Equal Prosecution For All: Violent Extremism at the Intersection of Hate Crime and Terrorism

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Equal Prosecution For All: Violent Extremism at the Intersection of Hate Crime and Terrorism

Erratum
changed title to "Prosecution" from "Protection"
EQUA PROSECUTION FOR ALL: VIOLENT EXTREMISM AT THE INTERSECTION OF HATE CRIME AND TERRORISM

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After a white supremacist used his vehicle as a weapon to purposefully attack anti-racism protesters in Charlottesville, Virginia in 2017, federal officials called the incident domestic terrorism. The incident, in fact, met the definition of domestic terrorism. But the perpetrator was not prosecuted under any of the available terrorism statutes. The defendant was instead charged with, and later pled guilty to, committing hate crimes. It is imperative that we recognize all forms of terrorism as terrorism and use the legal system fairly to prosecute all terrorist attacks as terrorism. But the current terrorism statutory framework hinders the ability to prosecute incidents of extreme-right violence as terrorism. This Article argues that many incidents of extreme-right violence are terrorism and should be prosecuted as terrorism. This Article also proposes Congress update the definition of “weapon of mass destruction” to include (1) the use of a vehicle as a weapon and (2) mass shootings. These definitional updates provide a viable path forward for prosecution of violent extreme-right perpetrators as terrorists because it would make available 18 U.S.C. § 2332a, 18 U.S.C. § 2339 A, and the terrorism sentencing enhancement. The United States owes it to the victims of such horrific incidents of extreme-right violence to finally prosecute these perpetrators for what they are—terrorists.

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I. INTRODUCTION

On August 12, 2017, an avowed white supremacist\(^1\) deliberately drove his car into a crowd of anti-racism protesters during a rally in Charlottesville, Virginia, killing one woman and injuring dozens.\(^2\) The perpetrator pled guilty to twenty-nine hate crimes and was subsequently sentenced to two life sentences plus 419 years.\(^3\) Even though the perpetrator was charged with committing hate crimes, much of the public, and many high-level law enforcement officials, called the attack domestic terrorism.\(^4\) This begs the question, why was the incident not prosecuted as “terrorism”? And does it even matter?

The language of the current terrorism statutes implicitly focuses on the perpetrator’s ideology rather than their method of attacks.\(^5\) As a result, while domestic Islamist-extremists are able to be prosecuted as terrorists, extreme-right perpetrators who commit the same method of attack are unable to be prosecuted as terrorists.\(^6\) This is particularly concerning because the majority, and fastest-growing form of domestic terrorism, is perpetrated by individuals associated with the extreme-right movement.\(^7\) The extreme-right movement includes the white-supremacy, anti-
immigrant, and anti-Muslim movements.⁸ Due to the nature of many extreme-right ideologies—believing in the inherent supremacy of the white race and the fear and hatred of non-whites—many of the violent incidents target minorities, specifically individuals who are Black, Jewish, and Muslim.⁹ This lends to the categorization and prosecution of such incidents as hate crimes, especially because the current terrorism statutes are insufficient to capture most violent extreme-right attacks, even though the facts resemble those of domestic Islamist extremist attacks.¹⁰ These extreme-right perpetrators¹¹ therefore are typically prosecuted under hate crime and civil rights statutes.¹²

It is true that these violent extreme right perpetrators often receive lengthy, and sometimes fatal, sentences.¹³ But mere prosecution of these individuals as criminals is not enough. It is imperative that we identify terrorism as terrorism.¹⁴ “Terrorism” is not just a word; it signifies

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⁸In the United States, the extreme-right primarily consists of three slightly overlapping groups: (1) the white supremacist movement, (2) anti-government extremist movements, and (3) “single-issue” movements, such as anti-immigrant and anti-Muslim extremists. *Extreme Right//Radical Right/Far Right, ANTI-DEFAMATION LEAGUE*, https://www.adl.org/resources/glossary-terms/extreme-right-radical-right-far-right.

⁹See e.g., JEROME P. BIELOPEKA, CONG. RESEARCH SERV., R44921, DOMESTIC TERRORISM: AN OVERVIEW 17 (2017); see also Sukhmandir Khalsa, 10 Ways Sikhism Differs From Islam: A Comparison of Sikh and Muslim Faiths, LEARN RELIGIONS (Jan. 21, 2019), https://www.learnreligions.com/ways-sikhism-differs-from-islam-2992956 (Sikhs are also frequently targeted due to the mistaken belief that they are Muslim). It is further impossible to discuss hate crimes without addressing the massive increase in anti-Asian hate crimes over the past two years, in part due to the use of racially-charged language by political leaders in response to the COVID-19 pandemic. See N’dea Yancey-Bragg, ‘Stop Killing Us’: Attacks on Asian-Americans Highlight Rise in Hate Incidents Amid COVID-19, USA TODAY (Feb. 11, 2021, 9:40 PM), https://www.usatoday.com/story/news/nation/2021/02/12/asian-hate-incidents-covid-19-lunar-new-year/4447037001/. However, because of the recency of these growing attacks, it is unclear who is committing these attacks and where on the spectrum of hate and extremism these crimes fall.


¹¹Because the term “domestic terrorism” has a specific statutory definition, this Note will avoid using the term “domestic terrorism” unless it is argued that an incident of violent extremism satisfies the legal definition.


¹³See, e.g., Lavvie, supra note 3; see also Debbie Elliott, 5 Years After Charleston Church Massacre, What Have We Learned?, NPR, (June 17, 2020), https://www.npr.org/2020/06/17/878828088/5-years-after-charleston-church-massacre-what-have-we-learned (the Charleston Church shooter was found guilty under 18 U.S.C. § 247 and sentenced to death).

¹⁴Jane Chong, White Hate but Islamist Terror? Charleston, Hate Crimes and Terrorism Per Quo, LAWFARE (June 21, 2015, 10:00 PM), https://www.lawfareblog.com/white-hate-islamist-terror-charleston-hate-crimes-and-terrorism-quo (“the issue of nomenclature is obviously deeply emotional for the public.”).
particularly abhorrent crimes in our society. Prosecuting only certain instances of terrorism under the relevant terrorism statutes is inappropriate because it treats violent attacks differently based, inherently, on the beliefs of the actor rather than the act itself. This underappreciates the threat of the extreme-right and leads to the implicit opinion that certain actors, victims, or incidents are less threatening and less important than others.

This Note argues that the current terrorism statutes are insufficient to prosecute the most violent extreme-right perpetrators as terrorists because the statutes fail to account for the most common form of extreme-right attacks, using a vehicle as a weapon and mass shootings. This leads terrorists to be charged and prosecuted based, fundamentally, on their ideology rather than the violent attack itself. Perpetrators of violent extreme-right attacks, such as the Charlottesville car attack, should be charged and prosecuted under the terrorism statutes to ensure fairness of the laws and equality of the victims. Congress must thus update the statutory definition of “weapon of mass destruction,” which includes not only the traditional nuclear, biological, and chemical weapons, but also certain explosive and projectile-expelling devices, to include the use of a vehicle as a weapon and mass shootings. Part II of this Note provides an overview of the domestic terrorist threat, the hate crime and terrorism statutes, and recent domestic extremist attacks. Part III then argues that the current terrorism statutes are insufficient to prosecute all types of terrorism, the most violent extreme-right attacks are terrorism, and these crimes must be prosecuted as terrorism. Lastly, Part IV explores how updates to the definition of “weapon of mass destruction” would provide the most

15 Priscilla Parada, White Supremacists Have Committed Domestic Terrorist Attacks, But Why Have the Attackers Not Been Indicted As Domestic Terrorists? 41 U. La Verne L. Rev. 104, 124 (Fall 2019).
17 By arguing that the terrorism statutes should be updated to reflect method of attack rather than ideology, this proposed recommendation does not implicate protected speech.
18 18 U.S.C. § 2332a(c)(2).
succinct and efficient solution and allow a clearer path to prosecute many instances of the most egregious extreme-right violence as terrorism.

II. BACKGROUND

Federal law defines terrorism as (1) an act dangerous to human life that violates, or would violate, the criminal laws of the United States and (2) appears intended to (i) intimidate or coerce a civilian population, (ii) influence the policy of a government by intimidation or coercion, or (iii) affect the conduct of a government by mass destruction, assassination, or kidnapping.\(^{19}\) Terrorism is often categorized as either international or domestic. Whereas international terrorism must “transcend national boundaries,”\(^{20}\) domestic terrorism occurs “primarily within the territorial jurisdiction of the United States.”\(^{21}\) This section will discuss the history and present threat of domestic terrorism and how the United States prosecutes domestic violent extremists, including the historical developments and current usage of the hate crime and terrorism statutes.

A. Domestic Terrorism Threat

Incidents of domestic terrorism in the United States have been increasing in recent years.\(^{22}\) The Anti-Defamation League (ADL), one of the leading policy groups on the issue of domestic terrorism, recorded fifteen incidents of domestic terrorism in 2020 that led to seventeen deaths.\(^{23}\) Additionally, extremist-related attacks led to forty-five deaths in 2019 and fifty-four deaths in 2018.\(^{24}\)

\(^{19}\) 18 U.S.C. § 2331(1), (5).

\(^{20}\) 18 U.S.C. § 2331(1)(C); \textit{see also} 18 U.S.C. § 2332b(g)(1) (“transcending national boundaries” means “conduct occurring outside of the United States in addition to the conduct occurring in the United States.”).

\(^{21}\) 18 U.S.C. § 2331(5).


\(^{23}\) Pitcavage, \textit{supra} note 22 at 4.

\(^{24}\) \textit{Id.}
While the 2020 numbers seem to show a decrease in domestic terrorism, these numbers are misleading. Due to the COVID-19 pandemic in 2020, stay-at-home orders and social distancing protocols had the effect of decreasing mass gatherings, the typical environment for mass casualty incidents.\textsuperscript{25} And although extremist-related deaths were lower in 2020, extremists were more active overall.\textsuperscript{26} Data compiled by the Center for Strategic and International Studies (CSIS) concluded that “far left and far right attacks hit groundbreaking levels in 2020.”\textsuperscript{27}

The federal government has similarly acknowledged an increase in domestic terrorism.\textsuperscript{28} An October 2018 report from the National Strategy for Counterterrorism concluded domestic terrorism is on the rise in the United States.\textsuperscript{29} In January 2020, the Department of Homeland Security’s Strategic Framework for Countering Terrorism and Targeted Violence discussed the concerning rise in severity and number of attacks by individuals motivated by domestic terrorist ideologies.\textsuperscript{30} In February 2020, the FBI elevated racially-motivated violent extremism to “top-level priority,” putting it on the same footing as threats by ISIS\textsuperscript{31} and homegrown violent extremism.\textsuperscript{32} And the Department of Justice recently announced that its National Security Division is and will continue to

\textsuperscript{25} Id.
\textsuperscript{26} Id. at 8 (reporting the number of extremist-related terrorist attacks or plots increased from 2019 to 2020).
\textsuperscript{29}EXEC. OFF. OF THE PRESIDENT, National Strategy for Counterterrorism of the United States of America 10 (2018).
\textsuperscript{31} See also TERRENCE K. KELLY ET AL., RAND CORP, KNOWING THE ENEMY: UNDERSTANDING THE ISLAMIC STATE AND PRINCIPLES FOR DEFETING IT, n.1 (2017) (noting that ISIS is also commonly referred to as Islamic State of Iraq and Syria (ISIS), the Islamic State of Iraq and the Levant (ISIL), or simply as the Islamic State (IS)).

(Defining Homegrown Violent Extremists (HVEs) as persons operating primarily in the United States who “engage in ideologically-motivated terrorist activities...in furtherance of political or social objectives promoted by an [FTO], but is acting independently of direction by an FTO.”)
focus on the rise of domestic terrorism by increasing training and resources to directly address the threat.\textsuperscript{33}

While there are certainly incidents of far-left extremist attacks, the majority of domestic extremist incidents are carried out by individuals tied to extreme-right ideologies.\textsuperscript{34} In fact, extreme-right incidents reached an all-time high in 2020.\textsuperscript{35} Three of the most notable incidents of extremist violence over the past two years—the conspiracy to kidnap Michigan Governor Gretchen Whitmer, the attack on a federal district judge’s family, and the January 6 attack on the U.S. Capitol—were all carried out by members associating with the extreme-right.\textsuperscript{36}

Although the extreme-right movement incorporates many groups and ideologies, the majority of extreme-right attacks are carried out by white supremacists.\textsuperscript{37} Over half of all domestic extremist-related killings in the United States between 2009-2018 were committed by white supremacists, and four out of every five extremist-related murders in 2019 were committed by white supremacists.\textsuperscript{38} Extreme-right terrorist plots or attacks increased from 2019 to 2020,\textsuperscript{39} and white supremacist propaganda also increased significantly in that same period of time.\textsuperscript{40} Propaganda, often

\textsuperscript{34} SETH G. JONES ET AL., CTR. FOR STRATEGIC AND INT’L STUDIES, THE ESCALATING TERRORISM PROBLEM IN THE UNITED STATES 1-3 (2020) (concluding far-right terrorism significantly outpaces other types of terrorism, including those from far-left networks and individuals inspired by foreign Islamist terrorist organizations); O’Harrow Jr. et al., supra note 27 at n.28 (reporting that CSIS recorded 73 incidents of far-right extremism and 25 incidents of far-left extremism in 2020); PICTAVAGE, supra note 22 at 4,11 (stating that the remaining instances of domestic terrorism are typically carried out by domestic Islamist extremists and left-wing extremists (including anarchists and black nationalists)).
\textsuperscript{35} See O’Harrow et al., supra note 27.
\textsuperscript{36} See infra Appendix B.
\textsuperscript{37} PICTAVAGE, supra note 22 at 4, 11-12. See White Supremacy, ANTI-DEFAMATION LEAGUE, https://www.adl.org/resources/glossary-terms/white-supremacy (defining the term “white supremacist” as encompassing a variety of individuals having one or more of the following beliefs: (1) whites should have dominance over people of other ethnicities; (2) whites should live in a whites-only society; (3) white culture is superior to other cultures; (4) white people are genetically superior to other people).
\textsuperscript{38} Seamus Hughes et al., White Supremacist Terror: Modernizing our Approach to Today’s Threat, GEO. WASH. PROGRAM ON EXTREMISM 4 n.5 (April 2020).
\textsuperscript{39} PICTAVAGE, supra note 22, at 4, 11–12.
\textsuperscript{40} Id. at 4, 8 (documenting 4,500 incidents of white supremacist propaganda in 2020 and only 2,724 in 2019); see generally ANTI-DEFAMATION LEAGUE CTR. ON EXTREMISM, WHITE SUPREMACISTS DOUBLE DOWN ON PROPAGANDA IN 2019 (2020).
spread via the Internet and social media platforms, increases the numbers of individuals espousing white supremacist views and encourages those individuals to engage in more destructive and violent behavior. It also furthers the interconnectivity between groups and individuals in the United States and those internationally who espouse similar white supremacist ideologies.

Not only is the threat of extreme-right violence increasing, but the methods of attack are increasingly moving outside the current terrorism statutory framework, which focuses on traditional notions of terrorism, such as use of explosive devices. But between January and August 2020, vehicle and firearm attacks made up over half of all violent extreme-right attacks and plots, whereas explosives and incendiaries were only one-fourth. Since 2014, perpetrators have used firearms to cause the majority of extreme-right related killings. And the use of vehicles as a weapon, specifically, is the fastest growing type of extreme-right violence. This increase is likely due to the ease of carrying out such an attack coupled with the devastating impact such an attack can have when used to target large groups of people.

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42 See Kurz, supra note 10, at 128–29.
43 See 18 U.S.C. §§ 2332a-b (defining and imposing penalties for use of weapons of mass destruction and acts of terrorism transcending national boundaries); see also 18 U.S.C. § 2332b(g)(5)(B) (defining acts of terrorism including destruction of property or violence at mass transit systems or federal property, use of chemical, biological, nuclear weapons, violence against federal government officials, use of explosives, arsons, and bombing, destruction of certain infrastructure, such as communication lines, stations, systems, energy facilities, national defense facilities).
45 Pitchavge, supra note 22.
46 Jones et al., supra note 44, at 2 (concluding that vehicles were used in eleven extreme-right attacks between January and August 2020, whereas a vehicle was only used as a weapon once between 2015-2019); see also Hannah Allam, Vehicle Attacks Rise at Extremists Target Protesters, NPR (June 21, 2020, 7:01 AM), https://www.npr.org/2020/06/21/880963592/vehicle-attacks-rise-as-extremists-target-protesters (reporting at least eighteen deliberate vehicle-ramming attacks targeting those protesting against police brutality between May-June 2020); Toronto is the Most Recent of Many Deliberate Attacks Involving Vehicles, USA TODAY (Apr. 23, 2018, 10:27 PM), https://wwwusatoday.com/story/news/world/2018/04/23/list-fatal-vehicle-attacks/544603002/ (cataloguing a growing trend of perpetrators using vehicles as a weapon to target mass amounts of civilians).
47 Jones et al., supra note 44, at 5 (quoting DEPT HOMELAND SEC., VEHICLE RAMMING: SECURITY AWARENESS FOR SOFT TARGETS AND CROWDED PLACES 1).
B. Paths to Prosecution and Sentencing

Due to the lack of a specific “domestic terrorism” charge, the Government uses a variety of statutes to prosecute extreme-right attacks. This Note considers the most commonly used tool to prosecute extreme-right violence, the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009, as well as three relevant terrorism statutes, 18 U.S.C. § 2332a (use of weapon of mass destruction), 18 U.S.C. § 2339A (provision of material support to terrorists), and 18 U.S.C. § 2339B (provision of material support to a foreign terrorist organization (“FTO’’)), and the terrorism sentencing enhancement.


Various forms and iterations of hate crime statutes have existed since the late-1800s in response to the reign of terror perpetrated by the Ku Klux Klan and similar organizations following the Civil War. Currently, the most prominent hate crime statute is the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009 (hereinafter “Hate Crime Act”) named after two individuals brutally murdered because of their sexuality and race respectively.

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49 Michael German & Sara Robinson, Wrong Priorities on Fighting Terrorism 10–13 (2018) (compiling a list of statutes used in domestic terrorism prosecutions); see also Domestic Terrorism Prosecutions Reach All-Time High in FY 2020, TRAC REP. (Jan. 11, 2021), https://trac.syr.edu/trareports/crim/636/ (listing a variety of lead charges in domestic terrorism prosecutions, including 18 U.S.C. §§ 111 (assaulting, resisting, or impeding officers or employees), 871 (threats against the President and successors), 1752 (knowingly entering or remaining in any restricted building or grounds), 844 (importation and storage of explosives), 231 (civil disorders), 875 (interstate communications), and 876 (making threatening communications)).
53 Eric Shimamoto, Rethinking Hate Crime in the Age of Terror, 72 UMKC L. REV. 829, 833 (Spring 2004).
The Hate Crime Act provides for prosecution of a perpetrator who “willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, [or] attempts to cause bodily injury to any person because of the actual or perceived race, color, religion, or national origin of any person.”

In order to prosecute a defendant under the Hate Crime Act, the Government must prove that (1) defendant committed an act prohibited by law, (2) defendant selected a victim because of the victim’s protected characteristic, such as race, ethnicity, religion, or sexual orientation, and (3) defendant demonstrated bias or prejudice against a protected characteristic of the victim. Many violent extreme-right perpetrators clearly satisfy these elements, as they often post their ideologies on social media and write manifestos explaining their views and reasons for committing the attack.

2. Terrorism Statutes

While there is a statutory definition of domestic terrorism, there is no specific domestic terrorism charge for prosecutors to pursue. Some scholars argue the difference in treatment between extreme-right perpetrators and Islamist extremists comes down to the weapon used—e.g., a bomb or a gun. But regardless of weapon, the current terrorism statutes provide a clearer avenue to prosecution for extremists who have an international connection. While there is no standalone

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56 57 AM. JUR. 3d PROOF OF FACTS 1, 20–21.
59 See generally DOYLE, supra note 48; Mary McCord, Filling the Gap in Our Terrorism Statutes, GEO. WASH. PROGRAM ON EXTREMISM (Aug. 2019).
60 Islamist extremism is rooted in the perception that Western culture is a threat to Islam and Islamic religious identity. See DINA AL RAFFIE, IDENTITY-EXTREMISM NEXUS: COUNTERING ISLAMIST EXTREMISM IN THE WEST, 8 (2015).
domestic terrorism charge, there is a charge dedicated to terrorism that “transcends national boundaries”\(^{62}\) or where the individual is connected to a designated FTO.\(^{63}\) Given that the United States has primarily only designated Islamist extremist groups as FTOs,\(^{64}\) most terrorism cases brought are against homegrown Islamist extremists, even if the facts seem comparable to those of violent extreme-right perpetrators.\(^{65}\)

Although it is significantly more common for terrorism charges to be brought against homegrown Islamist extremists,\(^{66}\) violent extreme-right perpetrators can still be prosecuted under the various terrorism statutes.\(^{67}\) But extreme-right perpetrators are commonly charged under non-terrorism related statutes.\(^{68}\) The most relevant terrorism statutes for purposes of this Note are 18 U.S.C. § 2332a (use of weapon of mass destruction) and the two material support statutes—18 U.S.C. §§ 2339A (provision of material support to terrorists) and 2339B (provision of material support to an FTO).\(^{69}\)

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\(^{63}\) 18 U.S.C. § 2339B. This international focus can likely be attributed, at least in part, to the timing of the statutes, which were enacted in 1992 following the Gulf War, and later amended in 2001 following the September 11 attacks.


\(^{65}\) See discussion infra Part III.A.

\(^{66}\) FY 2019 Domestic Terrorism Prosecutions Twice Number for International Terrorism, TRAC REP. (Aug. 29, 2019) [hereinafter FY 2019 Domestic Terrorism Prosecutions], https://trac.syr.edu/tracreports/crim/572/ (finding that 18 U.S.C. §2339B (material support to an FTO) was the most commonly filed lead charge in federal terrorism-related prosecutions).

\(^{67}\) Most of the terrorism statutes do not explicitly require an international nexus. See GERMAN & ROBINSON, supra note 49, at 5 (finding 51 of the 57 listed terrorism offenses are applicable to both international and domestic terrorism).

\(^{68}\) See Scott Sullivan, Prosecuting Domestic Terrorism as Terrorism, JUST SECURITY (Aug. 18, 2017), https://www.justsecurity.org/44274/prosecuting-domestic-terrorism-terrorism/ (concluding that “domestic terrorists, unlike their international counterparts, are rarely prosecuted for terrorism-related crimes.”); see Shirin Sinnar, More Misleading Claims on Immigrants and Terrorism, JUST SECURITY (Mar. 4, 2017), https://www.justsecurity.org/38341/misleading-claims-immigrants-terrorism/ (arguing that prosecutors often do not charge extreme-right violence under any of the terrorism statutes); see Eric Halliday & Rachael Hanna, How the Federal Government Investigates and Prosecutes Domestic Terrorism, LAWFARE (Feb. 16, 2021, 11:17 AM), https://www.lawfareblog.com/how-federal-government-investigates-and-prosecutes-domestic-terrorism (listing each of the four § 2339A domestic terrorism cases); see also GERMAN & ROBINSON, supra note 49 at 9–11 (finding that, between 2013–2017, prosecutors used at least 66 different statutes in 412 “Domestic Terrorism” prosecutions); but see id. at 14, 17 (finding that the data are inconclusive as to how many of the domestic terrorism prosecutions involved far-right violence).

\(^{69}\) 18 U.S.C. § 2332a (weapons of mass destruction); 18 U.S.C. § 2339A (material support to terrorists); 18 U.S.C. § 2339B (material support to foreign terrorist organizations); See generally Sinnar, supra note 61, at 1352–53 (explaining the three categories of terrorist crimes under federal law).
First, under 18 U.S.C. § 2332a (use of weapon of mass destruction), a perpetrator may be liable if they use, threaten, attempt, or conspire to use a weapon of mass destruction.\textsuperscript{70} Prosecutors must thus prove defendant (1) used or attempted to use a weapon of mass destruction, (2) against any person within the United States, and (3) the incident affects interstate commerce by one of four conditions.\textsuperscript{71} “Weapon of mass destruction” is defined, in part, as “any destructive device as defined in [18 U.S.C. § 921].”\textsuperscript{72} A destructive device generally refers to explosive or incendiary devices, other weapons that may be converted to expel a projectile, or any combination of parts designed or intended to be used as a destructive device.\textsuperscript{73} This expands the criminalization of use of a “weapon of mass destruction” beyond just the traditional concept of nuclear, biological, and chemical weapons.\textsuperscript{74}

Second, under 18 U.S.C. § 2339A (provision of material support to terrorists), a perpetrator may be liable for providing material support,\textsuperscript{75} including property, services, or personnel, for a

\textsuperscript{70} For example, a white supremacist who planted an explosive device at a Martin Luther King Jr. day parade in Spokane, Washington in 2011 was sentenced to thirty-two years for attempting to use a weapon of mass destruction. \textit{See, e.g.}, Michael Martinez, \textit{Man Who Placed Bomb on MLK Day Parade Route Sentenced to 32 Years}, CNN (Dec. 20, 2011, 4:35 PM), https://www.cnn.com/2011/12/20/justice/washington-mlk-bomb-sentencing/index.html (citing law enforcement officials determination that the bomb plot, if successful, could have injured many more people).

\textsuperscript{71} 18 U.S.C. § 2332a(a)(2) provides that, if the weapon is used against a person or property within the United States, (1) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense, (2) such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce, (3) any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or (4) the offense, or the results of the offense, affect interstate or foreign commerce, or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce.


\textsuperscript{73} 18 U.S.C. § 921(a)(4). The term “destructive device” means – 
(A) any explosive, incendiary, or poison gas . . . ;
(B) any type of weapon (other than a shotgun . . .) . . . which may be readily converted to[] expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

\textsuperscript{74} See, e.g., United States v. McVeigh, 940 F. Supp. 1571, 1575 (D. Colo. 1996) for a case that invokes Section 921 to include a truck bomb as a “destructive device” and thus a “weapon of mass destruction.”

\textsuperscript{75} 18 U.S.C. § 2339A(b)(1). “The term ‘material support or resources’ means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouse, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.”
variety of defined terrorist acts. Prosecution under this statute requires evidence that (1) defendant provided material support, (2) for a specified underlying terrorist act, and (3) defendant knew their support would be used to perpetrate the underlying terrorist act.

Third, another possible pathway to prosecution is under 18 U.S.C. § 2339B (provision of material support to an FTO). To violate this statute, a person must (1) provide material support, (2) to a designated FTO, and (3) have knowledge that the organization is a designated FTO, or has engaged or does engage in terrorist activities or terrorism.

3. Terrorism Sentencing Enhancement

Lastly, following a guilty plea or conviction, the court may impose a terrorism sentencing enhancement where the offense was a felony that involved, or was intended to promote, a “federal

76 18 U.S.C. § 2339A(a) (listing the defined terrorist acts, including destruction of, or violence at, mass transit systems or federal property, use of chemical, biological, nuclear weapons, violence against federal government officials, use of explosives, arsons, and bombing, destruction of certain infrastructure, such as communication lines, stations, systems, energy facilities, national defense facilities, 2332a (relating to the use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries)). See GERMAN & ROBINSON, supra note 49, at 6–7 (compiling and defining list of all predicate offenses).


78 For example, a defendant associated with both Nazi ideology and radical Islam was found guilty of attempting to provide material support to an FTO for transmitting $245 worth of gift cards in order to help facilitate fighters’ travel to ISIL-controlled territory. United States v. Young, 916 F.3d 368, 375 (4th Cir. 2019).


80 The organization must be a designated terrorist organization under 8 U.S.C. § 1189 as an FTO. This requires a finding by the Secretary of State that (1) the organization is a foreign organization, (2) the organization engages in terrorist activity (as defined in 8 U.S.C. § 1182(a)(3)(B) or terrorism (as defined in 22 U.S.C. § 2656f(d)(2)), or retains the capability and intent to engage in terrorist activity or terrorism, and (3) the terrorist activity or terrorism threatens the United States or its nationals. See TERRORIST DESIGNATIONS AND STATE SPONSORS OF TERRORISM, supra note 64.

81 "Terrorist activities," as used in this definition, means any activity which is unlawful in the place it was committed, or would be unlawful if committed in the United States, and involves: high jacking or sabotage of transportation; seizing, detaining, or threatening to injure or kill an individual in order to compel a third person to act or abstain from acting; engaging in a violent attack upon an internationally protected person; committing an assassination; using biological, chemical, nuclear, or other dangerous weapons; or threatening, attempting, or conspiring to do any of the foregoing. 8 U.S.C. § 1182(a)(3)(B)(iii)(I)–(VI); "Terrorism," as used in this definition, means "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents." 22 U.S.C. § 2656f(d)(2).
crime of terrorism,” as defined in 18 USC § 2332b(g)(5). A “federal crime of terrorism” is an offense that (1) “is calculated to affect the conduct of government by intimidation or coercion, or to retaliate against government conduct” and (2) is a violation of one of the enumerated offenses. The upward departure is further appropriate where (1) the act was intended to influence the government, but was not covered by one of the enumerated statutes, or (2) the act was covered by one of the enumerated statutes, but was intended to intimidate or coerce a civilian population rather than the government. Many instances of extreme-right violence would fall into this latter category, as the attacks are generally intended to intimidate a civilian population. The act would, thus, need to be covered by one of the enumerated statutes.

C. Violent Extremist Incidents

There have unfortunately been many recent incidents of violent extremism in the United States. The chart below specifically highlights certain violent extremist incidents particularly recognizable due to their mass casualties and publicity. All of these incidents were carried out by perpetrators who were inspired by extremist incidents, propaganda, or individuals, and the violent

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83 18 USC § 2332b(g)(5). The list of enumerated offenses is the same as that which appears in 18 U.S.C. § 2339A. See GERMAN & ROBINSON, supra, note 76.  
85 For more case details, see infra Appendix A. The case examples will study the details available about the incident, government response to the incident, public reaction to the incident, the possible motivation behind the attack, and any charges levied against the perpetrators or co-conspirators.  
86 FED. BUREAU INVESTIGATION & DEP’T HOMELAND SEC., STRATEGIC INTELLIGENCE ASSESSMENT AND DATA ON DOMESTIC TERRORISM 22 (2021) (counting the number of domestic terrorism-related arrests by or in coordination with the F.B.I. between the fiscal years 2015 and 2019) [hereinafter STRATEGIC INTELLIGENCE ASSESSMENT]. This Note uses the term “violent extremism” to mean violent attacks occurring within the United States that was perpetrated by self-radicalized United States individuals espousing extremist ideologies. See Defining Extremism: A Glossary of White Supremacist Terms, Movements and Philosophies, ANTI-DEFAMATION LEAGUE, https://www.adl.org/education/resources/glossary-terms/defining-extremism-white-supremacy (defining “extremism” as “religious, social or political belief systems that exist substantially outside of belief systems more broadly accepted”). This includes both Islamist extremism and the extreme-right.  
87 For purposes of brevity, this Note is unable to list and consider all relevant incidents of violent extremism. However, omission of certain violent extremist attacks is not meant to detract from the horror and pain of those incidents.
attacks were not directly planned, funded, or organized by a specific domestic or international group.\footnote{This class of perpetrators is often referred to as “lone wolf terrorists.” See Jeffrey Connor & Carol Rollie Flynn, Report: Lone Wolf Terrorism, GEO. UNIV. SEC. STUD. PROGRAM, NAT’L SEC. CRITICAL ISSUE TASK FORCE 9 (June 27, 2015), https://georgetownsecuritystudiesreview.org/wp-content/uploads/2015/08/NCITF-Final-Paper.pdf (defining “lone wolf terrorism” as “The deliberate creation and exploitation of fear through violence or threat of violence committed by a single actor who pursues political change linked to a formulated ideology, whether his own or that of a larger organization, and who does not receive orders, direction, or material support from outside sources.”); See Noah Bierman et al., Charleston Shooting Suspect Dylann Roof Said to Be ‘A Classic Lone Wolf’, L.A. TIMES (June 20, 2015), https://www.latimes.com/nation/la-na-charleston-lone-wolf-20150620-story.html (noting how lone wolf perpetrators are both unpredictable and capable of more violent attacks); For an important examination of society’s selective use of the term “lone wolf” and its effects on the prosecution of domestic terrorism (or lack thereof), see Khaled A. Beydoun, Lone Wolf Terrorism: Types, Stripes and Double Standards, 112 NW. U. L. REV. 187, 209 (2018) (arguing that racial and religious stereotypes of Muslims impact the investigation and prosecution of lone wolf terrorism).}

<table>
<thead>
<tr>
<th>Date</th>
<th>Incident</th>
<th>Weapon</th>
<th>Ideology</th>
<th>Prosecution/Indictment</th>
<th>Number of Victims</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 17, 2015</td>
<td>Charleston Church Shooting</td>
<td>Firearm</td>
<td>Extreme-right</td>
<td>Perpetrator convicted of federal hate crimes and sentenced to death</td>
<td>Nine</td>
</tr>
<tr>
<td>July 16, 2015</td>
<td>Chattanooga Shooting</td>
<td>Firearm</td>
<td>Islamist extremism</td>
<td>Perpetrator killed at the scene</td>
<td>Seven</td>
</tr>
<tr>
<td>December 2, 2015</td>
<td>San Bernardino Shooting</td>
<td>Firearm</td>
<td>Islamist extremism</td>
<td>Perpetrators killed at the scene; co-conspirator found guilty of providing material support to terrorists and sentenced to twenty years</td>
<td>Thirty-six</td>
</tr>
<tr>
<td>August 12, 2017</td>
<td>Charlottesville Car Attack</td>
<td>Vehicle</td>
<td>Extreme-right</td>
<td>Perpetrator pleaded guilty to multiple hate crime charges and was sentenced to two life sentences plus 419 years</td>
<td>Dozens</td>
</tr>
<tr>
<td>March 2019</td>
<td>Germantown Car Attack Plot</td>
<td>Vehicle</td>
<td>Islamist extremism</td>
<td>Perpetrator charged with attempting to provide material support to an FTO</td>
<td>None</td>
</tr>
<tr>
<td>August 2, 2019</td>
<td>El Paso Walmart Shooting</td>
<td>Firearm</td>
<td>Extreme-right</td>
<td>Perpetrator indicted on multiple hate crime charges</td>
<td>Forty-five</td>
</tr>
</tbody>
</table>
III. ANALYSIS

Terrorism is viewed as a threat to the national security, whereas hate crimes are viewed as only a threat to a certain community.\textsuperscript{89} It cannot be denied that the targeting of large groups of Americans, by any extremist group, constitutes a threat to America’s national security.\textsuperscript{90} But because the underlying ideology of the extreme-right is based on hatred of certain communities, society and the legal system struggle to properly identify extreme-right violence as terrorism.\textsuperscript{91} As such, many incidents of extreme-right violence are prosecuted as hate crimes.\textsuperscript{92} The statutory definition of “domestic terrorism,” however, makes clear that these incidents are terrorism\textsuperscript{93} because (1) incidents of extreme-right violence that use a vehicle as a weapon or involve a mass shooting specifically target certain groups of individuals based on extreme-right ideology,\textsuperscript{94} and (2) these extremists use violence to intimidate a civilian population, whether these individuals are Black, perceived immigrants, or anti-racism protestors.\textsuperscript{95}

\textsuperscript{89} Conversation with Rollie Lal, Assoc. Professor, The George Washington Univ. Elliott Sch. of Int’l Affairs (Feb. 8, 2021); What We Investigate Terrorism, Federal Bureau of Investigation, (Sep. 08, 2021 3:00 PM) https://www.fbi.gov/investigate/terrorism (protecting the United States from terrorist attacks is the FBI’s number one priority); What We Investigate: Civil Rights- Hate Crimes, Federal Bureau of Investigation, (Jul. 29, 2021 7:59 PM) https://www.fbi.gov/investigate/civil-rights/hate-crimes (stating that hate crimes are the highest priority of the FBI’s civil rights program because of the devastating impact they have on families and communities); cf. Michael German & Emmanuel Maulton, Fighting Far-Right Violence and Hate Crimes: Reshaping Federal Law Enforcement Priorities, BRENNAN CTR. FOR JUSTICE 19 (July 1, 2019), https://www.brennancenter.org/sites/default/files/2019-08/Report_Far_Right_Violence.pdf (finding that the government regularly categorizes extreme-right violence as gang crimes rather than terrorism).

\textsuperscript{90} See William Braniff, Hate Crime is a National Security Issue, NAT’L CONSORTIUM FOR THE STUDY OF TERRORISM AND RESPONSES TO TERRORISM (Nov. 12, 2020), https://www.start.umd.edu/news/hate-crime-national-security-issue (claiming that hundreds of crimes are committed every year that threaten national security); see also Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, [Feb. 16 2011] Case No. STL-11-01/I, p.73 (Leb.) (stating that those who are victims of fear, terror, or panic need not necessarily make up the whole population).

\textsuperscript{91} See Engy Abdellaker et al., Mass Violence Motivated by Hate: Are New Domestic Terrorism Laws the Answer?, 44 HARBINGER 116, 117, 132–133 (2020).

\textsuperscript{92} See e.g., Strategic Intelligence Assessment, supra note 86, at 29–40.

\textsuperscript{93} 18 U.S.C. § 2331(5).

\textsuperscript{94} See Elliott, supra note 13 (Charleston Church shooter posted racist manifesto targeting Black individuals); Lavoie, supra note 2 (Charlottesville car attacker targeted individuals protesting white supremacist rally); Simon Romero, Manny Fernandez, & Mariel Padilla, Massacre at a Crowded Walmart in Texas Leaves 20 Dead, N.Y. TIMES (Aug. 3, 2019), https://www.nytimes.com/2019/08/03/us/el-paso-shooting.html (El Paso Walmart shooter posted anti-immigrant manifesto).

\textsuperscript{95} 18 U.S.C. § 2331(5).
These acts of terrorism are not being properly identified and prosecuted as such.\textsuperscript{96} Evidence shows that non-white individuals are more frequently prosecuted as terrorists for the same crime as white individuals.\textsuperscript{97} This section will first address the critical statutory gap that leads to this difference in prosecution of extreme-right domestic terrorists and other types of domestic terrorists. This section will next show why it actually matters that violent extreme-right terrorists be prosecuted as terrorists.

\textit{A. Arbitrary Distinction Between “Domestic” and “International” Terrorism}

The current terrorism statutory framework leans on a distinction between “domestic” and “international” terrorism.\textsuperscript{98} In its literal definitional sense, “international” captures terrorist attacks that primarily occur abroad, and “domestic” captures terrorist attacks that occur within the United States.\textsuperscript{99} But these terms are increasingly used to bucket certain terrorist attacks into categories based on underlying ideology.\textsuperscript{100} This creates the misguided view that the extreme-right movement is solely a “domestic” issue.\textsuperscript{101}

The varied legal treatment of violent extreme-right perpetrators and homegrown violent Islamist extremists thus comes down to arbitrary distinctions between the two material support statutes—18 U.S.C. §§ 2339A (material support to terrorists) and 2339B (material support to an FTO). These differences outline the hurdles necessary to overcome in order to prosecute extreme-

\textsuperscript{96} See infra Appendix A (perpetrators of the Charleston Church shooting, Charlottesville car attack, and El Paso Walmart shooting all charged with committing hate crimes)

\textsuperscript{97} See Sinnar, supra note 61 (showing that the different distinctions given to white supremacy and foreign terrorism affects how these threats are perceived by government agencies).

\textsuperscript{98} Geltzer, McCord, & Rasmussen, supra note 10 (providing that the distinction between international terrorism and domestic terrorism is counterproductive to current threats).

\textsuperscript{99} 18 U.S.C. § 2331(1), (5).

\textsuperscript{100} See Geltzer, McCord, & Rasmussen, supra note 10.

\textsuperscript{101} Id.
right domestic terrorists as terrorists. This is further exemplified by the inappropriate distinction between domestic terrorists who are connected with certain types of foreign ideologies.

1. Difference Between the Material Support Statutes

The disproportionate prosecution of domestic terrorists espousing extreme-right versus Islamist extremist ideologies often comes down to the difference between the material support statutes. The United States has designated zero extreme-right groups as an FTO but has designated multiple Islamist extremist groups as FTOs. This makes it much easier for the government to bring terrorism charges against domestic individuals espousing Islamist extremist ideologies. These charges are typically brought under 18 U.S.C. § 2339B (material support to an FTO), even though the domestic perpetrator may be self-radicalized or merely inspired by the FTO. To the contrary, even though violent extreme-right individuals are often also self-radicalized and inspired by various foreign attacks, groups, and ideologies, there are no international white

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802 While it is impossible to discount that potential implicit biases may be leading to unequal prosecutions of white and non-white violent extremists, this Note will presume that prosecutorial discretion of this sort is not an issue. See Press Release, Department of Justice, Department of Justice Announces New Department-Wide Implicit Bias Training for Personnel (June 27, 2016) (on file with author) (the Department of Justice announces its implementation of implicit bias trainings to address issues of racial disparity in policing). Implicit bias trainings focused at eliminating the discrepancy between how white and non-white individuals are viewed in terms of terrorism prosecutions may be useful in supplementing the recommended statutory updates.

803 See Terrorist Designations and State Sponsors of Terrorism, supra note 64.

804 See infra Appendix A (Germantown Car Attack Plot). This, however, seems counter to the statutory language of 18 U.S.C. § 2339B(h) (“Individuals who act entirely independently of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization’s direction and control.”).
supremacist groups designated as FTOs.\textsuperscript{105} This makes it unlikely and difficult for a violent extreme-right perpetrator to be prosecuted under 18 U.S.C. § 2339B.\textsuperscript{106}

On the other hand, nothing in 18 U.S.C. § 2339A (material support to terrorists) requires that the perpetrator be connected to international terrorism or an FTO.\textsuperscript{107} This statute thus provides the clearest avenue for prosecution of violent extreme-right perpetrators as terrorists. However, unlike 18 U.S.C. § 2339B, 18 U.S.C. § 2339A requires proof of an underlying designated terrorist act and knowledge that the material support will be used to further the terrorism-related offense.\textsuperscript{108} This creates a higher threshold for prosecutions under 2339A because it (1) only applies to certain specified acts linked primarily to traditional notions of terrorist activities—such as chemical, biological, and nuclear warfare, destruction of and attacks on transportation systems, such as railroads, airplanes, and airports, and use of explosive devices—and (2) implements a heightened mens rea requirement in that the defendant must have knowledge that the support will be directly used to commit the terrorist act, rather than just generally used by an FTO.\textsuperscript{109}

These differences—18 U.S.C. § 2339A requiring a specific predicate offense and 18 U.S.C. § 2339B requiring a connection to an FTO—explain why the Charleston Church shooter, Charlottesville car attacker, and El Paso Walmart shooter were not prosecuted as terrorists, while the

\textsuperscript{105} See discussion infra Part III.A.2; Terrorist Designations and State Sponsors of Terrorism, supra note 64; see also Press Statement, Michael R. Pompeo, Secretary of State, United States Designates Russian Imperial Movement and Leaders as Global Terrorists (Apr. 7, 2020), https://2017-2021.state.gov/united-states-designates-russian-imperial-movement-and-leaders-as-global-terrorists/index.html [hereinafter Pompeo Press Statement] (designating the Russian Imperial Movement (RIM), an international white supremacist organization, and its leaders as Specially Designated Global Terrorists (SDGT)). Though, because RIM was designated as an SDGT and not an FTO, this designation is irrelevant for material support charges under 18 U.S.C. § 2339B.

\textsuperscript{106} But see, United States v. Young, 916 F.3d 368, 378-379 (4th Cir. 2019) (upholding defendant’s conviction for attempting to provide material support to ISIL in part based on evidence tending to show pro-Nazi and white supremacy beliefs, which the court found to have enough similarities to Islamist extremism to find defendant had a “particular predisposition to support ISIL.”).

\textsuperscript{107} See 18 U.S.C. § 2339B.

\textsuperscript{108} See 18 U.S.C. §§ 2339A, 2339B. See also GERMAN & ROBINSON, supra note 49, 8 (explaining the difference in mens rea standards for 2339A and 2339B; where 2339A requires the defendant know their support will be used to further one of the terroristic offenses, 2339B only requires the defendant have knowledge that the group is an FTO and need not know that their support will be used to commit a criminal act).

\textsuperscript{109} See id.
perpetrators involved in the San Bernardino shooting and the Germantown car attack plot were charged with terrorism. The Germantown car attack plot and the Charlottesville car attack both involved a self-radicalized domestic extremist who took deliberate steps to committing an attack on civilians using a vehicle as a weapon. Further, the San Bernardino, Charleston Church, and El Paso Walmart shootings were all mass shootings carried out by perpetrators inspired by extremist ideology who posted about their extremist views online. The Germantown perpetrator was charged with providing material support to an FTO and the San Bernardino perpetrators (had they not been killed during the attack) likely would have also been charged with providing material support to an FTO because they were inspired by ISIS propaganda.

But unlike the self-radicalized Islamist extremists, the similar attacks carried out by extreme-right perpetrators can be prosecuted neither under 18 U.S.C. §§ 2339A nor 2339B. Neither method of attack (use of a vehicle as a weapon and mass shooting) falls into an enumerated predicate offense under § 2339A, and these extreme-right perpetrators are not connected to a designated FTO, as required under § 2339B.

2. Blurring of the Two “Types” of Terrorism

An additional underlying reason why violent extreme-right perpetrators are infrequently prosecuted as terrorists is that the government considers them lone actors, not acting on behalf of group directive. But this distinction cannot alone turn a seeming terrorist into just another violent criminal. In contrast to extreme-right perpetrators, self-radicalized domestic individuals espousing

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110 The Germantown perpetrator stole a U-Haul with the intention of committing a vehicle attack similar to the truck attack in Nice, France; the Charlottesville car attacker deliberately drove from Ohio to Virginia and rapidly accelerated his vehicle into a crowd of protestors. See infra Appendix A.

111 See infra Appendix A (providing examples of violent extremism carried out by persons motivated by extremist ideologies).

112 See infra Appendix A (explaining that the Germantown car attack perpetrator was charged with attempting to provide material support to an FTO because he was self-radicalized and supported ISIS); see also McCord, supra note 16.

113 See Hughes et al., infra note 38, at 27.
Islamist extremist ideologies, who similarly commit violent acts on their own accord and with no assistance from foreign groups, are still considered and prosecuted as terrorists.\textsuperscript{114}

For instance, the San Bernardino shooting was investigated as, and deemed an act of, terrorism because the perpetrators supported ISIS and its views, even though their attack was not actually planned nor directed by a foreign terrorist group.\textsuperscript{115} While the main perpetrators were killed during the attack and thus never prosecuted, the government did charge and prosecute a co-conspirator with providing material support to terrorists for his provision of weapons to the perpetrators of the attack.\textsuperscript{116} Additionally, the perpetrator in the July 2015 mass shooting that killed three U.S. Marines and a Navy sailor in Chattanooga, Tennessee, was deemed a terrorist after the FBI determined he had been “inspired” and “motivated by foreign terrorist organization propaganda.”\textsuperscript{117}

But the extreme-right is similarly not limited to the United States, nor has it ever been.\textsuperscript{118} By its very name, neo-Nazis, who are recognized as part of the domestic extreme-right,\textsuperscript{119} model their

\textsuperscript{114} See GERMAN & ROBINSON, supra note 49, at 4.


\textsuperscript{116} See infra Appendix A (providing support for the notion that domestic individuals inspired by extremist ideologies have been prosecuted under terrorism statutes).


\textsuperscript{119} See Neo-Nazis, ANTI-DEFAMATION LEAGUE, https://www.adl.org/resources/glossary-terms/neo-nazis (including Neo-Nazis as part of the United States white supremacist movement).
ideology after that of Nazi Germany. Beyond its historical roots, the international nature of the extreme-right has persisted today. United States citizens who espouse white supremacist ideologies regularly communicate with, associate with, and are inspired by like-minded groups and individuals internationally, including Canada, Europe, Russia, and elsewhere. For example, the perpetrator of the 2019 El Paso Walmart shooting was inspired by foreign extremist propaganda and expressed admiration for the Christchurch Mosque shooter, a foreign terrorist, who in turn, was inspired by the Charleston Church shooting. Yet this transnational connection has never been used to prosecute a violent extreme-right perpetrator under the international or transnational-specific terrorism statutes.

This transnational connection of domestic individuals with foreign individuals or groups espousing similar views will likely only continue to increase through the use of social media to connect and communicate. But even though white supremacy is considered by some to be “the first global terrorist network,” as of April 2021 the United States has never designated a foreign

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120 See id. (defining Neo-Nazi ideology as idolizing Adolf Hitler, Nazi Germany, and often adopting the symbology of the Third Reich); see also Hate on Display: Hate Symbols Database, ANTI-DEFAMATION LEAGUE, https://www.adl.org/hate-symbols (demonstrating that Neo-Nazi groups have adopted cultural symbols reminiscent of Nazi Germany).


123 Confronting Violent White Supremacy (Part III), supra note 10 (statement of Dr. Joshua A. Geltzer, Director, Institute for Constitutional Advocacy and Protection, Georgetown Law).

124 As there have not been many prosecutions under 18 U.S.C. § 2332b (terrorism transcending national boundaries), it is unclear what level of transnational conduct would be required for conviction. See United States v. Wright, 957 F.3d 8, 32–33 (1st Cir. 2019) (declining to find whether “substantial” conduct was required and instead concluding evidence that one of the co-conspirators was located overseas during the conspiracy and conveyed research and guidance in aid of the plot was sufficient to support conviction under 18 U.S.C. § 2332b(a)(1)(A)).


126 Rubin, supra note 125.
white supremacist organization as an FTO.\textsuperscript{127} Accordingly, domestic extreme-right perpetrators who support or are inspired by international groups espousing similar extreme-right terroristic views are currently not prosecutable under 18 U.S.C. § 2339B because there is no relevant FTO.\textsuperscript{128}

B. Why Prosecuting Extreme-Right Domestic Terrorists as Terrorists Matters

The current statutory framework allows the same crimes—use of a vehicle as a weapon and mass shootings—to be treated differently based, fundamentally, on the beliefs of the actor, rather than the act itself. Domestic extreme-right perpetrators are often treated as committing hate crimes, whereas domestic Islamist extremists are treated as terrorists. While such extreme-right terrorists often receive significant sentences, “means, not just ends, matter...”\textsuperscript{129} Failure to prosecute extreme-right domestic terrorists as terrorists is inappropriate for four reasons. First, it furthers the societal belief that Islamist extremism is the primary type of terrorism and threat to the United States, which severely underestimates the threat of the extreme-right. Second, it reflects an implicit opinion that certain actors, victims, or incidents are less threatening and less important than others. Third, the United States’ approach to extreme-right violence—particularly in its identification and prosecution of such individuals and groups—is out of accordance with the international community. Fourth, the current terrorism statutory framework makes it difficult to prevent, deter, and monitor extreme-right domestic terrorists.

\textsuperscript{127} See Pompeo Press Statement, supra note 105 (noting that designation of the RIM and its leaders as SDGTs is the first white supremacist group to be designated as terrorists). If the RIM were designated as an FTO, rather than merely an SDGT, it may be possible and appropriate to prosecute a domestic extreme-right perpetrator as providing material support to an FTO under 18 U.S.C. § 2339B. If it can be shown that the individual promoted the group’s ideologies or was self-radicalized and/or inspired by the groups’ activities, such evidence would be consistent with cases such as the 2015 Chattanooga shooting. See also analysis supra Part III.A.2.

\textsuperscript{128} See 18 U.S.C. § 2339B(a)(1), (h) (requiring defendant to provide support, including in the form of themselves as “personnel,” to a designated foreign terrorist organization).

\textsuperscript{129} Kisor v. Wilkie, 139 S.Ct. 2400, 2425 (2019) (Gorsuch, J., concurring).
1. Underappreciates the Threat of Extreme-Right Terrorism

First, failure to identify and prosecute extreme-right domestic terrorism underappreciates the threat of the extreme-right movement. Over the past decade, members associated with the extreme-right have killed more Americans domestically than have self-radicalized Islamist extremists. Yet the media continues to disproportionately cover attacks perpetrated by domestic Islamist extremists over white supremacists. This has the effect of minimizing the threat posed by the extreme-right by furthering the inaccurate perception that Islamist extremism is the primary terrorist threat to the United States. Labelling an attack as “terrorism” reflects what society considers its most heinous crimes and acts to delegitimate the terrorist’s underlying ideology and goals. If the United States is unable to identify extreme-right terrorism as such, it fails to outright denigrate the violent extreme-right, likely only encouraging it to grow.

2. Undervalues the Communities Targeted by Extreme-Right Terrorists

Second, distinguishing attacks carried out by the extreme-right (typically white-Christian perpetrators) and those carried out by Islamist extremists (typically Muslim perpetrators) implicitly places certain races, cultures, and religions over others. As an initial matter, referring to only one

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131 See German & Robinson, supra note 49, at 15 (citing Erin M. Kearns, et al., Yes, the Media Do Underreport Some Terrorist Attacks, Just Not the Ones Most People Think Of, WASH. POST, (Mar. 13, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/03/13/yes-the-media-do-underreport-some-terrorist-attacks-just-not-the-ones-most-people-think-of/?utm_term=.4dda3333a203 (finding that attacks perpetrated by Muslims were covered up to 357% more than acts deemed “terrorism” but perpetrated by non-Muslims)).
type of perpetrator—Islamist extremists—as “terrorists” reinforces the bias-laden perceptions of white versus non-white perpetrators.\textsuperscript{134} This furthers the Islamophobia and anti-Muslim sentiment that already persists throughout our society and is a catalyst for extreme-right violence.\textsuperscript{135} Such a failure also sends the implicit message to the minority communities that are victimized by extreme-right perpetrators that they are “second-class citizens,”\textsuperscript{136} less deserving of the same protections and justice afforded to victims of other terrorist attacks.\textsuperscript{137} Calling violent extreme-right attacks as anything other than terrorism thus does a disservice to the founding ideals of America.\textsuperscript{138}

3. Lagging Behind Internationally

Third, in contrast to how the United States has approached incidents of extreme-right violence, the international community has often appropriately categorized and prosecuted extreme-right violence as terrorism. Europeans routinely use the phrase “right-wing terrorists” in discussing the threat of extreme-right violence,\textsuperscript{139} and the United Kingdom, Canada, and Germany have all designated extreme-right groups and associated individuals as terrorists.\textsuperscript{140} Additionally, the white

\textsuperscript{134} A study analyzing how the public views the term “terrorism” and the individuals deemed “terrorists,” found that “Arab-American attackers are more likely to be ascribed political or religious motives, while White suspects are more likely to be seen as mentally ill.” D’Orazio & Salehyan, supra note 132.


\textsuperscript{137} See Trump v. Hawaii, 138 S.Ct. 2392, 2434 (2018) (Sotomayor, J., dissenting) (quoting Santa Fe Independent School Dist. V. Doe, 530 U.S. 290, 309 (2000)) (“such acts send messages to members of minority faiths ‘that they are outsiders, not full members of the political community.’”).

\textsuperscript{138} See generally THE DECLARATION OF INDEPENDENCE (U.S. 1776); see generally U.S. CONST. amends. I, XIV.


supremacist who murdered fifty-one people in a shooting rampage in two mosques in Christchurch, New Zealand on March 15, 2019—and livestreamed the attack on Facebook—was the first person in the country’s history to be convicted as a terrorist and receive a life sentence without parole.\textsuperscript{141} It is clear that the United States must join the international community in identifying and prosecuting all terrorists as terrorists.

4. Attempts, Plots, and Post-Incarceration Effects

Lastly, proper prosecution of extreme-right violence is particularly important from an investigatory and post-incarceration perspective. The current statutory framework does not provide a mechanism to prosecute extreme-right individuals as terrorists before they have carried out attacks using their vehicle as a weapon or mass shootings. For example, the perpetrator of the Germantown car attack plot was charged under 18 U.S.C. § 2339B for attempting to provide material support to an FTO because the perpetrator had expressed support for ISIS.\textsuperscript{142} In contrast, there is no applicable terrorism statute that would capture a similar extreme-right perpetrator who had planned, but not yet carried out, such a violent attack.\textsuperscript{143} This prevents the domestic terrorist from receiving a sentence at a level appropriate for defendant’s dangerousness,\textsuperscript{144} which results in three main failures: (1) the perpetrator is back on the street quicker, (2) the seriousness of the perpetrator’s act is not captured for probationary and post-release purposes, and (3) proper tracking of terrorist activities is


\textsuperscript{143} See Hughes et al., supra note 38, at 15 (neo-Nazi found in possession of "two long rifles and ammunition" and believed to have been on the way to commit a mass shooting, was sentenced to just five years in prison).

\textsuperscript{144} Id.
obstructed. As a result, these failures make it more difficult to address the long-term problem of the violent extreme-right.\textsuperscript{145}

However, by updating the terrorism statutes to better capture the methods extreme-right perpetrators use to carry out their violent attacks—use of a vehicle as a weapon and mass shootings—perpetrators that commit or attempt such violent attacks would be prosecutable under 18 U.S.C. § 2332a.\textsuperscript{146} This update would be just as important, if not more important, for stopping would-be-perpetrators “left of boom.”\textsuperscript{147} An update to the definition of “weapon of mass destruction” means that, through 18 U.S.C. § 2332a, use of a vehicle as a weapon and mass shootings becomes a predicate offense under 18 U.S.C § 2339A (material support to terrorists) and the terrorism sentencing enhancement.\textsuperscript{148} This would enable extreme-right individuals to be prosecuted as terrorists before they have actually carried out their deadly attacks, similar to the perpetrator of the Germantown car attack plot,\textsuperscript{149} as well as prosecution of conspirators that provided material support for the planned attack, similar to the co-conspirator in the San Bernardino shooting.\textsuperscript{150}

IV. **Recommendations**

The current language of 18 U.S.C. § 2332a (use of weapon of mass destruction) fails to reflect the growing trend of terrorists using weapons other than explosive devices to carry out their


\textsuperscript{146} See discussion infra Section IV.


\textsuperscript{148} U.S. SENT’G GUIDELINES MANUAL § 3A1.4.

\textsuperscript{149} See infra Appendix A.

\textsuperscript{150} See infra Appendix A.
attacks. As such, incidents of extreme-right violence (many of which involve non-traditional
terroristic methods of attack) are not captured by the current terrorism statutory framework, which
leads to many lasting societal impacts as identified supra. An update to the definition of “weapon of
mass destruction” to include the use of a vehicle as a weapon and instances of mass shootings would
have three dramatic effects on the ability to prosecute and sentence violent extreme-right
perpetrators under the terrorism framework.

First, updating the definition of a “weapon of mass destruction” would enable prosecutions
under 18 U.S.C. § 2332a (use of weapon of mass destruction) for acts of violence, or attempts,
involving the use of a vehicle as a weapon and mass shootings. Second, because 18 U.S.C. § 2332a is
a relevant predicate offense for 18 U.S.C. § 2339A (material support to terrorists), updating the
definition of a “weapon of mass destruction” would also allow for more violent extreme-right
perpetrators and accomplices to be appropriately designated and prosecuted as terrorists. Third, 18
U.S.C. § 2332a is also a relevant predicate offense for the “federal crime of terrorism,” which is
the definition used by courts to determine whether the terrorism sentencing enhancement is
appropriate for a certain defendant. Thus, if the language is updated as recommended,
perpetrators of extreme-right violence who were not directly prosecuted as terrorists may still be
eligible for the terrorism sentence enhancement.

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151 Non-traditional methods of attack are also being encouraged and consistently carried out by lone-wolf domestic
Islamist-extremists. See generally Robert J. Bunker & Pamela Ligouri Bunker, Radical Islamist English-Language Online
152 18 U.S.C. § 2332b(g)(5).
154 See United States v. Graham, 275 F.3d 490, 517 (6th Cir. 2001) (holding that conviction of a crime specifically
enumerated in § 2332b(g)(5)(B) is not required for the domestic terrorism sentencing enhancement to apply, but rather
that defendant merely must have intended to promote a federal crime of terrorism).
A few states have already begun to move their terrorism state laws in this direction by updating their statutes to capture vehicle attacks and mass shooting events. For example, Alabama defines “weapons of mass destruction” as “[a]ny device, weapon, or vehicle designed to cause mass casualties.” California’s definition of “weapon of mass destruction” includes a “vehicle...which is used as a destructive weapon.” And New York created a new law for domestic acts of terrorism motivated by hate when the perpetrator acts with intent to cause the death of, or serious injury to, five or more other persons, in whole or in part because of perceived protected characteristics. Through the incorporation of similar language into the current federal definition of “weapon of mass destruction,” to include (1) use of a vehicle as a weapon and (2) mass shootings, violent extreme-right perpetrators may finally be prosecuted for what they are—terrorists.

A. Use of a Vehicle as a Weapon

First, the definition of “weapon of mass destruction” should be revised to specifically include a vehicle when used as a weapon. There is no significant difference between the car attack in Charlottesville, Virginia, in 2017 and the attempted car attack in Germantown, Maryland, in 2019. Both incidents were carried out by self-radicalized domestic extremists who took deliberate action in order to commit an attack on civilians using a vehicle as a weapon. Both perpetrators are terrorists.
under federal law but only the Germantown perpetrator was actually charged with terrorism. The definition of "destructive device," which is cross-referenced in the definition for "weapon of mass destruction," specifically exempts any device which is not designed for use as a weapon. This language theoretically exempts vehicles, as they are not designed as a weapon.

Thus, a revision to specifically include "a vehicle when used as a weapon," would have allowed the Charlottesville car attacker to be charged and prosecuted as a terrorist under 18 U.S.C. § 2332a. Defendant satisfies the first element, that he used a weapon of mass destruction, because he used his vehicle as a weapon. Defendant purposefully rapidly accelerated his vehicle directly into a crowd of protesters. Defendant next satisfies the second element, that he used his vehicle as a weapon against a person within the United States, because he directed his attack at anti-racism protesters in Charlottesville, Virginia, and his attack led to the death of one individual and the injury of many others. Lastly, Defendant satisfies the third element, that his conduct involved the use of interstate commerce, because he drove from Maumee, Ohio, into Charlottesville, Virginia, where the attack took place. Therefore, under similar facts, a future extreme-right attacker who uses a vehicle as a weapon to target civilians will be able to be prosecuted as a terrorist under 18 U.S.C. §§ 2332a, 2339A, or be eligible for the terrorism sentencing enhancement.

165 Since the Charlottesville car attack perpetrator has already pled guilty and been sentenced, this is just a theoretical application.
166 See Fields Indictment ¶¶ 9–11, June 27, 2018; see also Charlottesville Car Attack Press Release, supra note 162.
167 Fields Indictment ¶ 11; see also Charlottesville Car Attack Press Release, supra note 162.
168 Charlottesville Car Attack Press Release, supra note 162.
169 18 U.S.C. § 2332a(a)(2) ("perpetrator travel[ed] in . . . interstate or foreign commerce in furtherance of the offense").
170 Fields Indictment ¶ 6; see also Charlottesville Car Attack Press Release, supra note 162.
171 U.S. SENT’G GUIDELINES MANUAL § 3A1.4.
B. Mass Shootings

Second, the definition of "weapon of mass destruction" should be revised to specifically include use of a firearm which causes the death, or serious injury, of five or more persons. While the definition of "weapon of mass destruction," through its inclusion of any "destructive device," does not entirely eliminate its applicability to gun-related attacks, \(^{172}\) it limits the applicability to type of weapon \(^{173}\) rather than the actual destructive nature of the incident. The current definition specifically excludes shotguns and firearms that have a barrel with a bore less than one-half inch in diameter. \(^{174}\) This has the effect of excluding many instances of extremist-related mass shootings that occur, which tend to use assault rifles. \(^{175}\)

Accordingly, an update to the definition of "weapon of mass destruction" to specifically include the use of a firearm which causes the death, or serious injury, of five or more persons, would, for example, have enabled the perpetrator of the 2019 El Paso Walmart shooting to be charged as a terrorist. Defendant satisfies the first element, that he used a weapon of mass destruction, because he used a firearm (semi-automatic rifle) which caused the death or serious injury of more than five persons (forty-five people were killed or injured). \(^{176}\) Defendant next satisfies the second element, that he used his weapon against persons within the United States, because his attack, which occurred in El Paso, Texas, led to the deaths of twenty-two people and injury of

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172 See Robert Chesney, Should We Create a Federal Crime of 'Domestic Terrorism', LAWFARE (Aug. 8, 2018, 11:31 AM), https://www.lawfareblog.com/should-we-create-federal-crime-domestic-terrorism (quoting 18 U.S.C. § 921(c)(2)(A)) (although 2332a does not reach most gun-based scenarios, it does come into play for weapons that "expel a projectile by the action of an explosive or other propellant . . . [if it has a] barrel with a bore of more than one-half inch in diameter.").


174 Id.


twenty-three others.\textsuperscript{177} Lastly, defendant satisfies the third element, that his conduct involved the use of interstate commerce,\textsuperscript{178} because defendant purchased a Romanian firearm, in addition to ammunition, via the Internet, and defendant’s conduct interfered with the commercial and economic activity in which the victims were engaged in at Walmart.\textsuperscript{179} Therefore, under similar facts, a future extreme-right attacker who uses a firearm to cause the death or serious injury of five or more persons will be able to be prosecuted as a terrorist under 18 U.S.C. §§ 2332a, 2339A, or be eligible for the terrorism sentencing enhancement.\textsuperscript{180}

V. CONCLUSION

At this point, many academics, politicians, and citizens are aware of the threat of the violent extreme-right in our society. However, there is significant divergence on how to approach the problem, none of which are likely to gain the congressional support needed to effectuate change. The first group suggest the current statutory framework is sufficient.\textsuperscript{181} While the current statutory framework may be, in its literal sense, sufficient to capture the crimes, it fails to account for the importance of using correct terminology in identifying these attacks as terrorism. A second group proposes a new statute specific to domestic terrorism, mirrored after 18 U.S.C. § 2332b.\textsuperscript{182} But this is disfavored by politicians on both sides; some are concerned with possible First Amendment implications and others are concerned a domestic terrorism charge would have significant adverse effects on minority communities, many of which are the very targets of extreme-right

\begin{footnotesize}
\textsuperscript{177} Id.
\textsuperscript{178} 18 U.S.C. § 2332a(a)(2) ("the mail or any facility of interstate or foreign commerce is used in furtherance of the offense; the offense, or the results of the offense, affect interstate or foreign commerce").
\textsuperscript{179} Crusius Indictment ¶ 1, 6.
\textsuperscript{180} U.S. SENT’G GUIDELINES MANUAL § 3A1.4.
\textsuperscript{181} GERMAN & ROBINSON, supra note 49.
\textsuperscript{182} See, e.g., McCord, supra note 59; McQuade, supra note 147; see also H.R. 4192, 116th Cong. (2019) (as introduced by Rep. Schiff and referred to the Comm. on the Judiciary, Aug. 16, 2019).
\end{footnotesize}
perpetrators. A third group proposes a more robust and long-term solution by eliminating the distinction in the statutes between domestic and international terrorism.

The gaps in the statutes are evident today and need to be closed immediately to prevent future domestic terrorists from exploiting them. Therefore, the most efficient way to effectively close this gap is to meet the terrorists where they are—pivoting from airplanes and explosives to vehicles and firearms. Updating the statutory definition of “weapon of mass destruction” to include (1) use of a vehicle as a weapon and (2) mass shootings, would provide prosecutors with the tools necessary to charge, prosecute, and sentence the most violent extreme-right perpetrators as terrorists. The Charlottesville car attack was terrorism; the Charleston Church shooting was terrorism; the El Paso Walmart shooting was terrorism. The perpetrators of these incidents are terrorists. And the victims of these attacks died as the result of terrorism. We can no longer fail to acknowledge such truths.

APPENDIX A: VIOLENT EXTREMISM CASE EXAMPLES

Charleston Church Shooting: On June 17, 2015, a shooter entered Emanuel African Methodist Church in Charleston, South Carolina, a historic Black church, and proceeded to kill nine African-American individuals during their Bible study. Before the attack, the perpetrator had posted a racist manifesto online, supporting the shooting death of Trayvon Martin and posting photos with Confederate flags. The perpetrator was convicted of federal hate crimes, for which he was sentenced to death.

Chattanooga Shooting: On July 16, 2015, a Kuwaiti-born gunman opened fire on a military site in Chattanooga, Tennessee, where he killed four United States Marines and one U.S. Navy sailor, prompting a federal domestic terrorism investigation. Following an investigation into the incident, the FBI determined that the perpetrator was a self-radicalized violent extremist and “motivated by foreign terrorist organization propaganda.”

San Bernardino Shooting: On December 2, 2015, a heavily armed husband and wife couple killed fourteen people and wounded twenty-two others at a social services center in San Bernardino, California. After leading the police on a manhunt, the perpetrators were later killed in a shootout. The incident was investigated as an act of terrorism in part because one of the perpetrators had posted on Facebook—on behalf of himself and his wife—a pledge of allegiance to the leader of the Islamic State. Investigators do not believe, however, that the perpetrators were

185 Charleston Church Shooting, HISTORY (June 8, 2020), https://www.history.com/this-day-in-history/charleston-ame-church-shooting.
186 Elliott, supra note 13.
187 Id.
191 Id.
192 Berman, supra note 115.
actually directed by a foreign terrorist group. A co-conspirator, the perpetrator's friend and neighbor, was found guilty of conspiring to provide material support to terrorists and sentenced to twenty years imprisonment.

**Charlottesville Car Attack:** On August 12, 2017, a white supremacist deliberately drove his car into a crowd of anti-racism protesters in Charlottesville, Virginia, causing the death of one woman and injuring dozens. The perpetrator pleaded guilty to twenty-nine hate crimes in connection with the attack, and was subsequently sentenced to two life sentences plus 419 years.

**Germantown Car Attack Plot:** In March 2019, a perpetrator was arrested in Germantown, Maryland, and told investigators he had planned to carry out a truck attack like the one that killed dozens of people in Nice, France, in 2016. The perpetrator stole a U-Haul van in Alexandria, Virginia, and drove it to Maryland with the intention of using it as a weapon against pedestrians. The perpetrator was self-radicalized by watching ISIS propaganda videos of foreign terrorists and had images of the ISIS flag and armed ISIS fighters on his phone. The perpetrator is charged with attempting to provide material support to a foreign terrorist organization.

**El Paso Walmart Shooting:** On August 3, 2019, a gunman opened fire at a Walmart in El Paso, Texas, killing twenty-two people and injuring twenty-three others. The perpetrator had written and published a manifesto prior to launching his attack, espousing anti-immigrant views and admiration for the gunman who killed fifty-one people at two mosques in Christchurch, New Zealand.

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193 *Id.*


195 Lavoie, *supra* note 2.

196 *Id.; see also* Lavoie, *supra* note 3.

197 *National Harbor Truck Plot*, *supra* note 142; *see also* Nice Attack: What We Know About the Bastille Day Killings, BBC (Aug. 19, 2016) (truck attack, claimed by ISIS, which killed eighty-six people).

198 *National Harbor Truck Plot*, *supra* note 142.

199 *National Harbor Truck Plot*, *supra* note 142.


Zealand. The perpetrator’s manifesto also cited a 2011 French book that gave rise to a conspiracy theory that white people and culture are being replaced by non-whites. The perpetrator has since been indicted on twenty-two counts of hate crimes resulting in death, twenty-three counts of hate crimes involving an attempt to kill, and forty-five counts of discharging a firearm in relation to the hate crimes.

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202 Romero, Fernandez, & Padilla, supra note 94. See generally Diaz, supra note 118. On March 15, 2019, a gunman opened fire at two mosques in Christchurch, New Zealand, killing fifty-one people and wounding dozens of others. Id. The perpetrator livestreamed this brutal attack on Facebook and was online for seventeen minutes before finally being taken down. Id. According to a finding by the New Zealand Royal Commission, the country’s highest level of inquiry, the perpetrator had a long history of racist, extremist, and white nationalistic views. Id. The perpetrator has since been convicted of terrorism, for the murder of fifty-one people, and the attempted murder of forty others. Id. The perpetrator is serving a life sentence without parole. Id.

203 Villagran, supra note 122.

APPENDIX B: NOTABLE RECENT DOMESTIC EXTREMIST INCIDENTS

Congressional Baseball Shooting: On June 14, 2017, a shooter opened fire on a group of Republican politicians who were practicing for the annual Congressional Baseball Game for Charity.\(^ {205} \) The shooter wounded five individuals, including then-House GOP Whip, Steve Scalise.\(^ {206} \) Police arrived at the scene and killed the perpetrator.\(^ {207} \) It was learned that the perpetrator specifically targeted Republicans and had many social media posts criticizing President Trump.\(^ {208} \) The perpetrator had also volunteered on Senator Bernie Sanders’ 2016 Presidential Campaign.\(^ {209} \) The FBI concluded that the perpetrator’s motivations were “suicide by cop.”\(^ {210} \) However, the clear entanglement of political ideologies have led to many calls for a renewed investigation into whether the motivation was actually caused by extreme-left ideology.\(^ {211} \)

Plot to Kidnap Michigan Governor Gretchen Whitmer: In October 2020, the FBI and Michigan State Police thwarted a conspiracy to kidnap Governor Gretchen Whitmer by members of a local militia group known as the Wolverine Watchmen.\(^ {212} \) Many of the members were supporters of the Boogaloo Movement,\(^ {213} \) but there was a degree of political and ideological diversity.\(^ {214} \) Starting in April 2020, in response to their beliefs that the COVID-19 restrictions were infringing on their


\(^{206}\) Id.

\(^{207}\) Id.


\(^{209}\) Id.


\(^{211}\) Id.


\(^{213}\) The Boogaloo Movement is an anti-government extremist movement made up primarily of individuals associated with various right-wing extremist movements. See Anti-Defamation League, The Boogaloo Movement, https://www.adl.org/boogaloo.

\(^{214}\) Macklin supra note 212 at 4.
constitutional rights, the group began devising a plan to target the Michigan State government. Before settling on their plan to kidnap Governor Whitmer, the group considered storming the Michigan State Capitol building while Congress was in session and “taking hostages [and] executing tyrants” or setting the Capitol on fire and barricading the exits to prevent escape.215

The group ultimately devised their plan to attack and kidnap Governor Whitmer on her way to or from her official summer residence or private vacation home.216 In preparation for the “[s]natch and grab” the group performed months-long surveillance and tactical training.217 The perpetrators intended to kidnap Governor Whitmer and put her on trial for treason prior to the 2020 Presidential Election.218

Assault on U.S. District Judge Esther Salas’ Family: On July 19, 2020, a self-described “anti-feminist” who was a part of the male supremacy movement219 attacked the family of Judge Esther Salas of the U.S. District Court for the District of New Jersey.220 The perpetrator—a Manhattan lawyer who had appeared before Judge Salas—disguised himself as a FedEx worker to gain access to the family home.221 The perpetrator shot and killed Judge Salas’ son and critically wounded Judge Salas’ husband; Judge Salas was not injured.222

January 6 Attack on the U.S. Capitol: On January 6, 2021, Congress met at the United States Capitol building in Washington, DC, to certify the 2020 Presidential election results declaring

215 Id. at 4–5.
216 Id. at 6–7.
217 Id. at 6–8.
218 Id. at 5.
219 The male supremacy movement targets women and characterizes women as “genetically inferior, manipulative and stupid,” whose sole purposes are sexual and reproductive. It is considered to be a part of, or at least overlap significantly with, the extreme-right movement. See Southern Poverty Law Center, Make Supremacy, https://www.splcenter.org/fighting-hate/extremist-files/ideology/male-supremacy.
221 Margolin et al., supra note 219.
222 Id.
President Biden the next President of the United States. In the months since the election on November 3, 2020, and the reported results declaring President Biden the winner of the 2020 Presidential election, President Trump and multiple members of Congress furthered the baseless theory that there was widespread voter fraud and that President Trump had actually won the 2020 Presidential election. In continuing to espouse this view that the election had been stolen, President Trump encouraged his supporters to attend a rally and march from the White House to the Capitol to protest the Congressional session certifying the election results. Thousands of protesters showed up, some of which included members of paramilitary organizations and other right-wing extremists.

Just as the Congressional session was being convened, a mob pushed through fences surrounding the Capitol grounds, forcing Capitol police officers to retreat. The mob continued to grow larger and overwhelm the police presence. Officers were attacked, beaten, and trampled by the surging crowd. Within an hour of the assault beginning, the mob had breached the last barrier and began running into the Capitol building. The mob shattered windows, vandalized, looted, and ransacked the Capitol. Some rioters attempted to seek out members of Congress and Vice President Mike Pence, whom they deemed to be their enemies and traitors. Federal prosecutors have alleged that some of the rioters intended “to capture and assassinate elected officials,” including at least one who brought “plastic zip-tie handcuffs because he intended ‘to take

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225 Duignan, *supra* note 222.
226 Id.
227 Id.
228 Id.
229 Id.
230 Id.
231 Id.
232 Id.
hostages.” The investigation into the attack is still ongoing; many prosecutions are underway and charges continue to be filed.

*Inauguration Day Protest in Portland:* On January 20, 2021, the day President Biden was sworn in as President, hundreds of anti-Biden protesters gathered in Portland, Oregon. Some of the group included “far-left and anarchist demonstrators” who vandalized the Democratic Party headquarters, the ICE federal building, and threw rocks at federal officers. Several of the rioters were arrested, and one of which was arrested with four molotov cocktail explosives. The defendants have been charged with a variety of offenses, including participation in a riot, disorderly conduct, criminal mischief, and unlawful possession of a destructive device.

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236 *Id.*

237 *Id.*

238 *Id.*