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Wade Henderson

**STATEMENT OF WADE HENDERSON  
INTERIM PRESIDENT AND CEO  
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**“DOMESTIC TERRORISM AND VIOLENT EXTREMISM: EXAMINING THE  
THREAT OF RACIALLY, ETHNICALLY, RELIGIOUSLY, AND POLITICALLY  
MOTIVATED ATTACKS, PART I”**

**SENATE COMMITTEE ON HOMELAND SECURITY & GOVERNMENTAL  
AFFAIRS**

August 3, 2021

Chairman Peters, Ranking Member Portman, and members of the Committee: Thank you for holding this timely and important hearing today on the federal response to domestic terrorism. My name is Wade Henderson, and I am the interim president and CEO of 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, The Leadership Conference has coordinated national advocacy efforts on behalf of every major civil rights law since 1957.

As the president of The Leadership Conference on Civil and Human Rights who led the organization for over 20 years, I always appreciate the opportunity to testify before this committee, but I'm particularly grateful today, as we wrestle with the aftermath of the violent January 6 attack on the Capitol and our democracy. I want to acknowledge and express the respect we have for this committee and its members, your staff, the maintenance personnel and cleaning staff, the food workers, and the law enforcement who work in the Capitol during this time. Your shared commitment to democracy and to service has never been more apparent than now.

The violent insurrection on January 6, fueled by white supremacy horrified us all. However, for those of us who are a part of and work alongside Black, Brown, Arab, Muslim, Jewish, Sikh, disabled, and LGBTQ communities, the white nationalist violence did not surprise us. Sadly, for the members of our coalition and the people we represent, this violence is not new. Whether this type of violence is manifested through housing, education, employment, voting, or criminal legal systems, it demands that we come together across different communities to combat it.

Since this nation's inception, many of our nation's systems, and institutions continue to, perpetuate the scourge of white supremacy and it continues to thrive. We know that for too

long, the threat of white nationalist violence has been weaponized against Black and Brown communities – by white supremacists and government programs that target us rather than protect us. The history of racially-motivated violence in this country, from lynchings and the actions of the Ku Klux Klan (KKK) to the Tulsa massacre and beyond demonstrate that white supremacist violence is nothing new.

After the Civil War, with the passage of 13th, 14th, and 15th Amendments to the U.S. Constitution, the KKK emerged as a powerful movement. It was comprised of white supremacists that rejected our country’s changing electoral map with Black citizens gaining the right to vote. Today, we see a similar phenomenon, with growing support for white supremacist movements that appeal to white and other Americans who reject demographic shifts and electoral outcomes that reflect a more, multi-cultural America. Moreover, the tactics of the KKK and today’s white nationalists are also similar. In 1898, in Wilmington, North Carolina, a group of white supremacist insurrectionists carried out a successful *coup d’état* by overthrowing democratically elected government officials, like what we saw on January 6, 2021, when violent white supremacist insurrectionists stormed the US Capitol, attempting to subvert our free and fair elections. And in addition to committing horrifying violence and thousands of lynchings to intimidate people of color from voting, white supremacists throughout our nation’s history have also used institutional mechanisms to suppress the Black vote, from literacy tests to poll taxes. Today we see similar voter suppression initiatives across 43 states, where lawmakers have introduced hundreds of [bills](#) to further restrict voting.<sup>1</sup> Against the backdrop of this white nationalist insurgency, the Department of Justice was created in 1871. Its *raison d’être* was to hold white supremacists, namely, the KKK accountable for their white terror and to enforce Constitutional amendments passed to protect Black people and their right to vote.<sup>2</sup>

Congress must help ensure that DOJ uses the many tools already at its disposal, including over 50 terrorism-related crimes and over a dozen other criminal statutes and authorities, to prioritize and address white nationalist violence, now as it was established to do. And while we continue to support the re-introduced Domestic Terrorism Prevention Act (DTPA), as well as efforts to improve the federal government’s response to hate crimes, we remain adamantly opposed to any new legislation that would create an added charge for domestic terrorism or any enhanced or additional criminal penalties, because we know that those laws will likely target Black, Brown and Muslim communities instead of the white supremacist threat.

### **Federal Law Enforcement Has Criminal Statutes and Investigative Authorities to Combat Violence Fueled by White Supremacy. It Has Lacked the Will to Use Them.**

The federal government has long had intelligence that demonstrated the threat of violent white nationalists. The Federal Bureau of Investigation (FBI) elevated white supremacist activity to a “national threat priority,” and FBI Director Christopher Wray testified recently, before both the House and Senate on just how

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<sup>1</sup> Amy Gardner and Kate Rabinowitz and Harry Stevens. “How GOP-backed voting measures could create hurdles for tens of millions of voters.” *Washington Post*. March 11, 2021. <https://www.washingtonpost.com/politics/interactive/2021/voting-restrictions-republicans-states/>.

<sup>2</sup> Bryan Greene. “Created 150 Years Ago, the Justice Department’s First Mission Was to Protect Black Rights.” *Smithsonian Magazine*. July 1, 2020. <https://www.smithsonianmag.com/history/created-150-years-ago-justice-departments-first-mission-was-protect-black-rights-180975232/>.

dangerous white supremacist organizations and the people who ascribe to their racist ideologies are to our national security.<sup>3</sup>

Time and time again, our coalition has emphatically called for white supremacist and nationalist violence and activity to be prioritized by federal law enforcement as a clear and present national security threat. Just last September, our coalition called on Congress to hold the Department of Homeland Security (DHS) accountable for their acting leadership's efforts to cover up intelligence detailing that white supremacists posed the greatest terror threat to our national security.<sup>4</sup> And despite the overwhelming data,<sup>5</sup> the failure to prioritize the white nationalist threat, both within federal and other institutions and among private citizens, has cost us, Black, Brown, and Muslim lives, while white nationalists become emboldened to commit more acts of hate and violence.<sup>6</sup> This includes the murder of 23 individuals by a white nationalist two years ago today in El Paso, Texas.<sup>7</sup>

So why hasn't more been done to address this real and present danger to our country? The failure to confront and hold accountable white nationalist violence is not a question of not having appropriate tools to employ, but a failure to use those on hand. To date, the federal government has simply not prioritized white nationalist crimes or their violent agenda.<sup>8</sup> Congress should use its power to ensure that law enforcement appropriately focuses investigative and prosecutorial resources on white nationalist crimes. The Department of Justice (DOJ), including the FBI, has over 50 domestic terrorism-related statutes it can use to investigate and prosecute criminal conduct, including white supremacist violence, as well as dozens of other federal statutes relating to hate crimes, organized crime, conspiracy, and violent crimes.<sup>9</sup>

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<sup>3</sup> Erin Donaghue. "Racially-motivated violent extremists elevated to 'national threat priority,' FBI director says." *CBS News*. Feb. 5, 2020. <https://www.cbsnews.com/news/racially-motivated-violent-extremism-isis-national-threat-priority-fbi-director-christopher-wray/>; see also Amy Sherman. "Fact-check: Did the FBI director warn about white supremacist violence?" *Austin American Statesman*. Oct. 9, 2020. <https://www.statesman.com/story/news/politics/elections/2020/10/09/fact-check-did-fbi-director-warn-about-white-supremacist-violence/114251512/>.

<sup>4</sup> The Leadership Conference on Civil and Human Rights, "Letter from Civil Rights Organizations Calling for Investigation and Hearings into DHS Coverup of White Supremacist Intelligence." Sept. 24, 2020. <https://civilrights.org/resource/letter-from-civil-rights-organizations-calling-for-investigation-and-hearings-into-dhs-coverup-of-white-supremacist-intelligence/>; see also Betsy Woodruff Swan. "DHS draft document: White supremacists are greatest terror threat." *Politico*. Sept. 4, 2020. <https://www.politico.com/news/2020/09/04/white-supremacists-terror-threat-dhs-409236>.

<sup>5</sup> See, e.g., Mark Hosenball. "White supremacist groups pose rising U.S. threat, Garland says." *Reuters*. May 12, 2021. <https://www.reuters.com/world/us/white-supremacist-groups-pose-rising-us-threat-garland-says-2021-05-12/>.

<sup>6</sup> Michael German, "Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement", The Brennan Center for Justice

<sup>7</sup> Zack Beauchamp. "El Paso shooting: the surge in white nationalist violence, explained." *Vox*. Aug. 6, 2019. <https://www.vox.com/policy-and-politics/2019/8/6/20754828/el-paso-shooting-white-supremacy-rise>.

<sup>8</sup> Michael German, "Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement", The Brennan Center for Justice

<sup>9</sup> Roy L. Austin Jr. and Kristen Clarke. "Creating a 'Domestic Terrorism' Charge Would Actually Hurt Communities of Color." *Washington Post*. Aug. 26, 2019. [https://www.washingtonpost.com/opinions/domestic-terrorism-doesnt-need-to-be-a-chargeable-offense-we-already-have-powerful-hate-crime-laws/2019/08/26/14c6f354-c4eb-11e9-b72f-b31d7212\\_story.html](https://www.washingtonpost.com/opinions/domestic-terrorism-doesnt-need-to-be-a-chargeable-offense-we-already-have-powerful-hate-crime-laws/2019/08/26/14c6f354-c4eb-11e9-b72f-b31d7212_story.html); Michael German and Sarah Robinson. "Wrong Priorities on Fighting Terrorism." *Brennan Ctr. for Justice*. Oct. 31, 2018. [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); Michael German and Emmanuel Mauleón. "Fighting Far-Right Violence and Hate Crimes." *Brennan Ctr. for Justice*. July 1, 2019. <https://www.brennancenter.org/publication/fighting-far-right-violence-and-hate-crimes>.

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.<sup>10</sup> As our colleagues at the Brennan Center for Justice have detailed, 51 of these statutes, or 89 percent, are applicable to both international and domestic terrorism.<sup>11</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>12</sup>

DOJ has dozens of federal criminal statutes to prosecute violent far-right extremists, including white nationalists. And while DOJ 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 and the cases against the January 6 insurrectionists, demonstrating that they are, indeed, applicable.<sup>13</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.<sup>14</sup> 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>15</sup>

### **Congress Must Not Create a New Charge that Would Harm the Same Communities Targeted by Violent White Nationalists**

A new federal domestic terrorism charge or list would adversely impact civil rights. Support for such a new charge misdiagnoses the white nationalist challenge because it points to a lack of legal authority as the main reason for the growing white nationalist violence ripping our nation apart. In fact, it is law enforcement’s lack of prioritizing, violent, white nationalism as the greatest threat to our national security which is largely to blame.<sup>16</sup> Moreover, a new domestic terrorism charge ignores the experiences of over-policed, and over-surveilled, Black, Brown, and Muslim communities who have suffered enormously – first, at the hands of white supremacists themselves and, second at the hands of law enforcement unjustly prioritizing them as the primary, security threat.<sup>17</sup> Our nation’s long and disturbing history of unjustly targeting Black activists, Muslims, Arabs, immigrants, and movements for social and racial justice has demonstrated how this new authority will likely be used.

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<sup>10</sup> 18 U.S.C. § 2339A.

<sup>11</sup> Michael German and Sara Robinson, “Wrong Priorities on Fighting Terrorism”, Brennan Center for Justice. Pg. 5. [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> *Ibid.*

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

<sup>14</sup> Arwa Mahdawi, The Guardian, “Enough with militias“ Let’s call them what they really are: Domestic Terrorists. <https://www.theguardian.com/commentisfree/2020/oct/10/militias-domestic-terrorists-gretchen-whitmer>

<sup>15</sup> *Ibid*; 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).

<sup>16</sup> Michael German and Sarah Robinson. “Wrong Priorities on Fighting Terrorism.” *Brennan Ctr. for Justice*. Oct. 31, 2018. [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); Michael German and Emmanuel Mauleón. “Fighting Far-Right Violence and Hate Crimes.” *Brennan Ctr. for Justice*. July 1, 2019. <https://www.brennancenter.org/publication/fighting-far-right-violence-and-hate-crimes>.

<sup>17</sup> See, e.g., Amith Gupta, “Broader US government surveillance powers won’t make us safer.” *Al Jazeera*. April 28, 2021. <https://www.aljazeera.com/opinions/2021/4/28/broader-u-s-government-surveillance-powers-wont-make-us-safer>; “Unleashed and Unaccountable: The FBI’s Unchecked Abuse of Authority.” *ACLU*. September 2013. <https://www.aclu.org/other/unleashed-and-unaccountable-fbis-unchecked-abuse-authority>.

Members of Congress should not reinforce counterterrorism policies, programs, and frameworks that are rooted in bias, discrimination, and diminution of fundamental rights like due process or privacy.<sup>18</sup> Rather, as highlighted below, Congress should focus on oversight, appropriations, and limited legislation like the DTPA that ensures the federal government redirect resources towards the white nationalist violence plaguing our country while holding law enforcement accountable.

The systemic racism that infects the criminal legal system means that “domestic terrorism” approaches to addressing violence inevitably come back to harm communities of color. COINTELPRO, the FBI’s unlawful domestic surveillance operation that was used to try to discredit Dr. Martin Luther King, Jr. and other civil rights leaders in the 1960s, was also justified as a national security program.<sup>19</sup> After 9/11, our nation built a counterterrorism framework and apparatus that continues to over-police, unjustly surveil, and harm Muslims, Arabs, and South Asians along with immigrants, for little reason other than their national origin, religion, or ethnic background.<sup>20</sup> Rather than recognizing each and every person based on the content of their character and the actions that they take, Arab, Muslim and South Asian communities have been demonized and viewed as suspects above all else.<sup>21</sup> The FBI and other have agencies “mapped” Muslim and Arab communities, deployed informants throughout mosques and hookah bars, and solicited intelligence through federally sanctioned community engagement programs and detained and interrogated members of those communities using secret evidence and other “national security” exceptions on razor thin evidence.<sup>22</sup> Federal agents also abuse the ever-burgeoning, no-fly list, by adding law abiding persons, who refuse to become informants for the FBI, each resulting in devastating discriminatory consequences.<sup>23</sup> And all this is happening, against a background of an increase in hate crimes against members of these same communities targeted by white supremacist violence with little protection from law enforcement.<sup>24</sup>

In 2017, when the federal government should have been redoubling its efforts to combat white nationalist violence after the Charlottesville tragedy, the FBI chose instead to target people demanding racial justice.

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<sup>18</sup> See generally, Harsha Panduranga, “Community Investment, Not Criminalization”, Brennan Center for Justice <https://www.brennancenter.org/our-work/research-reports/community-investment-not-criminalization>

<sup>19</sup> “COINTELPRO.” *FBI*. <https://vault.fbi.gov/cointel-pro>.

<sup>20</sup> Michael German and Sarah Robinson. “Wrong Priorities on Fighting Terrorism.” *Brennan Ctr. for Justice*. Oct. 31, 2018.

[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); Michael German and Emmanuel Mauleón. “Fighting Far-Right Violence and Hate Crimes.” *Brennan Ctr. for Justice*. July 1, 2019.

<https://www.brennancenter.org/publication/fighting-far-right-violence-and-hate-crimes>.

<sup>21</sup> Michael German and Sarah Robinson. “Wrong Priorities on Fighting Terrorism.” *Brennan Ctr. for Justice*. Oct. 31, 2018.

[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); Michael German and Emmanuel Mauleón. “Fighting Far-Right Violence and Hate Crimes.” *Brennan Ctr. for Justice*. July 1, 2019.

<https://www.brennancenter.org/publication/fighting-far-right-violence-and-hate-crimes>.

<sup>22</sup> Michael German and Sarah Robinson. “Wrong Priorities on Fighting Terrorism.” *Brennan Ctr. for Justice*. Oct. 31, 2018.

[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); Michael German and Emmanuel Mauleón. “Fighting Far-Right Violence and Hate Crimes.” *Brennan Ctr. for Justice*. July 1, 2019.

<https://www.brennancenter.org/publication/fighting-far-right-violence-and-hate-crimes>.

<sup>23</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. Pg. 149. <https://www.hsdl.org/?abstract&did=835354>.

<sup>24</sup> Roy L. Austin Jr. and Kristen Clarke. “Creating a ‘Domestic Terrorism’ Charge Would Actually Hurt Communities of Color.” *The Washington Post*. Aug. 26, 2019. [https://www.washingtonpost.com/opinions/domestic-terrorism-doesnt-need-to-be-a-chargeable-offense-we-already-have-powerful-hate-crime-laws/2019/08/26/14c6f354-c4eb-11e9-b72f-b31dfaa77212\\_story.html](https://www.washingtonpost.com/opinions/domestic-terrorism-doesnt-need-to-be-a-chargeable-offense-we-already-have-powerful-hate-crime-laws/2019/08/26/14c6f354-c4eb-11e9-b72f-b31dfaa77212_story.html); see also Kuang Keng Kuek Ser. “Data: Hate crimes against Muslims increased after 9/11.” *The World*. Sept. 12, 2016. <https://www.pri.org/stories/2016-09-12/data-hate-crimes-against-muslims-increased-after-911>.

The decision by the FBI's Domestic Terrorism Unit to label African Americans as "Black Identity Extremists" diverted resources that could have been used to address the growing white nationalist threat.<sup>25</sup> Instead, Black advocates who dared to speak out against injustice were targeted under yet another misdirected domestic terrorism tool.

### **Addressing White Nationalist Violence Means Dismantling White Supremacist Policies and Practices Across Institutions Inside and Outside the Criminal Legal System, including White Supremacy in Policing**

We continue to demand accountability for the white supremacist insurrectionists who attacked our country on January 6, as well as for other violent white nationalists who have committed crimes that devastate our communities. But if we are to truly address white nationalist violence, we must reckon with the legacy of enslavement in this country by telling the truth about our history including the ways in which systemic racism permeates areas like education, employment, the courts, housing and lending, health care, immigration, voting rights, and our criminal legal system. Our recommendations for legislative action to advance civil rights in each of these areas are therefore important steps in addressing white nationalist violence.<sup>26</sup> Our national security and the future of our democracy demands that we root out white supremacy across all the institutions and systems that impact our lives. We cannot truly grapple with the ongoing impact of slavery, which was central to our founding as a nation, without truth telling and reparations for the debt that is owed.

### **White Supremacy in Policing and Law Enforcement**

White supremacy infects so many of our institutions, but its impact on policing by law enforcement at all levels, is particularly devastating. Police officers, charged with the mandate of protecting and serving our communities, are vested with the extraordinary power to inflict state sanctioned violence. And far too often, this violence is unlawfully used particularly at Black people. The murders of Rayshard Brooks, George Floyd, and Breonna Taylor at the hands of police officers put the issue of state-sanctioned, police brutality in the spotlight during the summer of 2020.<sup>27</sup> The worldwide outcry that continues today is not a reaction to one isolated incident or the misconduct of a few individual officers, but to the deadly impact of systemic racism.<sup>28</sup>

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<sup>25</sup> David Dennis. "'Black Identity Extremists' and the Dark Side of the FBI." *The Marshall Project*. Oct. 17, 2017. <https://www.themarshallproject.org/2017/10/17/black-identity-extremists-and-the-dark-side-of-the-fbi>.

<sup>26</sup> The Leadership Conference on Civil and Human Rights. "The Leadership Conference on Civil and Human Rights Transition Priorities." Nov. 24, 2020. Pg. 4, <http://civilrightsdocs.info/pdf/policy/task-force-priorities/Transition-ShortToplinePriorities-TheLeadershipConference-November2020-FINAL.pdf>.

<sup>27</sup> There were also the killings of Dreasjon "Sean" Reed and Tony McDade, who join the all too long list of Black people who have died at the hands of police, including Michael Brown, Freddie Gray, Eric Garner, Alton Sterling, Philando Castile, Sandra Bland, Laquan McDonald, Tamir Rice, and too many more.

<sup>28</sup> The pain and demands for justice that we saw over the summer and that motivated so many to go to the polls during the 2020 election also reflected incidents of heavy-handed enforcement of low-level offenses and "broken windows" policing, and decades of inadequate reform efforts that undermine trust in law enforcement, especially in communities of color. Policies like "zero tolerance" laws, stop-and-frisk tactics, the use of military-style equipment and techniques, and the fueling of a school-to-prison pipeline for thousands of children through the deployment of police in schools. Black and Hispanic people are overrepresented in other enforcement activities, including pedestrian and vehicle stops. And all of these stops increase the chances that people will be seriously injured or killed when engaging with police. All of these policies reflect white supremacist structures in policing.

Last summer, we saw peaceful, Black-led uprisings for racial justice that were met with a swift and heavy-handed, militarized local, state, and federal law enforcement response. By contrast, on January 6, we saw many white nationalists, with little law enforcement response, engage in a premeditated, violent insurrection on our nation's Capitol, executed in broad daylight. The failure to prepare and respond effectively to white supremacist violence is not an isolated accident. This disparity in police responses is stunning and systemic. Whether it was violent white nationalists who targeted and killed people protesting for racial justice, or militants storming state capitols threatening the lives of public officials and then our nation's Capitol on January 6, white supremacy has cost lives and harmed all of our communities because it is not taken seriously by law enforcement institutions.<sup>29</sup> One data reporting project found that law enforcement was more than twice as likely to attempt to break up protests that were categorized as "left-leaning" (such as protests organized by the Black Lives Matter movement and the NAACP, or protests against former President Trump), – when compared to protests characterized as "right-leaning" (like pro-Trump protests, pro-police demonstrations, and events held by Q-Anon supporters and right-wing militias).<sup>30</sup> They were also more likely to use force, even when 93 percent of the protests associated with Black Lives Matter were peaceful.<sup>31</sup>

We know that hundreds of thousands of law enforcement officers report for duty every day, with a mission to keep us safe and protect us from harm. And we are grateful to the majority of these officers who carry out their mission with dignity and honor — especially to those who give their lives to the cause. But we also know that there are police officers in departments across the country who have been identified as members of white supremacist groups. These officers can take and destroy lives. With scandals in over 100 different police departments across 40 different states where officers sent overtly racist emails, texts, or made comments on social media, it is no wonder that communities are demanding action to address white supremacy in policing.<sup>32</sup> And while we know that this is an issue that is playing out in departments across the country, the participation of current and former law enforcement and military officials in the insurrection has raised alarms. Out of over 500 insurrectionists with federal or D.C. charges, at least 72 served in the military or law enforcement.<sup>33</sup>

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<sup>29</sup> For example, shortly before Kyle Rittenhouse, a white man with connections to far-right militants, shot three people, killing two of them, at a protest for racial justice in Kenosha, Wisconsin, he appeared at the protests as part of a self-styled militia there to support law enforcement. In video from the hours before he shot and killed the protestors, law enforcement officers passed by, handing out water to armed white militants who were targeting Black protestors stating "We appreciate you guys. We really do." <https://www.npr.org/2020/08/27/906791713/oh-hell-no-why-the-police-doesnt-need-militias-help-at-riots>

<sup>30</sup> Maggie Koerth. "The Police's Tepid Response to the Capital Breach Wasn't an Aberration." *FiveThirtyEight*. Jan. 7, 2021. <https://fivethirtyeight.com/features/the-polices-tepid-response-to-the-capitol-breach-wasnt-an-aberration/>; Lois Beckett. "US police three times more likely to use force against leftwing protestors, data finds." *The Guardian*. Jan. 14, 2020. <https://www.theguardian.com/us-news/2021/jan/13/us-police-use-of-force-protests-black-lives-matter-far-right>.

<sup>31</sup> Sanya Mansoor. "93% of Black Lives Matter Protests Have Been Peaceful, New Report Finds." *Time*. Sept. 5, 2020. <https://time.com/5886348/report-peaceful-protests/>.

<sup>32</sup> Vida B. Johnson. "KKK in the PD: White Supremacists Police and What to do About It." *Lewis & Clark Law Review*. Apr. 1, 2019. Vol 23:1, p. 205-261, <https://law.lclark.edu/live/files/28080-lcb231article2johnsonpdf>.

<sup>33</sup> Clare Hymes & Cassidy McDonald & Eleanor Watson. "More than 540 charged so far in Capitol riot case, while approximately 300 suspects remain unidentified." *CBS News*. July 27, 2021. <https://www.cbsnews.com/news/capitol-riot-arrests-latest-2021-07-27/>.

White supremacy in policing makes us all less safe, including police officers. As we begin to learn more horrific details about the January 6 attack on the Capitol, we are also learning more about years of racist abuse that confronted Black Capitol police officers.<sup>34</sup> And the failure to act on widely available intelligence about white nationalists' plans for violence meant that all people in the Capitol, including law enforcement officers, were at greater risk for serious physical harm. The most recent reports indicated that at least 150 officers from the Capitol Police and the Metropolitan Police Department were injured.<sup>35</sup>

### **Federal Failures with Respect to Hate Crimes Data and Resources for Communities**

White nationalist violence terrorizes communities in the form of hate incidents and hate crimes that target people across the country on a daily basis. When someone is targeted for hate violence on the basis of race, color, national origin, sex (including sexual orientation and gender identity), religion, or disability, the impact goes beyond that person; it devastates an entire community. The Hate Crimes Statistics Act recognized the importance of the federal government capturing accurate data on hate crimes in jurisdictions across the country.<sup>36</sup> Data-driven policy enables law enforcement to effectively target resources, and is critical to enabling communities targeted for hate to access the support and resources that they need. But federal hate crimes data as reported by the FBI through the Uniform Crime Reporting (UCR) Program is so notoriously unreliable that it is actually undermining the work of law enforcement and community leaders trying to effectively combat hate.

For example, in 2019, the most recent year for which FBI hate crimes data is available, the FBI's UCR Program reported that 7,314 hate crime incidents occurred that year. The data available indicated 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.

Furthermore, in a 2017 Hate Crime Victimization Report published by the DOJ's Bureau of Justice Statistics (BJS), BJS statisticians reviewed data on hate crimes victimization from the DOJ's National Crimes Victimization Survey (NCVS). In that study, they estimated that U.S. residents actually experienced an average of 250,000 hate crime victimizations each year from 2004-2015.<sup>37</sup> The same DOJ that reports around 7,000 hate crimes incidents each year also recognizes that the actual number is closer to 250,000.

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<sup>34</sup> Joshua Kaplan and Joaquin Sapien. "No One Took Us Seriously": Black Cops Warned About Racist Capitol Police Officers for Years." *ProPublica*. Jan. 14, 2021. <https://www.propublica.org/article/no-one-took-us-seriously-black-cops-warned-about-racist-capitol-police-officers-for-years>.

<sup>35</sup> Michael Kaplan & Cassidy McDonald. "At least 17 police officers remain out of work with injuries from Capitol attack." *CBS News*. June 4, 2021. <https://www.cbsnews.com/news/capitol-police-injuries-riot/>.

<sup>36</sup> FBI: Uniform Crime Reporting. *Hate Crime Statistics Act*. 2017. <https://ucr.fbi.gov/hate-crime/2017/resource-pages/hate-crime-statistics-act>.

<sup>37</sup> Lynn Langton and Madeline Masucci. "Hate Crime Victimization, 2004-2005." *Bureau of Justice Statistics*. June 29, 2017. <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5967>.



The Hate Crime Victimization Report estimated that 54 percent of hate crime victimizations were not reported to police.<sup>38</sup>

When you know that hate crimes have targeted people in your community, and you learn that the police department, and in some cases an entire city or state, has reported to the federal government that no hate crime has occurred, it sends a very clear message about who is protected and who is respected. It can undermine hard-earned trust in communities. While we know that communities are continuing to see an increase in hate incidents and hate crimes, they are often turning to trusted non-governmental organizations to report hate crimes instead of law enforcement. For example, the racist targeting of 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.<sup>39</sup> We know communities fear reporting to law enforcement, and that even if law enforcement does respond to a hate crime, they may not identify a hate crime as a hate crime when investigating and prosecuting it.<sup>40</sup>

## Recommendations

***Pass the Domestic Terrorism Prevention Act (DTPA) and use oversight and appropriations powers to demand that federal agencies make public how they have and are now using resources to fight white supremacist violence.***

The DTPA will help ensure that federal law enforcement authorities use existing criminal legal tools to prioritize addressing white nationalist violence. The DTPA authorizes DOJ, DHS, and FBI offices that are responsible for monitoring threats to offer training and resources to assist state, local, and tribal law enforcement in understanding, investigating, prosecuting, and deterring acts of domestic terrorism. The legislation mandates that these agencies issue joint annual reports to the House and Senate Judiciary, Homeland Security, and Intelligence Committees in order to evaluate the domestic terrorism threat posed by white supremacists; examine domestic terrorism incidents that occurred in the previous year; and offer transparency through a public quantitative analysis of domestic terrorism-related assessments, investigations, incidents, arrests, indictments, prosecutions, convictions, and weapons recoveries. And through its inclusion of the Community Relations Service (CRS), the DTPA recognizes that communities targeted for hate must be at the center of policies and programs intended to address hate violence and to ensure that the people targeted have the resources and support that they identify and need.

Central to our support for the Domestic Terrorism Prevention Act is that it will not create a new domestic terrorism charge or sentence enhancement that would harm our communities. Instead, it implements common sense processes that will combat white supremacy while not falling into tropes of racial and religious groups who may become unintentional targets of proposed policy.

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<sup>38</sup> *Ibid.*

<sup>39</sup> Asian Americans Advancing Justice, (2020-2021). <https://www.standagainthatred.org/stories?offset=1595538420174>; see also Stop AAPI Hate. <https://stopaapihate.org/reportsreleases/>.

<sup>40</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>.

### ***Combat White Supremacy in Policing: Hiring, Policies for Departments, and Accountability***

Congress should identify ways to address white supremacy in law enforcement that has been documented by the FBI.<sup>41</sup> The Oversight Committee hearing last year highlighted this threat, which puts lives at risk and undermines the criminal legal system.<sup>42</sup> Congress must demand a full accounting for what is being done to address white supremacy in law enforcement, and to get data on the extent of the problem. The White Supremacy in Law Enforcement Information Act is a good first step to obtain some of this information. Congress must also identify ways to ensure that law enforcement officers who actively advocate for and incite violence against people on the basis of race, color, national origin, religion, sex (including sexual orientation and gender identity), and disability are not welcome in federal law enforcement. And federal law enforcement agencies must have clear policies to address and combat white supremacy in policing.

### ***Reparations and Truth, Racial Healing, and Transformation: Pass H.R. 40 and the Truth, Racial Healing, and Transformation Resolution***

In the more than 400 years since the first enslaved Africans arrived at Jamestown, Virginia, African people, their descendants, and other marginalized groups have borne the brunt of structural inequality, racism, and discrimination. Subjugation of African Americans was integral to establishing the United States as a world economic power, yet African Americans were continuously denied the right to participate in the economic growth of this country even after the official end of slavery. Policies like American chattel slavery, Black Codes, convict leasing, Jim Crow segregation, redlining, and racial discrimination have all contributed to intergenerational harm to African Americans that continues to persist today.<sup>43</sup> The same structural racism that permeates our justice system and sanctions police brutality has also robbed many Black communities of the resources they need and deserve. If we are to address white nationalist violence, we must confront this history. Black communities deserve real justice: structural change to eradicate white supremacy, freedom from unjust and targeted policing, and the space and resources to grieve and heal. We must confront how we have under-resourced and under-invested in Black and Brown communities, leading to gross inequity and overcriminalization.

At long last, Congress must pass H.R. 40 – the Commission to Study and Develop Reparation Proposals for African Americans Act – which was re-introduced by Congresswoman Sheila Jackson Lee this session, as well as H.Con.Res. 19, which was introduced by Congresswoman Barbara Lee and which calls for the establishment of the first United States Commission on Truth, Racial Healing, and Transformation. We cannot truly address the white nationalist violence we are here to discuss today without these truthful reckonings and accountings for what is owed with respect to the ongoing legacy of racism and white supremacy in our country. Reparations are owed. Transformation is required. Generations of denied

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<sup>41</sup> FBI Counterterrorism Division. “White Supremacist Infiltration of Law Enforcement Intelligence Assessment.” Oct. 17, 2006. [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White\\_Supremacist\\_Infiltration\\_of\\_Law\\_Enforcement.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White_Supremacist_Infiltration_of_Law_Enforcement.pdf).

<sup>42</sup> Office of Rep. Jamie Raskin. “Experts Warn Oversight Subcommittee that White Supremacist Infiltration of Law Enforcement Poses a Threat to Cops, Communities.” Sep. 29, 2020. <https://raskin.house.gov/media/press-releases/experts-warn-oversight-subcommittee-white-supremacist-infiltration-law>

<sup>43</sup> “The Descendants: From slavery to Jim Crow, a call for 21st century abolition.” *Harvard Law Today*. Mar. 19, 2018. <https://today.law.harvard.edu/descendants-slavery-jim-crow-call-21st-century-abolition/>.

opportunity through systems and a culture of racial hierarchy cannot be permanently disrupted without a nationally coordinated, and community-driven truth, healing, and transformation effort. And a U.S. Commission for Truth, Racial Healing, and Transformation would enable us to ensure that the reparations that must be a part of this country's transformation are part of a foundation for sustainable systemic change. Together, we must confront and reject the big lie — the hierarchy of human value — residing at the very core of our country's founding beliefs, and that continues to drive white nationalist violence and white supremacist policies and practices.

### **Conclusion**

Now is the time to create a shared vision for a country as good as its ideals that centers human dignity. A country where all are valued equally regardless of their race, ethnicity, religion, sex, disability, or socioeconomic status. In order to do this, we must reckon with the white supremacy that was present at our founding and continues to infect all of our institutions, policies, and practices. This upcoming Friday, on August 6, we commemorate the anniversary of the historic, Voting Rights Act that was passed in 1965. We all owe a great debt to all those who fought for this precious right against white supremacists who continue to try to tear it away from communities of color. Congress should focus on passing legislation that strengthens democracy, like S. 1, the For the People Act, not more counterterrorism laws that target Black, Brown, and Muslim communities. We need to prioritize targeting white terror and fighting white supremacy by issuing reparations and making the John Lewis Voting Rights Act, the law of the land. Thank you.