealand under the concern and belief that white New Zealander’s’ traditional values are being upended.¹²¹

New Zealand’s International Terrorism (Emergency Powers) defines an international terrorist attack “as one involving actions, or threats of actions, to kill or injure people or seriously damage

¹¹⁴ See *Christchurch Massacre: Inquiry Finds Failures Ahead of Attack*, BBC NEWS (Dec. 8, 2020), <https://www.bbc.com/news/world-asia-55211468> (examining the law enforcement response to the attack on two New Zealand mosques); Pannett et al., *New Zealand Shootings: Brenton Tarrant Bought Four Guns Legally Online*, WALL STREET J. (Mar. 18, 2019), <https://www.wsj.com/articles/australian-police-raid-two-homes-in-hunt-for-clues-on-brenton-tarrant-11552872377> (reiterating investigators’ beliefs that Tarrant used higher-capacity magazines in his semi-automatic rifle to fire more bullets without having to reload).

¹¹⁵ *Christchurch Massacre*, *supra* note 126.

¹¹⁶ Rob Kidd, *Mosque Gunman Wished He’d Killed More, Court Told*, OPAGO DAILY TIMES (Aug. 24, 2020), <https://www.odt.co.nz/news/national/mosque-gunman-wished-hed-killed-more-court-told> (indicating that Tarrant told police after the shooting).

¹¹⁷ *Christchurch Massacre*, *supra* note 126.

¹¹⁸ Suzanne Nuyun, *New Zealand’s Christchurch Mosque Shooter Sentenced to Life Without Parole*, NPR (Aug. 27, 2020), <https://www.npr.org/2020/08/27/906539369/new-zealands-christchurch-mosque-shooter-sentenced-to-life-without-parole>.

¹¹⁹ See e.g., NORWAY: EXTREMISM & COUNTER-EXTREMISM, *supra* note 109, at 2 (illustrating how as recently as 2017, far-right groups emerged in New Zealand campuses with theories of white genocide and the dangers of Marxist ideologies in Western societies).

¹²⁰ *Id.*

¹²¹ See NORWAY: EXTREMISM & COUNTER-EXTREMISM, *supra* note 109, at 1 (illustrating New Zealand’s history with state-sanctioned racism).

property in order to coerce or intimidate a government or person.”¹²² If an international terrorist attack occurs, this Act gives the Prime Minister authority to, with the support of at least three ministers, declare a state of emergency and concurrent emergency powers are then granted to the Prime Minister.¹²³

New Zealand also has the 2002 Terrorism Suppression Act and 2003 Counter Terrorism Bill.¹²⁴ The 2002 Terrorism Suppression Act, a definition for a terrorist act is provided as “a terrorist act as one intended to induce terror in a civilian population or compel a government or international organization to do or abstain from any act.”¹²⁵ Further, organizations who participate in terrorist acts can be labelled as terrorist organizations and have their assets frozen.¹²⁶ Any participation in terrorist groups, recruitment for such groups, or providing financial assistance to terrorist individuals or groups is outlawed as well.¹²⁷ In the 2003 Bill, penalties against terrorism were increased, harboring terrorists was criminalized, and new offenses were added to terrorist offenses including “improper use of nuclear material or unmarked plastic explosives, contamination of food crops, and causing sickness or disease in animals.”¹²⁸

D. The United Kingdom and Domestic Terrorism

In September 2019, 50-year-old Vincent Fuller, inspired by Tarrant’s rampage in New Zealand set into the streets at first with a bat, screaming “All Muslims should die. White supremacists rule. I’m going to murder a Muslim.”¹²⁹ Driving a knife into a 19-year-olds neck, the knife miraculously only grazed the victim’s neck, although the victim suffered hand wounds.¹³⁰ Fortunately there were no other injuries, but Fuller’s white supremacist-fueled attack was labelled a terrorist act by the judge, sentencing Fuller to 18 years and nine months in prison with an additional five year sentence for his criminal

¹²² *Id.* at 5.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ BBC, *Vincent Fuller: White Supremacist Car Park Stabbing 'Terrorist Act'* (Sept. 10, 2019), https://www.bbc.com/news/uk-england-surrey-49652977?ns_source=twitter&.

¹³⁰ *Id.*

actions.¹³¹

While Fuller was eventually stopped and publicly tried for his terrorist act, Europol reported in 2019 that there were three additional unpublished arrests for terrorist acts.¹³² One of these previously unpublished arrests related to a 17-year-old neo-Nazi who planned to attack synagogues.¹³³ The 17-year-old was caught and jailed for writing a manifesto which aspired to inspire other terrorists.¹³⁴

The United Kingdom (UK) has a collection of robust terrorism and anti-terrorism statutes which provide definitions, mechanisms for designation, and criminal acts for prosecution.¹³⁵ A unique feature of the UK's domestic terrorism regime is that The United Kingdom's Terrorism Act 2000 which includes a provision that terrorism can include any act "designed seriously to interfere with or seriously to disrupt an electronic system,"¹³⁶ this provision means that violence is not necessary for an act to be considered a terrorist act if it interferes or disrupts an electronic system.¹³⁷

In 2006, a new Terrorist Act was passed which included new offenses determinable as terrorist acts.¹³⁸ Section Two of this Act, titled "Dissemination of Terrorist Publications," "makes it an offence to distribute a terrorist publication with the intention of encouraging acts of terrorism. A terrorist publication is one which could be useful to a person in the commission or preparation of acts of terror."¹³⁹ The maximum sentence for disseminating terrorist publications is seven years imprisonment.¹⁴⁰ Section Five of this Act, titled "Preparation of Terrorist Acts" states:

"makes it an offence for a person to engage in the preparation of acts of terrorism, or to assist others in preparation of acts of terrorism. This includes attempts. It is an offence which requires proof that an individual had a specific intent to commit an act or acts of terrorism and can encompass a wide range of different levels of criminality, from a minor

¹³¹ *Id.*

¹³² Lizzie Dearden, *UK Saw Highest Number of Far-Right Terror Attacks and Plots in Europe In 2019, Europol Says*, THE INDEPENDENT (June 23, 2020), <https://www.independent.co.uk/news/uk/home-news/terror-attacks-far-right-islamist-europe-uk-stanwell-2019-a9581921.html>.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Terrorism*, THE CROWN PROT. SERV., <https://www.cps.gov.uk/crime-info/terrorism> (last visited May 9, 2021).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

role in relation to intended acts all the way through to the planning of multiple murders.”¹⁴¹

The maximum sentence for preparing for terrorist acts as defined in Section Five is life imprisonment.¹⁴²

In 2008, the UK passed the Counter-Terrorism Act which gave new authority for a judge to conclude terrorist connections in relationship to existing charges such as “murder or causing an explosion.”¹⁴³

In 2019, a new Counter-Terrorism and Border Security Act was enacted, produced with hopes of combating rising trends of radicalism.¹⁴⁴ Specifically, the Act was written with hopes of:

“updating terrorism offences for the digital age, and to reflect contemporary patterns of radicalisation; disrupting terrorism by enabling the police and Crown Prosecution Service to intervene at an earlier stage in investigations; ensuring that sentences properly reflect the severity seriousness of terrorism offences, and strengthen the ability of the police to manage terrorist offenders after their release; and strengthening the country’s defences at the border against hostile state activity.”¹⁴⁵

The Act has several main provisions which create new potential terrorist acts, redefine terrorist acts, and raise penalties.¹⁴⁶ A new terrorist offense created is leaving the UK to enter or remain in a designated terrorist risk zone.¹⁴⁷ In terms of redefined terrorist acts, the crime of “obtaining information likely to be useful to a terrorist” was redefined so that it is no longer limited to downloading information, but now includes viewing or streaming such information.¹⁴⁸ Additionally, Section Six of the Act “confers extra-territorial jurisdiction on a number of further offences to ensure that individuals abroad can be prosecuted for having encouraged or carried out acts of terror overseas.”¹⁴⁹ An example of raised penalties includes the maximum penalty for preparatory terrorism offenses, which was raised to 15 years.¹⁵⁰

E. Germany and Domestic Terrorism

In October 2019, Stephan Balliet live streamed his attempt to break into a synagogue in Halle on

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

Yom Kippur.¹⁵¹ Upon failing to enter, he shot and killed a nearby woman and a man inside a nearby kabob shop.¹⁵² Balliet left a trail of online activity indicating anti-Semitism.¹⁵³ A year later, in October 2020, an unidentified man “attacked and wounded a Jewish man exiting a synagogue in Hamburg.”¹⁵⁴ Inside the pocket of the unidentified man was a piece of paper with a swastika on it.¹⁵⁵

Germany has suffered from the activities of far-right extremist groups and is unique in that they have banned such organizations from continuing to operate.¹⁵⁶ Since 2000, Germany has banned organizations such as Blood & Honor, Combat 18, Phalanx 18, and Nordadler, all of which either sustained international neo-Nazi networks or promoted neo-Nazi ideology domestically.¹⁵⁷

Germany has been aggressive in combating the development of terrorist groups, implementing protocols allowing for the tracking of data use relating to potential online terrorist activities.¹⁵⁸ Task forces have been built which monitor hate speech and collaborate with Facebook to screen content that violate German laws on incitement to violence.¹⁵⁹ In 2017, new legislation was adopted which focuses on hate speech, requiring social media companies to “remove illegal content and hate speech from their platforms within 24 hours of receiving a notification” or receive fines of up to 50 million euros for systematic non-compliance.¹⁶⁰

The Improving Information Exchange to Combat International Terrorism, adopted in 2016, empowered “Federal Police to operate undercover agents for the purposes of protecting public safety, expands data exchanges with foreign intelligence services, and allows for advanced monitoring activities

¹⁵¹ Kate Connolly, *German Suspect in Deadly Halle Synagogue Attack Blames Refugees*, THE GUARDIAN (July 21, 2020), <https://www.theguardian.com/world/2020/jul/21/german-man-goes-on-trial-for-deadly-halle-synagogue-shooting-stephan-balliet>.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Germany: Extremism & Counter-Extremism*, COUNTER EXTREMISM PROJECT, <https://www.counterextremism.com/countries/germany> (last visited May 9, 2021).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

of prepaid cellphones by the BfV.”¹⁶¹ Additionally, new legislation was passed to make it illegal to leave Germany to receive terrorist training and national ID cards standards were adjusted so that they might be revoked if an individual was “suspected of constituting a threat.”¹⁶²

CONCLUSION

White nationalist movements have been proliferating in numbers of groups, individuals, and attacks over the past decade.¹⁶³ All of these countless groups and individuals have been energizing and inspiring one another to carry out more and more dramatic attacks.¹⁶⁴ Each time an attack or mass shooting occurs, one to several more attacks are carried out in the following weeks often in completely different countries.¹⁶⁵ After Tarrant massacred 51 people in New Zealand, John T. Earnest was inspired to carry out his shooting in Poway, California.¹⁶⁶

White nationalism is on the rise in the United States.¹⁶⁷ The list of white terrorist attacks in the United States has been steadily rising and there are no legal mechanisms to designate domestic white nationalist groups as the terrorist organizations they truly are.¹⁶⁸ While 18 U.S.C. Chapter 113B offers definitions for domestic terrorism, none of the listed activities or definitions are applicable to actual criminal charges. In practice, many charged white nationalists should have been charged with acts of terror but instead are only decried as terrorists in public or the FBI will investigate such nationalists as terrorists.

When white nationalist groups are based in foreign nations, there is an opportunity to designate

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *White Supremacy is Being Internationalized and Weaponized Like Never Before, Says New ADL Report*, ANTI-DEFAMATION LEAGUE (Sept. 18, 2019), <https://www.adl.org/news/press-releases/white-supremacy-is-being-internationalized-and-weaponized-like-never-before>.

¹⁶⁴ *Id.*

¹⁶⁵ *Mass Shootings Can Be Contagious: Research Shows*, NPR (Aug. 6, 2019), <https://www.npr.org/sections/health-shots/2019/08/06/748767807/mass-shootings-can-be-contagious-research-shows>

¹⁶⁶ Zimmerman, *supra* note 60.

¹⁶⁷ *The Facts on White Nationalism*, FACTCHECK.ORG (Mar. 20, 2019), <https://www.factcheck.org/2019/03/the-facts-on-white-nationalism/>.

¹⁶⁸ *Why Is It So Hard For America To Designate Domestic Terrorism And Hate Crimes?*, BROOKINGS (Mar. 18, 2021), <https://www.brookings.edu/blog/how-we-rise/2021/03/18/why-is-it-so-hard-for-america-to-designate-domestic-terrorism-and-hate-crimes/>.

these groups as Foreign Terrorist Organizations under the FTO list, but this mechanism appears to be focused on Islamic based terror groups based off the listing of most recently designated groups.¹⁶⁹ Where a group may not be labelled an FTO, white nationalist groups abroad may also receive designations as an SDGT (specially designated global terrorist), but such designations are rare and often pundits believe that it would have been more impactful to place white nationalist SDGTs on the FTO list.¹⁷⁰

The FTO list appears underutilized in combating the rise of white nationalism and it is still not entirely clear how valuable an SDGT designation might be. However, the FBI has been vocal that white nationalism is on the rise and has been tracking these white nationalist groups as though they are domestic terrorist groups.¹⁷¹

Norway, New Zealand, England, and Germany all provide examples for consideration in how the United States might criminalize acts as domestic terrorist ones. Norway has criminalized acts including receiving training for terrorist acts, planning terrorist acts, and engaging in terrorist acts. Additionally, Norway has removed any differentiation between foreign or domestic terrorist acts and labels organizations as terrorist ones regardless of foreign or domestic origin.¹⁷² New Zealand has also removed any distinctions between foreign or domestic terrorist groups or acts.

The UK has a complex anti-terrorist regulatory regime with layers of amendments, all of which provide unique features including electronic interference rising to the standard of terrorism in the absence of actual violence.¹⁷³ Germany, in efforts to prevent the spread of hate speech from feeding white nationalist sentiments, actively screens and censors harmful language while tracking data use in potential

¹⁶⁹ *Foreign Terrorist Organizations*, *supra* note 73.

¹⁷⁰ Meier, *supra* note 71.

¹⁷¹ *FBI Director Wray Reconfirms the Threat Posed by Racist Extremists*, WASH. POST (Mar. 2, 2021), <https://www.washingtonpost.com/politics/2021/03/02/fbi-director-wray-reconfirms-threat-posed-by-racist-extremists/>.

¹⁷² *New Zealand's Counter-Terrorism Strategy*, DEP'T OF THE PRIME MINISTER AND CABINET, <https://dpmc.govt.nz/our-programmes/national-security-and-intelligence/national-security/counter-terrorism/new-zealands> (last visited May 9, 2021).

¹⁷³ *The Use of the Internet for Terrorist Purposes*, UN OFFICE ON DRUGS AND CRIME (2012), https://www.unodc.org/documents/frontpage/Use_of_Internet_for_Terrorist_Purposes.pdf.

terrorist activities.¹⁷⁴ Requiring private companies to comply with these practices, companies must consistently remove potentially dangerous content within 24 hours of notice or risk tens of millions in fines¹⁷⁵. A person leaving Germany to potentially train with terrorists would also risk losing the ability to return.¹⁷⁶

The United States would benefit greatly from following in the footsteps of these countries. Removing differentiations of foreign and domestic terrorism as Norway and New Zealand have might allow for mechanisms like the FTO list and SDGT to be used for domestic organizations such as The Base or the Boogaloo. Criminalization of terrorist acts might also make a severe impact. Making activities listed 18 U.S.C. Chapter 113B chargeable terrorist crimes could associate organizations with charged terrorists and help paint white nationalist organizations in a new light.

Legislation that criminalizes terrorist acts presents an opportunity for courts to have guidelines by which to determine if a charged criminal is a terrorist. When such a criminal is convicted as a terrorist, the conviction could go in hand with FBI investigations to then designate the associated group a terrorist one. This recommendation would involve the legislature, executive, and judicial systems to review the facts, ensure the crime is a terrorist one, and confirm association with any such group. Publicly, the group might choose to disband, disown the convicted person, or appeal the designation. Perhaps the designation could require manual State Department renewal every year to ensure that organizations have an opportunity to reform, or they might disband, and the State Department would then have no reason to continue monitoring said group.

This is but a single recommendation among many in academia, but white nationalism is going to continue to rise in the United States and the current legal regime has been ineffective in slowing it down.¹⁷⁷ Eventually, practical actions must be taken, and states have provided new elements for

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Simon Clark, *How White Supremacy Returned to Mainstream Politics*, CTR. FOR AM. PROGRESS (July 1, 2020), <https://www.americanprogress.org/issues/security/reports/2020/07/01/482414/white-supremacy-returned-mainstream-politics/>.

consideration in how the rise of white nationalism might be mitigated. At minimum, criminalization of terrorist acts, as many other states have already done, should be considered.