



STATEMENT OF IMAN BOUKADOUM ON BEHALF OF  
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES  
SUBCOMMITTEE ON NATIONAL SECURITY, INTERNATIONAL DEVELOPMENT, AND  
MONETARY POLICY

HEARING ON “DOLLARS AGAINST DEMOCRACY: DOMESTIC TERRORIST FINANCING IN  
THE AFTERMATH OF INSURRECTION.”

FEBRUARY 25, 2021

Chairman Himes, Ranking Member Hill, and distinguished members, thank you for holding this timely hearing today on domestic terrorism financing in the aftermath of the white nationalist insurrection on January 6, 2021. My name is Iman Boukadoum, senior program manager of Fighting Hate and Bias at The Leadership Conference on Civil and Human Rights. The Leadership Conference is a coalition of more than 220 national organizations working to build an America as good as its ideals. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference has coordinated national advocacy efforts on behalf of every major civil and human rights law since 1957.

I want to express my gratitude to this subcommittee and its members, the maintenance personnel and cleaning and other staff, the food workers, and the law enforcement personnel who worked in the Capitol during the time of the insurrection and continue to work. Your shared commitment to democracy and to service has never been more vital.

Last month’s violent insurrection, fueled by white supremacy and white nationalism, shocked the world. However, for those of us who are a part of Black, Brown, Native, Arab, Muslim, Jewish, Sikh, disabled, immigrant, or LGBTQ communities, the violent insurrection on our nation’s Capitol did not shock us. Sadly, for too many members of our coalition and the people we represent, white nationalist violence is not new. Personally, as a Muslim and Algerian-American, I appreciate the opportunity to be heard today, as we wrestle with the aftermath of the violent January 6 attack on the Capitol.

White supremacist violence is all too familiar to me, my community, my former clients, and my family. Its structural manifestations appear within too many institutions and have thrived since the founding of our nation, including in recent years. Therefore, I submit this testimony today to reiterate our support for **prioritizing** holding white nationalists accountable across institutions in a systemic way, by using existing tools, and our opposition to the creation of additional national security, domestic terrorism, or surveillance authorities to combat this severe threat.

To be clear, we echo the sense of urgency that many in Congress have recently brought to the debate regarding the very real threat of white nationalist violence. Yet a sober analysis of our nation’s history

shows that even well-intentioned national security laws are invariably weaponized against Black, Brown, and Muslim communities, because white nationalist violence is not prioritized. For these reasons, we oppose any legislation that would create an added charge for domestic terrorism or any enhanced or additional criminal penalties including to trace funding relating to domestic terrorism. The federal government, including the Financial Crimes Enforcement Network within the Treasury Department, has many tools at its disposal to investigate and support Federal Bureau of Investigation (FBI) and Department of Justice (DOJ) prosecutions, including some 50 terrorism-related statutes and over a dozen other criminal statutes and authorities. These measures authorize both the FBI and DOJ to prioritize and address white nationalist violence and financing now, irrespective of a link to international terrorism.

### **The Federal Government Has Known that White Nationalist Violence Has Been a Serious Threat to Our National Security**

First, it is important to highlight that the federal government has had robust intelligence indicating the violent predilections of organized hate groups and “lone wolf” white nationalists throughout the United States for many years now. With countless atrocities perpetrated in recent memory, from the Tree of Life synagogue killings, to the massacre of Latinos in El Paso, to the devastating massacre at Emanuel African Methodist Episcopal Church in Charleston, it is no secret that white nationalist violence has been on the rise. Independent academic institutions have also documented the critical rise in white supremacist threats throughout our country. Professor Brian Levin, the Director of the Center for the Study of Hate and Extremism at California State University, San Bernadino, testified before the House Committee on Homeland Security in September of 2019, and explained that “[w]hite supremacist/far right extremists are now, the most ascendant transnational terror threat facing the homeland, in a fluid and somewhat diversifying risk matrix.”<sup>1</sup> Even the FBI elevated white supremacist activity to a “national threat priority,” and in 2020, FBI Director Christopher Wray testified before both House and Senate committees about the serious threat that violent white supremacist organizations and the people who ascribe to their ideologies pose to our national security.<sup>2</sup> Indeed, the failure to take seriously and prioritize the threat of white nationalist violence is the true reason violent insurrectionists were able to easily storm our Capitol on January 6, 2021.

### **Selective Enforcement by Federal Agencies Deprioritized White Nationalist Crimes**

White nationalist violence and violence inspired by ISIS or Al-Qaeda are treated very differently regardless of where it takes place. For purposes of this hearing, I will focus on the ways that over-policing of financial transactions since 9/11 has chilled charitable giving by Muslims. In Islam, *zakat* is a fundamental pillar of our faith. This core tenet requires that any Muslim who makes an income pay a percentage every year to charity. The Material Support for Terrorism statutes give very broad authority to

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<sup>1</sup> Center for the Study of Hate and Extremism, Global Terrorism: Threats to the Homeland, Part I, September 10, 2019, [https://www.csusb.edu/sites/default/files/GLOBAL%20TERRORISM-%20cong%20BL2%2091019\\_0.pdf](https://www.csusb.edu/sites/default/files/GLOBAL%20TERRORISM-%20cong%20BL2%2091019_0.pdf)

<sup>2</sup> Erin Donaghue, Racially-motivated violent extremists elevated to “national threat priority,” FBI director says (Feb. 5, 2020), <https://www.cbsnews.com/news/racially-motivated-violent-extremism-isis-national-threat-priority-fbi-director-christopher-wray/>; see also <https://www.statesman.com/story/news/politics/elections/2020/10/09/fact-check-did-fbi-director-warn-about-white-supremacist-violence/114251512/>

the Treasury Department to trace and freeze bank accounts without much transparency or procedural guardrails. This has led to the shuttering of countless charities and bank accounts of Arab Americans or Muslim-American institutions, without due process. According to the ACLU, “[t]errorism financing laws are overly broad and lack procedural safeguards that would protect American charities against government mistake and abuse.”<sup>3</sup> Moreover, various national security laws also provide the government with wide latitude to investigate, interdict, and stop financing deemed materially supporting terrorist action on U.S. soil by a U.S. entity that is not affiliated with a foreign terrorist group.<sup>4</sup> Yet, the overwhelming number of cases prioritized by the Treasury Department and federal agencies focus on “international terrorism” which covers violent threats that have a nexus outside our nation’s shores, even if they stem from U.S. citizens acting only within our country. As renowned legal scholar and expert Professor Shirin Sinnar of Stanford Law School describes:

The law permits broader surveillance, wider criminal charges, and more punitive treatment for crimes labeled international terrorism. Law enforcement agencies frequently consider U.S. Muslims “international” threats even when they have scant foreign ties. As a result, they police and punish them more intensely than white nationalists and other “domestic” threats. This legal divide not only harms individuals and communities but also reinforces distorted public perceptions of terrorism that fuel<sup>5</sup>

This failure to prioritize white nationalist crimes has come at a severe cost to my community and other communities I work with. By over-policing innocuous financial transactions by mosques or those originating from the Middle East or Muslim-majority countries, our government has failed to prioritize the actual threat of white nationalist violence percolating all around us. This has also meant that charitable giving, particularly in Arab and Muslim communities in the U.S., has been severely chilled by the oversurveillance and aggressive application of powerful, existing terrorism statutes. Countless innocent people, particularly in the Muslim community, have effectively lost their right to First Amendment-protected free exercise rights to perform religious duties while violent white nationalists become emboldened to commit more acts of hate violence with impunity.

What is clear is that the Treasury Department and other federal law enforcement agencies already have vast administrative and statutory authorities at their disposal, which they routinely use to disrupt financing relating to clandestine activity. What history demonstrates is that providing additional national security authorities to fight “domestic terrorism” groups would devastate already over-policed and over-surveilled communities of color and Muslims. The systemic racism that infects the criminal legal system means that so-called “domestic terrorism” approaches to addressing white nationalist violence inevitably come back to harm communities of color, including Muslims.

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<sup>3</sup> The American Civil Liberties Union, Block Faith, Freezing Charity, <https://www.aclu.org/report/blocking-faith-freezing-charity-chilling-muslim-charitable-giving-war-terrorism-financing?redirect=cpreirect/39849> at p. 7 (last visited Feb. 16, 2021)

<sup>4</sup> *Id.* at 10.

<sup>5</sup> Shirin Sinnar, *Separate and Unequal: The Law of "Domestic" and "International" Terrorism*, 117 MICH. L. REV. 1333 (2019). Available at: <https://repository.law.umich.edu/mlr/vol117/iss7/2>

## **Federal Agencies Must Redirect Focus Toward Hate Crimes Perpetrated by White Supremacists**

Not only has the federal government turned a blind eye to the serious white nationalist threat plaguing our country by failing to use existing tools to trace and cut off their funding sources, we have also seen disproportionate misdirection of federal law enforcement resources targeting Black, Brown, and Muslim communities for decades. This has led to the over-criminalization and over-policing of Black, Brown, and Muslim persons whose privacy, due process, and religious rights have been severely diminished. Equally problematic is the lack of focus by federal agencies on protecting communities from white nationalists and hate crimes by not even mandating accurate hate crimes data reporting to begin to address this crisis. For example, in 2019, the most recent year for which FBI hate crimes data is available, the FBI's Unified Crime Reporting Program (UCR) reported that 7,314 hate crime incidents occurred that year. The data available indicates that 2019 was the deadliest year for hate crimes since reporting began in 1991. And yet, we also know that this number grossly underestimates the actual number of hate crimes in the United States, as the FBI's report is based on voluntary local law enforcement reporting data to the FBI. In 2019, 86 percent of participating agencies did not report one single hate crime to the FBI, including at least 71 cities with populations over 100,000. Just 14 percent of the more than 15,000 participating agencies actively reported at least one hate crime. Meanwhile, the number of law enforcement agencies providing data declined for the second straight year.

When I know that hate crimes by white nationalists targeting me and my community are not even reported to the federal government, it sends a very clear message: You and your community don't matter. But groups are stepping up.<sup>6</sup> The recent uptick in violence targeting Asian American and Pacific Islander (AAPI) communities as a result of white supremacist lies and rhetoric around COVID-19 has been documented in real time by organizations like Asian Americans Advancing Justice - AAJC and Stop AAPI Hate, because communities have lost faith in law enforcement.<sup>7</sup>

## **The Federal Government, Including the Treasury Department, Must Use Existing Tools in an Equitable Way to Investigate Violent White Nationalist Funding Streams**

Many communities in our country live in a reality where government failure to police the serious scourge of white nationalist violence and hate crimes on the one hand, is combined with the over-policing and over-surveilling of their mosques and community centers on the other. It is against this stark backdrop that we must view the ways that any new federal national security authorities would be instrumentalized. Adding national security authorities not only fails to recognize the plethora of existing tools available to combat violent white nationalism or hate crimes, but it also ignores the experience of Black, Brown, and Muslim communities who have suffered because of the misapplication of similar national security laws,

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<sup>6</sup> International Association of Chiefs of Police and Lawyers' Committee for Civil Rights Under Law, "Action Agenda for Community Organizations and Law Enforcement to Enhance the Response to Hate Crimes", (2019). <https://lawyerscommittee.org/wp-content/uploads/2019/04/IACP.pdf>.

<sup>7</sup> Asian Americans Advancing Justice, (2020-2021). <https://www.standagainsthatred.org/stories?offset=1595538420174>; see also Stop AAPI Hate. <https://stopaapihate.org/reportsreleases/>.

no matter how well-intentioned. Our nation's long and disturbing history of targeting Black activists, Muslims, Arabs, and movements for social and racial justice has demonstrated that any new authority could be used to expand racial and religious profiling or be wielded to surveil and investigate communities of color and political opponents, all in the name of national security.

Therefore, Congress must change this narrative. It has the tools to do so. With its powerful appropriations power and oversight authority, Congress must demand law enforcement appropriately focus investigative and prosecutorial resources on white nationalist crimes. Federal law criminalizes material support that facilitates the commission of over 50 domestic terrorism-related crimes, including crimes that need not have a link to international terrorism. Therefore, the Treasury Department can already work with DOJ to investigate financial sources supporting white supremacist violence that falls under any of these predicate offenses.<sup>8</sup> DOJ also has the authority to investigate and prosecute many other federal statutes relating to hate crimes, organized crime, conspiracy, and violent crimes committed by violent white nationalists.

These existing tools include a statute that criminalizes material support that aids in the commission of any one of 57 previously enacted terrorism-related offenses. As our coalition member The Brennan Center for Justice has detailed, 51 of these statutes, or 89 percent, are applicable to both international and domestic terrorism.<sup>9</sup> Each of these 51 laws can be independently used to prosecute cases of domestic terrorism, providing numerous options for prosecutors to address these threats.<sup>10</sup> And while the federal government has not used these statutes as much as the threat would warrant, it has already used over a dozen of them in prosecuting multiple domestic terrorism cases, demonstrating that they are, indeed, applicable.<sup>11</sup> With respect to organized groups of violent white nationalists, despite their effort to call themselves "militias," they are, of course, nothing more than violent criminal gangs that can and should be prosecuted as corrupt criminal enterprises. These groups can be dismantled using statutes like the Racketeer Influenced and Corrupt Organizations (RICO) Act. Conspiracy statutes also provide prosecutors with the ability to charge individuals before they successfully complete a hate crime or domestic terrorist attack.<sup>12</sup>

## Recommendations

The Jabara-Heyer NO HATE Act is an important first step in enhancing a community-centered response to white nationalist violence in the United States. The Jabara-Heyer Act is named after Khalid Jabara and Heather Heyer, both young people who were murdered in hate crimes perpetrated by violent white supremacists. The people who killed Heather Heyer and Khalid Jabara were convicted of hate crimes, but

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<sup>8</sup> The Antiterrorism and Effective Death Penalty Act of 1996 amended to 18 U.S.C. § 2339A

<sup>9</sup> Michael German and Sara Robinson, "Wrong Priorities on Fighting Terrorism", Brennan Center for Justice. [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Wrong\\_Priorities\\_Terrorism.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Wrong_Priorities_Terrorism.pdf).

<sup>10</sup> Michael German and Sara Robinson, "Wrong Priorities on Fighting Terrorism", Brennan Center for Justice. [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Wrong\\_Priorities\\_Terrorism.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Wrong_Priorities_Terrorism.pdf).

<sup>11</sup> Michael German and Sara Robinson, "Wrong Priorities on Fighting Terrorism", Brennan Center for Justice. [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Wrong\\_Priorities\\_Terrorism.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Wrong_Priorities_Terrorism.pdf).

<sup>12</sup> Michael German and Sara Robinson, "Wrong Priorities on Fighting Terrorism", Brennan Center for Justice. [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Wrong\\_Priorities\\_Terrorism.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Wrong_Priorities_Terrorism.pdf); see also Robert M. Chesney, "Beyond Conspiracy? Anticipatory Prosecution and the Challenge of Unaffiliated Terrorism", 80 S. Cal. L. Rev. 425, 428, 448-49, 451 (2007).

Heyer and Jabara's killers were not reported as hate crimes in the FBI's UCR hate crimes data. The Jabara-Heyer Act would provide important incentives to improve reporting, which will help the Treasury Department in following up on tracing financial ties to those incentives. Importantly, it would also create the opportunity for community-centered restorative practices in some cases, which will lead to greater cooperation between government officials and impacted communities, who are the best sources of information to follow funding leads relating to violent, criminal white nationalist groups.

We also support the Domestic Terrorism Prevention Act as it is currently written, without any additional charges or sentencing enhancements. We think this bill could benefit from specifying that it is designed to target white supremacists or white nationalists.

But more must be done. Hate crimes data should be mandated and made publicly available so federal leaders, especially at the Treasury Department, as well as leaders at the state and local level, can address the threat in a manner best suited to their community. Congress must ensure that the promised transition to the National Incident Based Reporting System (NIBRS) by 2021 is actually implemented in coordination with the Treasury Department in order to best follow financial patterns that support white supremacist violent networks. NIBRS is a critical tool for effectively understanding and addressing the rising number of hate crimes in the United States. NIBRS is a more effective data collection system than the current Summary Reporting System (SRS) within the Uniform Crime Report, which studies have shown leads to the underreporting of crimes like hate crimes.<sup>13</sup>

## Conclusion

In conclusion, history has taught us that national security laws invariably harm the very communities they are supposed to protect. COINTELPRO, the FBI's unlawful domestic surveillance operation that was shamefully used against Dr. Martin Luther King, Jr. and other civil rights leaders in the 1960s, was justified as a national security program. After 9/11, we have seen a similar counterterrorism framework used to unjustly target and harm Arabs, Muslims, and others treating us and our religion as suspicious.<sup>14</sup> Adding new national security authorities will only exacerbate these challenges.

Thank you for the opportunity to testify today. I would be pleased to answer any questions you may have.

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<sup>13</sup> The Leadership Conference on Civil and Human Rights, "Comments on the DOJ, FBI, Criminal Justice Information Services (CJIS) Division, Information Collection Request to OMB on the National Incident Based Reporting System", (Nov. 6, 2020). <https://civilrights.org/resource/comments-on-the-doj-fbi-criminal-justice-information-services-cjis-division-information-collection-request-to-the-office-of-management-and-budget-on-the-national-incident-based-reporting-system/>.

<sup>14</sup> Written Statement of Professor Shirin Sinnar, "Countering Domestic Terrorism: Examining the Evolving Threat", Hearing before the Committee on Homeland Security and Governmental Affairs, United States Senate, One Hundred Sixteenth Congress, First Session (September 25, 2019), p. 149. <https://www.hsdl.org/?abstract&did=835354>.