



**RESPONDING TO THE RISE OF DOMESTIC  
VIOLENT EXTREMISM: IMPROVING THE  
INTELLIGENCE COMMUNITY'S PRACTICES  
AND PROCEDURES**

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**Program on Extremism**

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## **Foreword**

As part of its dual commitments to spearhead academic inquiry on the problems of extremism in the United States and engage in collaborative research with the broader George Washington University community, the Program on Extremism at George Washington University is proud to publish this report on the U.S. Intelligence Community's response to domestic violent extremism. This occasional paper, authored by graduate students at the George Washington University's Elliott School of International Affairs, draws from independent research that they conducted in fulfillment of their Global Capstone final project. By combining primary-source research with rigorous policy analysis, the report fits into several of the Program on Extremism's major goals and highlights the importance of collaboration within the academic community at George Washington University, particularly involving its students and early-career researchers.

The views and conclusions contained in this document are those of the authors alone and should not be interpreted as necessarily representing the official policies, either expressed or implied, of the Program on Extremism or George Washington University.

## **About the Program on Extremism**

The Program on Extremism at George Washington University provides analysis on issues related to violent and nonviolent extremism. The Program spearheads innovative and thoughtful academic inquiry, producing empirical work that strengthens extremism research as a distinct field of study. The Program aims to develop pragmatic policy solutions that resonate with policymakers, civic leaders, and the general public.

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## Executive Summary

The January 6, 2021 attack on the U.S. Capitol and election certification process represented a turning point in the law enforcement and intelligence community's (IC) understanding of domestic violent extremism (DVE). Whereas prior threat assessments predominately looked toward foreign-based threats to U.S. national security, high-level national security policymakers began to sound the alarm about the threat of domestic violent extremism. In order to prevent future attacks on the United States, the U.S. national security community must strategically reform its analysis, cooperation, and coordination structures to better respond to the rising challenge of DVE. Without an appropriate policy response, DVE will likely continue to challenge and strain domestic national security resources. This paper accordingly evaluates U.S. intelligence and law enforcement capabilities with regard to DVE threats, and determines how the U.S. government can enhance its response to DVE threats. This analysis relies on quantitative and qualitative sources, including an analysis of U.S. policies related to DVE and intelligence, a review of databases tracking incidents of DVE attacks, and interviews of subject matter experts with substantial practical experience in this field.

This paper provides three recommendations to the intelligence and law enforcement communities for improving current counter-DVE policies:

- The IC and law enforcement should use post-conviction data to populate a classified and anonymized database for tracking DVE incidents.
- Law enforcement leadership should improve outreach efforts between federal, state, and local law enforcement and training courses and opportunities for personnel.
- The Director of National Intelligence should establish a new mission center under the Office of the Director of National Intelligence tasked with leading coordination of counter-DVE policies across the U.S. government.



## Introduction

The January 6, 2021 attack on the U.S. Capitol brought the threat of Domestic Violent Extremism (DVE) to the forefront of public discourse. Although experts have warned about the rising threat of violent extremism for years, images of an iconic government institution overrun by extremists seeking to overturn the results of the 2020 election crystalized the severity of DVE in no uncertain terms. While severe, the January 6<sup>th</sup> attack was neither isolated nor unprecedented. Prior events such as the Charlottesville, Virginia car attack of 2017 and the occupation of the Malheur Wildlife Reserve in 2016 served as a litmus test for how equipped the U.S. government was in anticipating and responding to DVE crises. Experts have increasingly advised that DVE represents a pressing national security concern, and that the U.S. government is not yet adequately equipped to manage and prevent threats of this nature.

A March 2021 report from the Office of the Director of National Intelligence (ODNI) flagged DVE as “an elevated threat to the Homeland.”<sup>1</sup> The report identified that some sub-types of DVE, such as Racially or Ethnically Motivated Violent Extremism (RMVEs) and Militia Violent Extremism (MVEs), pose the most lethal DVE threats.<sup>2</sup> The report flagged several key drivers of extremist behavior, which include but are not limited to biases against minority populations and perceived government overreach, and recent socio-political developments (narratives of fraud in the recent general election, the emboldening impact of the violent breach of the U.S. Capitol, conditions related to the COVID-19 pandemic, and conspiracy theories promoting violence).<sup>3</sup> The IC assesses that DVE, and MVE in particular, will likely increase as time goes on given the contentious sociopolitical factors that motivate MVEs to commit violence.<sup>4</sup> The ODNI is not alone in its assessment. Shortly after receiving his Senate confirmation, Attorney General Merrick Garland commented that DVE would be a top priority for the U.S. Department of Justice.<sup>5</sup> The FBI has also been active in investigating and arresting individuals who participated in the January 6<sup>th</sup> attack on the U.S. Capitol building.<sup>6</sup> Similarly, Secretary

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<sup>1</sup> *Domestic Violent Extremism Poses Heightened Threat in 2021* (Office of the Director of National Intelligence, March 1, 2021). [www.dni.gov/files/ODNI/documents/assessments/UnclassSummaryofDVEAssessment-17MAR21.pdf](https://www.dni.gov/files/ODNI/documents/assessments/UnclassSummaryofDVEAssessment-17MAR21.pdf).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Merrick B. Garland, *Domestic Terrorism Policy Address* (Department of Justice, June 15, 2021).

<https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-remarks-domestic-terrorism-policy-address>.

<sup>6</sup> *FBI Most Wanted: US Capitol Violence* (Federal Bureau of Investigation, undated). <https://www.fbi.gov/wanted/capitol-violence>.

of Homeland Security Alejandro N. Mayorkas recently stated, “Domestic violent extremism poses the most lethal and persistent terrorism-related threat to our country today.”<sup>7</sup>

This paper accordingly evaluates U.S. intelligence and law enforcement capabilities with regard to DVE threats and evaluates how the U.S. government can enhance its response to DVE threats. It recommends process and policy improvements to identify, prevent, and prosecute DVE incidents. First, this paper provides a background on existing DVE policies. This includes an assessment of the subsets of DVE and identifies the practical limits of existing terminology, an outline of the existing authorities guiding counter-DVE policy, and an analysis of existing challenges in tracking DVE incidents. The background section concludes with an assessment of how the above-noted structure of counter-DVE policies held up during the January 6<sup>th</sup> attack. Second, the paper presents the summarized contents of interviews conducted with leading DVE experts.<sup>8</sup> The interviews were semi-structured, with some questions presented to all interviewees and some unique to each interviewee’s field of expertise. Areas of consensus and disagreement are noted, along with notable observations about tools needed to improve counter-DVE policy. Finally, this paper concludes with a set of recommendations derived from the preceding research and interview data. This paper recommends (1) using post-conviction data to populate a classified and anonymized database for tracking DVE incidents, (2) improving federal, state, and local law enforcement communication and intelligence capabilities, and (3) creating an ODNI Mission Center tasked with coordinating counter-DVE policies across the U.S. government, improving existing tools, and filling organizational gaps.

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<sup>7</sup> *Press Release: Secretary Mayorkas Announces Domestic Violent Extremism Review at DHS* (Department of Homeland Security, April 26, 2021).

<https://www.dhs.gov/news/2021/04/26/secretary-mayorkas-announces-domestic-violent-extremism-review-dhs>.

<sup>8</sup> The eight experts interviewed will be referred to by the titles: former senior FBI field office official (interviewed June 9, 2021 via video conference), 9/11 commission member and subject matter expert (interviewed October 19, 2021 via video conference), former senior FBI official (interviewed May 6, 2021 via video conference), former counterterrorism police official (interviewed September 30, 2021 via video conference), subject matter expert and former FBI agent (interviewed September 21, 2021 via video conference), subject matter expert (interviewed August 31, 2021 via video conference), former Parks Police official (interviewed September 15, 2021 via video conference), and rural area sheriff (interviewed May 3, 2021 via video conference).

# Background

## Understanding Domestic Violent Extremism

The Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) define Domestic Violent Extremism (DVE) as “an individual based and operating primarily within the territorial jurisdiction of the United States who seeks to further their ideological goals wholly or in part through unlawful acts of force or violence.”<sup>9</sup> Two key subsets of DVE include Racially Motivated Violent Extremism (RMVE) and Militia Violent Extremism (MVE). RMVE is the use of bias-motivated violence against others in furtherance of an ideology<sup>10</sup> RMVEs often use political and religious justifications to support their racially or ethnically-based ideological objectives and criminal activities.<sup>11</sup> MVEs, in contrast, seek to violently resist or facilitate the overthrow of the U.S. government in support of their belief that the U.S. government is purposely exceeding its Constitutional authority.<sup>12</sup> They often oppose many federal and state laws and regulations, particularly those related to firearms ownership.<sup>13</sup> As a result of this ideology, MVEs are prone to targeting law enforcement and government personnel and facilities.<sup>14</sup> The March 2021 ODNI threat assessment determined that RMVEs and MVEs posed the most lethal threat to the Homeland in 2021.<sup>15</sup>

It is important to note that the above definitions are best suited for operational and intelligence purposes and do not translate into criminal statutes. Using these operational definitions, opposed to language such as “right-wing violent extremism,” ensures clarity in identifying actors and avoids politicized language. Under U.S. law, maintaining beliefs consistent with DVE ideologies or associating with groups that hold DVE sympathies is not illegal. Moreover, there is no domestic equivalent of the Foreign Terrorist Organization designation that would make association with or support for DVE groups subject to legal penalty. Violent extremist individuals may commit acts which are characterized as domestic terrorism for operational and intelligence purposes, and which can subject them to prosecution under garden variety criminal law, but there is no “guilt by

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<sup>9</sup> *Domestic Terrorism: Definitions, Terminology, and Methodology* (Federal Bureau of Investigations, November 2020). [www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-definitions-terminology-methodology.pdf/view](https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-definitions-terminology-methodology.pdf/view).

<sup>10</sup> *Domestic Violent Extremism Poses Heightened Threat in 2021* (Office of the Director of National Intelligence, March 1, 2021).

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

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

<sup>14</sup> *Ibid.*

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



association” statute or other crime associated with the belief systems underpinning these groups.<sup>16</sup> Accordingly, some argue that the United States should codify domestic terrorism as a criminal offense.<sup>17</sup> However, major legal challenges associated with this recommendation, including the lack of a domestic terrorism list that parallels the foreign terrorist list and potential First Amendment implications, have prevented this recommendation from gaining traction in Congress. Notably, the ability to label domestic groups as terrorist organizations could easily be misused persecute unpopular but otherwise lawful First Amendment activities.

### **Authorities Guiding Domestic Violent Extremism Policy**

As a preliminary matter, many have observed that countering DVE threats requires potential surveillance efforts that could implicate civil liberties protections for U.S. citizens. Surveillance collection authorities are generally divided into two categories: those covering activities within the United States and those covering activities outside of the United States. With respect to persons located within the United States, the Fourth Amendment to the U.S. Constitution prohibits law enforcement from conducting a search or seizure of information, absent a warrant obtained through proper showing of probable cause.<sup>18</sup> Although the courts have in some cases recognized a “national security exception” to the Fourth Amendment within the context of foreign threats, the Supreme Court has been less inclined to extend similar exceptions to national security concerns within the domestic context. In the *Keith* case, for example, the Supreme Court held that the government must obtain a warrant when pursuing electronic surveillance of U.S. persons, even when domestic national security concerns are at stake.<sup>19</sup> The Court highlighted the “inherent vagueness of the domestic security concept,” and cited the importance of preserving Fourth Amendment protections when the government is collecting information on its own citizens.<sup>20</sup>

Outside of constitutional protections for persons located within the United States, Title III of the Omnibus Crime Control and Safe Streets Act provides statutory guidance for domestic surveillance

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<sup>16</sup> Compare with, 8 U.S. Code § 2339A and 18 U.S. Code § 2339B (known as the “material support for terrorism” statutes).

<sup>17</sup> See generally, Brian Michael Jenkins, *Five Reasons to Be Wary of a New Domestic Terrorism Law* (RAND Corporation, February 24, 2021).

<https://www.rand.org/blog/2021/02/five-reasons-to-be-wary-of-a-new-domestic-terrorism.html>.

Greg Myre, *An Old Debate Renewed: Does The U.S. Now Need A Domestic Terrorism Law?* (NPR, March 16, 2021).

<https://www.npr.org/2021/03/16/976430540/an-old-debate-renewed-does-the-u-s-now-need-a-domestic-terrorism-law>.

Jason M. Blazakis, *The Intangible Benefits of a Domestic Terrorism Statute* (Georgetown University, June 24, 2021).

<https://gjia.georgetown.edu/2021/06/24/the-intangible-benefits-of-a-domestic-terrorism-statute/>.

<sup>18</sup> U.S. Const. amend. IV.

<sup>19</sup> *United States v. United States Dist. Court*, 407 U.S. 297 (1972).

<sup>20</sup> *Ibid.*

efforts targeting persons living in the United States.<sup>21</sup> Title III requires that government officials obtain a warrant intercepting "wire, oral, and electronic" communications, except where a designated law enforcement officer determines that an emergency situation exists and involves the immediate danger of death or serious injury to any person, conspiratorial activities threatening the national security interest, or conspiratorial activities characteristic of organized crime.<sup>22</sup> In these emergency cases, the federal government may begin intercepting communications so long as it obtains a warrant within forty-eight hours.<sup>23</sup> Federal law establishes the minimum privacy protections for intercepting communications and states law cannot weaken these protections in its own surveillance statutes.<sup>24</sup> Title III also regulates the use and disclosure of information obtained through authorized wiretapping.<sup>25</sup>

Some have also expressed concern that the federal intelligence community could use foreign surveillance tools to circumvent domestic privacy protections and collect information on U.S. persons, even outside of a prosecutorial context. Executive Order 12333 broadly governs the conduct of American intelligence and surveillance activities overseas.<sup>26</sup> It outlines the responsibilities of each intelligence agency with respect to intelligence collection and stipulates with few exceptions that the FBI, under the supervision of the DOJ, has the exclusive authority for conducting and coordinating intelligence collection within the United States.<sup>27</sup> Aside from establishing *who* can collect domestic intelligence, E.O. 12333 establishes guidelines for *how* intelligence on U.S. persons can be collected, retained, and disseminated throughout the intelligence community.<sup>28</sup> Additionally, pursuant to E.O. 12333, foreign intelligence surveillance law more broadly prohibits the surveillance and collection of information on persons located within the United States unless they are acting at the behest of a

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<sup>21</sup> Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 STAT 197 (1968). *See also*, Title III of The Omnibus Crime Control and Safe Streets Act of 1968 (Backgrounder) (Department of Justice, undated). <https://bja.ojp.gov/program/it/privacy-civil-liberties/authorities/statutes/1284>.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Exec. Order No. 12333, (§ 2.3) 3 C.F.R. 200 (1981), *as amended*. E.O. 12333 has been amended three times—first by Exec. Order No. 13, 284 (January 2003), second by Exec. Order No. 13,555 (August 2007), and finally by Exec. Order No. 13,470 (July 2008).

<sup>27</sup> Exec. Order No. 12333, (§ 1.4), 3 C.F.R. 200 (1981), *as amended*. Although ODNI entities such as the National Counter Terrorism Center (NCTC) have the authority to “receive and retain” domestic counterterrorism information for analysis, information sharing, and distribution purposes, the FBI and DHS are the primary organizations tasked with countering domestic terrorism on an operational level. *Strategic Intelligence Assessment and Data on Domestic Terrorism* (Federal Bureau of Investigation, May 2021). <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view>.

<sup>28</sup> Exec. Order No. 12333, § 2.3, 3 C.F.R. 200 (1981), *as amended*.

foreign power (which cannot turn on First Amendment activities alone).<sup>29</sup> Protections implemented by foreign intelligence laws, such as the Foreign Intelligence Surveillance Court (FISC) warrant approval process and minimization requirements and non-dissemination procedures have been implemented to protect U.S. person data from being swept into or incidentally collected via foreign intelligence processes.<sup>30</sup>

*Federal Bureau of Investigation and Department of Homeland Security*

At present, the FBI and DHS lead the IC's counter DVE missions with support from ODNI's National Counter Terrorism Center (NCTC).<sup>31</sup> Other IC elements, such as the Central Intelligence Agency (CIA) and Defense Intelligence Agency (DIA), provide their perspectives where appropriate, including where there are demonstrable links between foreign and domestic threats.<sup>32</sup>

The FBI is responsible for investigating and countering DVE threats on an operational level. FBI investigations into potential DVE activity must be predicated on an articulable factual basis that "reasonably indicates the existence of federal criminal activity or a threat to national security."<sup>33</sup> The investigation must be approved by a Supervisory Special Agent and notice must be provided to Headquarters within fifteen days.<sup>34</sup> The FBI can also open a preliminary investigation on the basis of an "allegation or information" indicative of possible criminal activity or threats to U.S. national security.<sup>35</sup> FBI Headquarters must notify the Department of Justice National Security Division about any national security full investigation of a U.S. person within thirty days.<sup>36</sup> Investigations involving a sensitive investigative matter have further reporting requirements.<sup>37</sup> Notably, "no investigation may be opened based solely on activities protected by the First Amendment or the lawful exercise of rights

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<sup>29</sup> US v. Truong Dinh Hung, 629 F.2d 908 (4<sup>th</sup> Cir. 1980). *See also*, 50 U.S.C. § 1805(a) and/or 50 U.S.C. § 1823 (a).

<sup>30</sup> 50 U.S.C. § 1801 (h). *See also*, In re: Sealed Case, 310 F.3d 717, 731 (FISCR 2002) (minimization procedures are designed to protect, as far as reasonable, against the acquisition, retention, and dissemination of nonpublic information which is not foreign intelligence information.).

<sup>31</sup> *Domestic Violent Extremism Poses Heightened Threat in 2021* (Office of the Director of National Intelligence, March 1, 2021). <https://www.dni.gov/files/ODNI/documents/assessments/UnclassSummaryofDVEAssessment-17MAR21.pdf>. *See also*, *Strategic Intelligence Assessment and Data on Domestic Terrorism* (Federal Bureau of Investigation, May 2021). <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view>.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism* (Federal Bureau of Investigation, May 2021). <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view>.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

secured by the Constitution or laws of the United States.”<sup>38</sup> Additionally, the Field Office’s Chief Division Counsel must approve investigations (preliminary or full) classified as domestic terrorism matters.<sup>39</sup> The FBI must conduct a file review for full investigations every ninety days.<sup>40</sup> Intelligence collection methods for domestic terrorism matters rely on the above-mentioned tools (Title III) and can make use of federal grand jury subpoenas to compel the disclosure of records and information.<sup>41</sup> Domestic terrorism investigations must be reviewed by the Field Office’s Chief Division Counsel.<sup>42</sup> The FBI uses the Threat Review and Prioritization (TRP) process for reviewing and prioritizing threats within operational programs.<sup>43</sup> Operational divisions within FBI Headquarters use TRP to define and prioritize threats at the national level and establish FBI National Threat Priorities, among other things.<sup>44</sup> Field offices use the TRP process to prioritize threat issues for their specific areas of responsibility and create strategies to mitigate concerns.<sup>45</sup>

The Homeland Security Act of 2002 created DHS by consolidating the responsibilities of several government agencies into a singular department.<sup>46</sup> This act gave DHS a mandate to reduce threats to the Homeland, and most importantly for the purposes of this project, the responsibilities to prevent and reduce U.S. vulnerabilities to acts of terrorism.<sup>47</sup> Though much of the post-9/11 policies were focused on foreign terrorist threats, the legislative language does use the broader “terrorist” term and allows for responsibilities towards both foreign and domestic threats.<sup>48</sup> To assess both foreign and domestic threats, DHS leadership began Threat Banding (prioritizing threat topics) in 2019 and implemented Intelligence Threat Banding procedures across its mission areas.<sup>49</sup> During the planning phase of the intelligence cycle, both the FBI and DHS refer to the National Intelligence Priorities Framework detailing the IC’s priorities.<sup>50</sup> The FBI also refers to its own TRP process.<sup>51</sup> Once the FBI and DHS collect intelligence through their own lawful authorities, synthesize and analyze the information, and receive requisite approval for dissemination, intelligence is disseminated via written

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

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (2002)

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism* (Federal Bureau of Investigation, May 2021). <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view>.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

or verbal methods.<sup>52</sup> Intelligence consumers include FBI leadership, policymakers and other government officials, military leaders, private partners, and other operational counterparts.<sup>53</sup>

The FBI also partners with federal, state, local, tribal, and territorial law enforcement to share information and help investigate and disrupt domestic terrorism matters.<sup>54</sup> The primary counterterrorism mission is the FBI-led Joint Terrorism Task Force (JTTF), which consists of approximately 200 JTTFs across all fifty-six FBI field offices nation-wide.<sup>55</sup> The FBI states that its JTTF program maintains the participation of over fifty federal agencies and over 500 state, local, tribal, and territorial agencies.<sup>56</sup> The FBI also coordinates with DHS and the National Counter Terrorism Center (housed in ODNI) to produce Joint Intelligence Bulletins that communicate threat information to federal, state, local, and tribal partners at the Unclassified // Law Enforcement Sensitive level.<sup>57</sup> Broadly speaking, the ODNI oversees FBI intelligence activities.<sup>58</sup>

### *Office of the Director of National Intelligence*

The Intelligence Reform and Terrorism Prevention Act of 2004 made several additional changes to the IC. Section 1011 of the Intelligence Reform and Terrorism Prevention Act of 2004 amended the National Security Act of 1947 and implemented an Office of the Director of National Intelligence (ODNI) that is headed by a Director of National Intelligence (DNI) who “shall be appointed by the President, by and with the advice and consent of the Senate” and who serves as the head of the intelligence community, acts as the principal adviser to the President, to the National Security Council, and the Homeland Security Council for intelligence matters related to the national security, and who “oversees and directs the implementation of the national intelligence program.”<sup>59</sup> Congress has also directed the DNI to “establish objectives, priorities, and guidance for the intelligence community to ensure timely and effective collection, processing, analysis, and dissemination [...] of national intelligence” and “determine requirements and priorities for, and manage and direct the tasking of, collection, analysis, production, and dissemination of national intelligence by elements of the intelligence community.”<sup>60</sup> The DNI is responsible for ensuring national

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<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *FAQ: Who monitors or oversees the FBI?* (Federal Bureau of Investigation, undated).

<https://www.fbi.gov/about/faqs/who-monitors-or-oversees-the-fbi>.

<sup>59</sup> Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, 118 STAT. 3638 (2004). *See also*, National Security Act of 1947 (§ 102 and § 102A), Pub. L. 80-253, 61 Stat. 495 (1947), *as amended*.

<sup>60</sup> National Security Act of 1947 (§ 102A (f) (1) (A) (i)), Pub. L. 80-253, 61 Stat. 495 (1947), *as amended*.

intelligence is provided to the President, agency and department heads of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, the Senate and House of Representatives, and other persons the DNI deems appropriate.<sup>61</sup>

Section 1021 of the Intelligence Reform and Terrorism Prevention Act of 2004 further amended the National Security Act of 1947 to establish the National Counter Terrorism Center (NCTC) as an ODNI Mission Center.<sup>62</sup> Section 119 of the National Security Act accordingly tasks the NCTC with the following responsibilities:

- (1) To serve as the primary organization in the United States Government for analyzing and integrating all intelligence possessed or acquired by the United States Government pertaining to terrorism and counterterrorism, excepting intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism.
- (2) To conduct strategic operational planning for counterterrorism activities, integrating all instruments of national power, including diplomatic, financial, military, intelligence, homeland security, and law enforcement activities within and among agencies.
- (3) To assign roles and responsibilities as part of its strategic operational planning duties to lead Departments or agencies, as appropriate, for counterterrorism activities that are consistent with applicable law and that support counterterrorism strategic operational plans, but shall not direct the execution of any resulting operations.
- (4) To ensure that agencies, as appropriate, have access to and receive all-source intelligence support needed to execute their counterterrorism plans or perform independent, alternative analysis.
- (5) To ensure that such agencies have access to and receive intelligence needed to accomplish their assigned activities.
- (6) To serve as the central and shared knowledge bank on known and suspected terrorists and international terror groups, as well as their goals, strategies, capabilities, and networks of contacts and support.<sup>63</sup>

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<sup>61</sup> National Security Act of 1947 (§ 119) Pub. L. 80-253, 61 Stat. 495 (1947), *as amended*. Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, 118 STAT. 3638 (2004).

<sup>62</sup> *See generally*, ODNI Centers (Office of the Director of National Intelligence, undated). <https://www.dni.gov/index.php/features/124-about/organization/1612-odni-centers>.

<sup>63</sup> National Security Act of 1947 (§ 119) Pub. L. 80-253, 61 Stat. 495 (1947), *as amended*.



Notably, Section 119 (e) adds the following stipulations with regard to domestic national security concerns–

(1) The Center may, consistent with applicable law, the direction of the President, and the guidelines referred to in section 102A(b), receive intelligence pertaining exclusively to domestic counterterrorism from any Federal, State, or local government or other source necessary to fulfill its responsibilities and retain and disseminate such intelligence.

(2) Any agency authorized to conduct counterterrorism activities may request information from the Center to assist it in its responsibilities, consistent with applicable law and the guidelines referred to in section 102A(b).<sup>64</sup>

The NCTC is headed by the Director of the National Counterterrorism Center (“The Director”).<sup>65</sup> The Director must be appointed by the President with the advice and consent of the Senate.<sup>66</sup> The Director has certain reporting responsibilities, which include informing the DNI and President of the NCTC budgetary matters and NCTC activities, as well as the conduct of intelligence operations implemented by other elements of the IC.<sup>67</sup> Per Section 119, the Director has other responsibilities, which include: (1) advising the DNI of counter intelligence operations, (2) providing strategic operational plans for civilian and military counterterrorism efforts inside and outside the United States, (3) advising the DNI on the extent to which counterterrorism recommendations conform with Presidential priorities, (4) disseminating terrorism information “to the President, the Vice President, the Secretaries of State, Defense, and Homeland Security, the Attorney General, the Director of the Central Intelligence Agency, and other officials of the executive branch as appropriate, and to the appropriate committees of Congress,” (5) supporting the DOJ, DHS, and other appropriate agencies in fulfilling their responsibilities, (6) developing a strategy to combine terrorist travel intelligence operations and law enforcement planning into a cohesive efforts, (7) conducting net assessments of terrorist threats, (8) establishing terrorist information collection requirements, and (9) performing other duties the DNI may proscribe. Notably, The Director cannot direct the execution of counterterrorism operations.<sup>68</sup>

Taken together, this means the NCTC is the “primary US government organization for analyzing and integrating all intelligence pertaining to terrorism and counterterrorism outside of scenarios in which the

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Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, 118 STAT. 3638 (2004).

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

threat pertains exclusively to domestic terrorists and domestic counterterrorism.”<sup>69</sup> Although the NCTC has the authority to “receive and retain” domestic counterterrorism information, the FBI and DHS are the primary organizations tasked with countering domestic terrorism on an operational level.<sup>70</sup> Whereas internationally the NCTC can identify and monitor threat trends across an array of actors, its domestic authorities are limited to providing support to the FBI and DHS consistent with mechanisms intended to protect the privacy, civil rights, and civil liberties of US persons.<sup>71</sup>

### *Other Legislation*

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Improvement and Reauthorization Act of 2005 included organizational changes within the DOJ. First, it stipulated that an Assistant Attorney General (AG) must be designated by the President as the Assistant Attorney General for National Security.<sup>72</sup> This Assistant Attorney General is also the head of the DOJ National Security Division created by this Act.<sup>73</sup> The National Security Division is a consolidation of non-FBI intelligence-related organizations within the DOJ, such as counterterrorism and counterespionage offices.<sup>74</sup> These significant changes to governmental organization in the aftermath of September 11, 2001 demonstrate the need for the government to adapt in response to an evolving threat landscape.

Other enacted policies focused on changing the way the U.S. collects and analyzes intelligence. The USA PATRIOT Act of 2001 was another major piece of legislation to become law in the aftermath of September 11, 2001. This act authorized the collection of communications to monitor for evidence of terrorist acts under certain conditions, as well as the strengthening of criminal laws related to terrorism, and requiring actions by the IC to improve intelligence related to foreign terrorism.<sup>75</sup> In March 2006, the USA PATRIOT Improvement and Reauthorization Act of 2005 extended the period in which several provisions could be applied, including making the surveillance provisions permanent.<sup>76</sup> Additionally, the Intelligence Reform and Terrorism Prevention Act changed more than just the IC structure. This act also included measures to improve intelligence collection and analysis such as bettering language capabilities, promoting efficient intelligence sharing, and requiring cooperation

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<sup>69</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism* (Federal Bureau of Investigation, May 2021). <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view>.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> USA Patriot Improvement and Reauthorization Act of 2005, Pub. L. 109-177, 120 Stat. 192 (2005).

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> USA Patriot Improvement and Reauthorization Act of 2001, Pub. L. 107-56, 115 Stat. 272 (2001).

<sup>76</sup> USA Patriot Improvement and Reauthorization Act of 2005, Pub. L. 109-177, 120 Stat. 192 (2005).

between IC and non-IC federal agencies.<sup>77</sup> Both the government reorganization and intelligence improvement policies shifted the landscape of many government agencies, and the IC in particular, in the hopes of being better prepared for future acts of terrorism.

The National Defense Authorization Act for Fiscal Year 2020 (NDAA FY20) included mandates related to DVE. First, it required the FBI and DHS, in consultation with the DNI, to create a standardized set of definitions and methodologies related to domestic terrorism.<sup>78</sup> This report was publicly released in November 2020 and describes different terms for domestic terrorism and methodologies for classifying acts of domestic terrorism.<sup>79</sup> The terms defined in this report have been used in other government documents, including the March 2021 ODNI intelligence assessment on DVE threats.<sup>80</sup> The NDAA FY20 also required the ODNI, FBI, and DHS to submit a report to Congress including a strategic assessment and data on domestic terrorism.<sup>81</sup> This report was released in May 2021 and details procedures for dealing with domestic terrorists and data on domestic terrorist attacks.<sup>82</sup> Finally, a third mandate in the NDAA FY20 required the Department of Defense (DOD) to report to Congress on screening individuals enlisting in the armed services for extremist views or actions.<sup>83</sup> This report was released in June 2020 and discusses how DOD plans to implement FBI screening mechanisms for enlisting servicemembers.<sup>84</sup> These mandates indicate that the Congress was aware of the growing threat DVEs present to the U.S. before the January 6<sup>th</sup> attack.

### **Critical Challenge: Tracking Domestic Violent Extremist Threats**

Despite the above-mentioned federal resources for gathering DVE information, there is currently no comprehensive or government-sanctioned database that quantifies, tracks, or analyzes DVE incidents. The lack of legal statutes and agreed upon definitions make establishing a baseline for what incidents

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<sup>77</sup> Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, 118 Stat. 3638 (2004).

<sup>78</sup> National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, 133 Stat. 1198 (2019).

<sup>79</sup> *Domestic Terrorism: Definitions, Terminology, and Methodology* (Federal Bureau of Investigation/Department of Homeland Security, November 2020).

<sup>80</sup> *Domestic Violent Extremism Poses Heightened Threat in 2021* (Office of the Director of National Intelligence, March 1, 2021). <https://www.dni.gov/files/ODNI/documents/assessments/UnclassSummaryofDVEAssessment-17MAR21.pdf>.

<sup>81</sup> National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, 133 Stat. 1198 (2019).

<sup>82</sup> *Strategic Intelligence Assessment and Data on Domestic Terrorism* (Federal Bureau of Investigation/Department of Homeland Security, May 2021). <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-strategic-report.pdf/view>.

<sup>83</sup> National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, 133 Stat. 1198 (2019).

<sup>84</sup> *Report to Armed Services Committees on Screening Individuals Who Seek to Enlist in the Armed Forces* (Department of Defense Office of the Undersecretary of Defense for Personnel and Readiness, June 2020). [REPORT-TO-ARMED-SERVICES-COMMITTEES-ON-SCREENING-INDIVIDUALS-WHO-SEEK-TO-ENLIST-IN-THE-ARMED-FORCES.PDF](https://www.dodig.mil/reports-and-testimony/publications/2020/06/2020-06-23-report-to-armed-services-committees-on-screening-individuals-who-seek-to-enlist-in-the-armed-forces.pdf).

fall under the category of DVE extremely difficult. Law enforcement and the intelligence community are limited in what information they are able to collect on U.S. citizens and have therefore not created a database specific to DVE threats. Several non-governmental organizations and academic institutions have created their own individual databases to track this information, but each entity uses different search parameters and criteria for categorizing DVE incidents. The following databases and studies assist in showcasing trends and increased violence, but each fall short at tracking the full spectrum of DVE in the United States.

The first, and most restrictive, non-governmental dataset is the Anti-Defamation League's Hate, Extremism, Antisemitism, and Terrorism (HEAT) Map.<sup>85</sup> Though originally founded to fight antisemitism in 1913, the organization expanded its mission to fight against all forms of hate.<sup>86</sup> The HEAT Map serves as a great visual aid to examine where incidents in the United States have taken place, but it does not fully explain where and how data is collected. Information is collected through media, government, and law enforcement reports, as well as private citizen accounts or victim statements that could potentially skew the data.<sup>87</sup> The incidents are filtered by the following categories: Islamist, left wing, right wing (anti-government), right wing (other), right wing (white supremacist), and other (or uncategorized).<sup>88</sup> The incident types include extremist murders, terrorist plots and attacks, and extremist police shootouts, but also include vague or peaceful protest incidents such as white supremacist events, white supremacist propaganda, and anti-Semitic incidents.<sup>89</sup> This heavy focus on one specific group, white supremacists, has skewed the data by failing to fully report on "left-wing" ideologically motivated incidents. The study includes events that cannot be categorized as DVE in that some are non-violent offenses.

Another non-governmental dataset is the Terrorism and Extremist Violence in the United States (TEVUS) Database and Portal, supported by the National Consortium for the Study of Terrorism and Responses to Terrorism (START).<sup>90</sup> This database establishes connections between acts of extremism and related preparatory events or associated groups.<sup>91</sup> In order to protect civil liberties, individuals who are not indicted or convicted are marked with a generic placeholder in place of names.<sup>92</sup> Individuals are only listed if they have been convicted of a crime or if they died in the act of committing

<sup>85</sup> ADL HEAT Map (Anti-Defamation League, undated). <https://www.adl.org/education-and-resources/resource-knowledge-base/adl-heat-map>.

<sup>86</sup> *Who We Are*, (Anti-Defamation League, undated). <https://www.adl.org/who-we-are>.

<sup>87</sup> ADL HEAT Map (Anti-Defamation League, undated). <https://www.adl.org/education-and-resources/resource-knowledge-base/adl-heat-map>.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> TEVUS Portal (University of Maryland, undated). <https://www.start.umd.edu/tevus-portal>. <sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

a crime.<sup>95</sup> While this database is the most comprehensive one available and does query incidents by ideology (environmental, left wing, nationalist/separatist, religious, right wing, and single issue), it warns that due to the difficulty in finding documentation of the ideological motivations of persons or groups committing these acts, entries are often categorized as “unknown” in regards to ideology.<sup>94</sup> Another limitation of this database is that the summary functions do not provide useful insights into trends or the magnitude of incidents in total. Therefore, this database is a great starting point in collecting information, but would need to be further developed if used on the policy or strategic level. Additionally, this database focuses heavily on foreign terrorist threats that occur in the United States. While it does include events involving domestic actors, its researchers devote more resources to foreign terrorism, similarly to recent policy objectives.

The final academic study surveyed was the Center for Strategic and International Studies (CSIS) Transnational Threats Project brief on “The Military, Policy, and the Rise of Terrorism in the United States.”<sup>95</sup> The methodology in this report is comprehensive and objective in that the authors pulled from both of the previously mentioned databases as well as from press releases from the FBI and DOJ.<sup>96</sup> The authors also cross-referenced context clues by using news sources and omitted any event with no presence of violence, such as in the HEAT database.<sup>97</sup> While they do not release their raw dataset, the brief reflects the institution’s understanding of the limitations of available data, noting that the purpose of their study is best for trend and strategic goal analysis.<sup>98</sup> One limitation of this study is that they do utilize political affiliations to determine ideology, prompting more politicization of the issue. Additionally, due to the fact that this database draws from multiple sources, there is inconsistency in how events were recorded.

The FBI has relied on the Uniform Crime Reporting (UCR) system to collect basic aggregate crime data across law enforcement agencies, with only basic collection factors.<sup>99</sup> This UCR program only tracked the most severe crime within an incident, omitting important context.<sup>100</sup> This limitation, along

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<sup>95</sup> *Ibid.*

<sup>94</sup> *Terrorism and Extremist Violence in the United States (TEVUS) Portal User Guide*, (National Consortium for the Study of Terrorism and Responses to Terrorism, 2019). [https://tap.cast.uark.edu/assets/help/TEVUS\\_User\\_Guide.pdf](https://tap.cast.uark.edu/assets/help/TEVUS_User_Guide.pdf)

<sup>95</sup> Seth G Jones et al., *The Military, Police, and the Rise of Terrorism in the United States* (Center for Strategic and International Studies, April 12, 2021).

<https://www.csis.org/analysis/military-police-and-rise-terrorism-united-states>.

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> *Uniform Crime Reporting Program* (Federal Bureau of Investigation, undated). <https://www.fbi.gov/services/cjis/ucr>

<sup>100</sup> *Ibid.*

with the UCR's inability to adapt technologically, caused the FBI and participating agencies to adopt a new system that could provide greater policy insight, prompt meaningful public discussions, and strategic policing.<sup>101</sup> As of January 1, 2021, the FBI approved the replacement of the UCR program with the National Incident-Based Reporting System (NIBRS).<sup>102</sup> This database collects detailed information on each incident, including separate offenses, information on victims, relationships between victims and offenders, property involved, and even whether an offender has been involved in gang activity.<sup>103</sup> While NIBRS provides greater specificity of offenses and analytic flexibility, incidents cannot be categorized as DVE and are limited to criminal records.<sup>104</sup> Participation among tribal, local, state, and federal agencies remains voluntary, limiting the accuracy of the database. With no mandate for agencies to participate, only 63% currently contribute to NIBRS.<sup>105</sup>

Currently, the closest resemblance to a DVE law enforcement database is the NIBRS derived Hate Crime Dataset.<sup>106</sup> The program defines hate crime as a committed criminal offense which is motivated, in whole or in part, by the offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.<sup>107</sup> While some of the offenses tracked in this dataset could be categorized as DVE, it is not inclusive of all DVE activity.<sup>108</sup> For instance, all incidents in the Hate Crime Dataset are coded as being motivated by an ideological bias towards a certain population, making Hate Crime Dataset less accommodating of MVE ideologies that seek to undermine institutions rather than groups of people.<sup>109</sup>

Though the datasets and studies noted above show signs of progress in identifying trends, there is still no operationally effective dataset specifically designed to assist the law enforcement and intelligence communities to track and ultimately prevent DVE incidents from occurring. Even if the IC reports that DVE is a heightened threat to the United States, the absence of a tracking mechanism likely impedes the U.S. government's ability to accurately assess the full scope of DVE in the United States. Without understanding the problem, policymakers will likely fall short in their attempts to develop credible

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<sup>101</sup> *SRS to Nibrs: The Path to Better UCR Data* (Federal Bureau of Investigation, March 28, 2017).  
<https://www.fbi.gov/services/cjis/cjis-link/srs-to-nibrs-the-path-to-better-ucr-data>.

<sup>102</sup> *SRS to Nibrs: The Path to Better UCR Data* (Federal Bureau of Investigation, March 28, 2017).  
<https://www.fbi.gov/services/cjis/cjis-link/srs-to-nibrs-the-path-to-better-ucr-data>.

<sup>103</sup> *National Incident-Based Reporting System (NIBRS)* (Federal Bureau of Investigation, undated).

<sup>104</sup> *Ibid.*

<sup>105</sup> *SRS to Nibrs: The Path to Better UCR Data* (Federal Bureau of Investigation, March 28, 2017).  
<https://www.fbi.gov/services/cjis/cjis-link/srs-to-nibrs-the-path-to-better-ucr-data>.

<sup>106</sup> *Data Crime Explorer* (Federal Bureau of Investigation, undated).  
<https://crime-data-explorer.fr.cloud.gov/pages/home>.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*



solutions. Further, without a law enforcement-specific database, all levels of law enforcement are left to their own devices to determine whether an incident is DVE related or not. This leads to further isolation between agencies and decreases the IC's ability to comprehensively understand how many DVE incidents are occurring at a given time.

### **January 6, 2021: A Referendum on Countering Domestic Violent Extremism Policy**

The events of January 6, 2021 on Capitol Hill provide insight into DVE threats in action and illustrate the weaknesses within the IC's assessment, warning dissemination, and response process. The January 6<sup>th</sup> attack on the Capitol showcases the repercussions of poor information analysis and warning dissemination, as well as the risks of failing to take DVE as a serious threat.

Following a political rally held by President Donald J. Trump on January 6, 2021, a crowd illegally entered Capitol grounds and ultimately breached the Capitol building in an attempt to prevent the certification of the 2020 Presidential Election.<sup>110</sup> The crowd violently engaged with the Capitol and D.C. Police, with a civilian fatality occurring within the building.<sup>111</sup> The incident resulted in three deaths, one hundred and forty wounded police officers, and \$30 million in property damages.<sup>112</sup> In an interview for this report, a subject matter expert described January 6<sup>th</sup> as a singular event, but also one which provided a "good representation of the threat landscape," as those involved held a wide range of views and affiliations from across the DVE spectrum.<sup>113</sup> The majority of those charged were acting independently of an organized group, but there is evidence of organization, by MVE groups in particular.<sup>114</sup> At the time of publication, over 800 federal cases have been brought against individuals involved.<sup>115</sup> January 6<sup>th</sup> is not the first DVE event with mass participation in recent years, as it was

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<sup>110</sup> [Footnote] For a detailed view of events see *Day of Rage: How Trump Supporters Took the U.S. Capitol* (New York Times, June 30, 2021).

<sup>111</sup> *Day of Rage: How Trump Supporters Took the U.S. Capitol* (New York Times, June 30, 2021)

<sup>112</sup> Tom Jackman, *Police Union Says 140 Officers Injured in Capitol Riot* (The Washington Post, January 28, 2021). [https://www.washingtonpost.com/local/public-safety/police-union-says-140-officers-injured-in-capitol-riot/2021/01/27/60743642-60e2-11eb-9430-e7c77b5b0297\\_story.html](https://www.washingtonpost.com/local/public-safety/police-union-says-140-officers-injured-in-capitol-riot/2021/01/27/60743642-60e2-11eb-9430-e7c77b5b0297_story.html).

Bill Chappell, *Architect of the Capitol Outlines \$30 Million in Damages from Pro-Trump Riot* (NPR, February 24, 2021). <https://www.npr.org/sections/insurrection-at-the-capitol/2021/02/24/970977612/architect-of-the-capitol-outlines-30-million-in-damages-from-pro-trump-riot>.

<sup>113</sup> Supported by interviews conducted for this report.

<sup>114</sup> Spencer Hsu, Aaron Davis, and Devlin Barrett, *Calls, Texts by Oath Keepers Founder Contain 'Substantial Evidence' of Capitol Conspiracy, Prosecutors Allege* (The Washington Post, March 25, 2021). [https://www.washingtonpost.com/local/legal-issues/oath-keeper-communications-stewart-rhodes-capitol/2021/03/25/792e8b7e-8d65-11eb-a730-1b4ed9656258\\_story.html](https://www.washingtonpost.com/local/legal-issues/oath-keeper-communications-stewart-rhodes-capitol/2021/03/25/792e8b7e-8d65-11eb-a730-1b4ed9656258_story.html).

<sup>115</sup> *Capitol Hill Siege* (George Washington University Program on Extremism, October 14, 2021). <https://extremism.gwu.edu/Capitol-Hill-Cases>.

predated by events like Charlottesville in 2017 and the Malheur occupation in 2016, but its diversity of participants and involvement of multiple federal agencies and law enforcement branches make it a useful study.

The former senior FBI official interviewed commented that January 6<sup>th</sup> was a clear intelligence failure, but that it was not immediately clear what specific kind of an intelligence failure.<sup>116</sup> The IC and law enforcement were aware of the potential for violence on January 6<sup>th</sup>, as social media platforms favored by DVE groups were filled with references to planned violence prior to the event.<sup>117</sup> During a hearing before the Senate Judiciary Committee, FBI Director Wray stressed that a report, known as the 'Norfolk report,' detailing the potential for violence had been sent to relevant agencies and police departments prior to January 6<sup>th</sup>.<sup>118</sup> A whistleblower formerly employed by the Capitol Police faulted both the leadership and the Capitol Police's intelligence analysis sector for failing to properly pass intelligence along to other divisions within Capitol Police.<sup>119</sup>

Viewing January 6<sup>th</sup> as an analysis and warning failure, rather than a collection failure, is not uncommon. Mitchell D. Silber's *Domestic Violent Extremism and the Intelligence Challenge*, for example, determined that January 6<sup>th</sup> was not an intelligence collection failure, but an intelligence analysis and warning dissemination failure.<sup>120</sup> Silber additionally suggests recommendations to improve the IC's handling of DVE, such as creating a social media analysis unit within DHS, creating a Domestic Violent Extremism Analysis Unit (DVEAU) within National Counterterrorism Center (NCTC) that would report directly to DNI, and establishing a Deputy DNI for domestic warnings.<sup>121</sup> Similarly, one subject matter expert and former FBI agent interviewed noted that like with September 11, 2001, "pertinent information was lost in the vast streams of information collected."<sup>122</sup> They also noted that after September 11, 2001 a system was created "where people were rewarded for ringing fire alarms, and

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<sup>116</sup> Supported by interviews conducted for the report.

<sup>117</sup> Craig Timberg and Drew Harwell, *Pro-Trump Forums Erupt with Violent Threats Ahead of Wednesday's Rally against the 2020 Election* (The Washington Post, January 5, 2021). <https://www.washingtonpost.com/technology/2021/01/05/parler-telegram-violence-dc-protests/>.

<sup>118</sup> *Oversight of the Federal Bureau of Investigation: The January 6 Insurrection, Domestic Terrorism, and Other Threats* (United States Senate Committee on the Judiciary, March 2, 2021) <https://www.judiciary.senate.gov/meetings/oversight-of-the-federal-bureau-of-investigation-the-january-6-insurrection-domestic-terrorism-and-other-threats>.

<sup>119</sup> Daniel Lippman and Betsy Woodruff Swan, *Capitol Police Whistleblower Delivers Scathing Rebuke to two of Its Senior Leaders Jan. 6* (POLITICO, October 10, 2021). <https://www.politico.com/news/2021/10/08/capitol-police-whistleblower-rebuke-jan-6-515696>.

<sup>120</sup> Mitchell D. Silber, *Domestic Violent Extremism and the Intelligence Challenge* (Atlantic Council, May 21, 2021). <https://www.atlanticcouncil.org/in-depth-research-reports/domestic-violent-extremism-and-the-intelligence-challenge/>.

<sup>121</sup> *Ibid.*

<sup>122</sup> Supported by interviews conducted for the report.

then we wonder why the firetruck doesn't get to the scene.”<sup>123</sup> The failure of IC and law enforcement to predict the January 6<sup>th</sup> attack, based on the availability of information and existence of warnings, raises serious concerns about whether IC and law enforcement have the tools to properly assess, disseminate, and act on intelligence.

In the aftermath of the January 6<sup>th</sup> attack, the Biden Administration released the National Strategy for Countering Domestic Terrorism in June 2021.<sup>124</sup> Though not an Executive Order or other directive, this strategy demonstrates the increased focus on the DVE issue in the executive branch. President Biden's strategy outlines strategic pillars that the administration intends to implement throughout the government.<sup>125</sup> These pillars touch on topics including intelligence sharing, preventing recruitment of members and escalation to violence, deterring DVE activity, and identifying the deeply rooted issues in society driving individuals to extremist ideologies.<sup>126</sup> Although this report is an important step, the events of January 6<sup>th</sup> demonstrated the need for a more robust, high level counter-DVE programing. While not all DVE events will rise to the same caliber of severity as the Capitol Hill attack, the lessons learned from the event will serve federal and state agencies well moving forward.

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<sup>123</sup> *Ibid.*

<sup>124</sup> *National Strategy for Countering Domestic Terrorism* (National Security Council, June 2021).

<https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

## Expert Analysis

We interviewed eight industry experts who worked on DVE prior to January 6.<sup>127</sup> These experts represent a wide range of stakeholders in DVE from senior level FBI officials, academic and think tank subject matter experts, to law enforcement officials. Their accolades and experiences include published works related to DVE, law enforcement experience during and after September 11, 2001, direct experience with recent DVE attacks, and military service. We posed a series of standardized questions relating to the effectiveness of DVE policies and a number of questions specific to their professional experience.

The interviewees consistently agreed that information sharing and access to information did not constitute a major challenge in assessing and combating DVE threats. Similarly, a majority of the experts interviewed believe that politicization plays a complicated role in addressing DVE, although several noted that public interest and focus toward combating the threat of DVE has increased since January 6th. Finally, everyone interviewed agreed that the U.S. government could do a better job of tracking DVE events. They also noted that counter DVE efforts would likely benefit from increasing support for state and local law enforcement and creating a more coordinated, whole of government approach to DVE threats.

### **Key Question: How well does U.S. law enforcement and the intelligence community understand DVE threats? What are the challenges to anticipating and preventing DVE threats?**

All of the experts highlighted the sensitive nature of domestic intelligence efforts and the ongoing, non-negotiable need to protect civil liberties. Accordingly, consensus among the experts is that the U.S. government should not implement counter-DVE policies at the expense of First Amendment and other civil rights protections. The interviewees noted, however, that it can be challenging to assess when otherwise protected activity, such as public comments, become evidence of a potential attack. In response to this concern, the subject matter expert and former FBI agent highlighted the need to “follow the violence” rather than attempt to make inferences from comments and public discourse.

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<sup>127</sup> The eight experts interviewed will be referred to by the titles: former senior FBI field office official (interviewed June 9, 2021 via video conference), 9/11 commission member and subject matter expert (interviewed October 19, 2021 via video conference), former senior FBI official (interviewed May 6, 2021 via video conference), former counterterrorism police official (interviewed September 30, 2021 via video conference), subject matter expert and former FBI agent (interviewed September 21, 2021 via video conference), subject matter expert (interviewed August 31, 2021 via video conference), former Parks Police official (interviewed September 15, 2021 via video conference), and rural area sheriff (interviewed May 3, 2021 via video conference).

They noted that certain groups have a history of violent activity and that understanding and tracking these trends can produce valuable analytic data.

The former senior FBI field office official made the key observation that the tools and assistance federal authorities provide to state and local law enforcement vary in quality and effectiveness depending on geographic location. By way of example, he notes that the Eastern states tend to host greater population densities than Western states. The former senior FBI field office official notes that law enforcement practices on the East coast are often more robust and streamlined than Western states because it is difficult to streamline tools across such a diffuse area. As a result, they have seen intelligence and law enforcement tools that fall well below the preferred standard of practice. Although they note that the FBI National Academy is a great development, federal authorities should take a more systematic approach to tracking DVE developments. They also noted that the national incident-based response system was a helpful pipeline for information, but law enforcement often put information into the pipeline without getting information out.

Moreover, two subject matter experts and the rural area sheriff noted that intelligence and law enforcement communities lack a comprehensive database for tracking and documenting DVE cases. The subject matter expert and former FBI agent in particular alleged that the FBI does not track white supremacy-based violence, likely because attempts to track this kind of violence would lead to an influx of data that would dwarf all other categories of terrorism. They also noted that there could nonetheless be some challenges in developing a database. Specifically, they highlighted the difficulty in categorizing and coding the types of violent incidents, especially where violent events potentially touch on the political sympathies of those running the database.

Notably, there no was no support for a “watchlist” of any kind. Among key first amendment challenges cited by many of the experts, the subject matter expert and former FBI agent noted that creating a watchlist may recreate the challenge of oversaturation of data. They noted that there would be too many people on the watchlist and that officials would fail to appropriately track and respond to threats.

**Key Question: How constructive is the relationship between federal and state/local authorities? How can we improve relationships between different levels of law enforcement and intelligence entities?**

The former senior FBI field office official highlighted the fundamental hurdle of convincing stakeholders that DVE is a pressing challenge for law enforcement and the intelligence community.

They noted that while the September 11, 2001 attacks were earth shattering and led to a unified restructuring of the counterterrorism community, January 6<sup>th</sup> and other popularized DVE attacks have divided public discourse and politicized the policy process. Despite this division at the federal level, the former senior FBI field office official noted that there is nonetheless good cooperation between federal and state/local law enforcement. In the occupation of the Malheur Wildlife Reserve case, for example, the former senior FBI field office official observed that most sheriffs came to assist federal efforts even if they did not generally have positive views of the federal government. The senior FBI official echoed the former senior FBI field office official observations but noted that federal and state/local law enforcement agencies have a good level of cooperation within the Joint Terrorism Task Force (JTTF), specifically. Outside of the JTTF, relationships between federal and state/local law enforcement can depend on the quality of specific interpersonal relationships between sheriffs and the FBI. They attribute the sometimes-bumpy relationship between law enforcement groups to a frustration from local law enforcement groups that they are not getting useful intelligence from federal authorities. The rural area sheriff agreed with the former senior FBI field office official and the senior FBI official and noted that the FBI's relationship with state and local law enforcement can depend on the political orientation of the department head.

Despite generally good cooperation between federal and state/local law enforcement, the former senior FBI field office official cited a primary concern about military and law enforcement officials expressing greater leniency toward DVE groups. The former senior FBI field office official believes there should be a greater effort to counter underlying biases toward extremist groups coming from within law enforcement and military communities. The former senior FBI field office official believes the military is not paying enough attention to this issue, and as a result, it risks "training tomorrow's insurrectionists." The senior FBI official confirms the former senior FBI field office official's observations about the potential threat of service members finding sympathy with violent extremist groups. They noted, for example, that there are many people drawn to the service who resonate with themes of liberty, allegiance to country, and chain of command.

There was consensus among the experts that military and law enforcement groups need to take a stronger stance against DVE sympathies. The former counterterrorism police official, for example, noted that police have a responsibility to both maintain order and facilitate demonstrations and that potential biases should not impact these obligations. They believe that participating in an event like January 6<sup>th</sup> should constitute misconduct, depending on any potentially illegal acts committed. The subject matter expert and former FBI agent observed that training for military and law enforcement should be revised to move away from a politicized view of threats. The rural area sheriff confirmed that police leadership should take a stronger stance against DVE activities. They noted that in the case of



January 6<sup>th</sup>, some police officers were hearing mixed messages. They believe that law enforcement communities benefit from strong leadership that is capable of taking a clear stance against extremist violence. As an example, the rural area sheriff noted that some sheriffs in his state stated that they would not enforce what they perceived as restrictions to their Second Amendment rights. The sheriff recalls that they had to remind the sheriffs of the oath they took when they took a position in law enforcement. The rural area sheriff also highlighted the importance of taking a strategic approach to communicating potentially sensitive messages. Rather than making big announcements about sensitive topics, for example, the rural area sheriff prefers to discuss challenging topics with people directly. With regard to the military, the former senior FBI field office official believes military leaders should take strong stances against violent extremism, and that service members should be discharged if they are found participating in acts of violent extremism.

**Key Question: Should the U.S. government develop a central authority for coordinating counter DVE practices across the government? Who should be in charge of this issue?**

When asked what the U.S. government should do to improve counter DVE policies, many experts noted that existing tools are ripe for improvement and that a complete restructuring (similar to post-9/11 reforms) is not necessary. Notably, they also consistently stated that a lack of information or a failure to adequately distribute information was not the reason the IC failed to stop the January 6<sup>th</sup> attack. Instead, they consistently highlighted that pertinent data was lost in vast streams of information being circulated throughout law enforcement and intelligence agencies. They noted the lack of centralized guidance to help law enforcement and intelligence agencies determine what information represented a high priority threat, and what information was less credible. Additionally, several experts noted the added complication of law enforcement and intelligence communities needing stronger guidance on how to collect and analyze domestic intelligence without violating individuals' civil rights. Notably, the former senior FBI field office official commented that the United States and FBI often struggle to balance dueling challenges of domestic intelligence collection and protecting First Amendment rights. Domestic intelligence collection often does not fit within the four corners of collection authorities, and law enforcement tends to be very worried about crossing the First Amendment line. They believe this lack of direction causes law enforcement and intelligence agencies to take a more conservative approach to counter-DVE practices.

Despite the stated difficulties in balancing civil rights and domestic intelligence collection, there was no clear consensus among the experts regarding whether one federal agency should take the lead on developing coordinated counter-DVE policies across law enforcement and intelligence agencies. A senior level FBI official observed that, generally speaking, there needs to be a cultural shift within law

enforcement to better address DVE as a novel challenge. They believe that law enforcement and intelligence communities are currently misguided in approaching DVE with the same general strategy used to counter foreign terrorist threats. They expressed concern that DVE incidents may substantially overlap with cultural identities and political ideologies already present within U.S. populations, making it difficult for law enforcement and intelligence communities to distinguish the violent, illegal acts from otherwise lawful activity.

The senior former FBI official noted that the media portrays DHS as having an outsized role in addressing DVE threats, but also indicated DHS may not be the preferred option given DHS's institutional complexity. This official also said that simply "doing more" as an institution is not a guaranteed recipe for success. They shared that the FBI presents an attractive alternative to DHS's larger role as it already maintains the tools, statutory authorities, and personnel needed to disrupt violent DVE groups. The official did not recall believing the FBI needed assistance in addressing DVE threats.

In addressing these institutional challenges, a common theme among interviewees was the effectiveness of existing resources and institutions. The two former FBI officials discussed the effectiveness of current structures for sharing information related to DVEs through organizations such as the FBI JTTFs and the DHS Fusion Centers. A key function of the JTTFs that a senior FBI official described was the linkages created between law enforcement at local, state, and federal levels. The other FBI official shared similar sentiments, but did note that some smaller local law enforcement may not have the resources to connect with the JTTF, or not know how to connect with the JTTF.

## Findings and Recommendations

The following policy recommendations aim to improve intelligence and law enforcement communities' ability to combat DVE. These reforms will serve both the local law enforcement level and the greater federal community that has jurisdiction over these issues. The intention of this paper is to suggest solutions that do not require a complete institutional overhaul, but rather improve immediate efficiency and effectiveness of the agencies already involved in countering DVE threats. Since the tools likely already exist to resolve key DVE challenges, the recommendations provided emphasize the importance of building from existing resources to develop efficient methods to combat the rise of DVE. The issue of violent extremism will remain relevant for the foreseeable future and that if improvements are not made to identifying perpetrators, preventing attacks, and prosecuting those responsible, it is likely that these violent events will increase in frequency and severity.

### **Recommendation 1: Using post-conviction data, implement a classified and anonymized database for tracking DVE incidents.**

ODNI and other intelligence agencies have publicly stressed the importance of countering DVE threats, but have no way of thoroughly tracking threats. As mentioned in both the interviews and in analyzing existing databases, no comprehensive database exists (government affiliated or otherwise) that can track both individual incidents and rising trends. Therefore, the first recommendation is to implement a DOJ database that can identify and track cases related to DVE. With this database, law enforcement and the greater IC can publish yearly reports for all levels of law enforcement, the IC, and Congress.

This database should utilize the already existing NIBRS, so as not to create inefficiencies.<sup>128</sup> Though NIBRS is the largest criminal database and some states have extremely high levels of participation, there are still some agencies that do not share data to NIBRS. In order to collect relevant data, NIBRS needs to increase participation across all tribal, local, state, and federal law enforcement agencies. While some cost-alleviating measures have aided in persuading agencies to transfer to NIBRS, more resources need to be devoted to increasing agency participation and training local enforcement officials that will be expected to input data uniformly.

The suggested database would collect data from NIBRS, then analyze which reported crimes have an element of DVE. This database would be intended for law enforcement and IC use only and any findings

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<sup>128</sup> *National Incident-Based Reporting System (NIBRS)* (Federal Bureau of Investigation, undated).

from the database would not be used in a court of law. Entries would be disassociated from individual perpetrator identifying data (i.e., depersonalized) and categorized based on event. Statistics gathered from this database would serve the IC in establishing reports of previous incidents, tactics used, and develop a more extensive threat analysis for future incidents. While annual findings from the IC or Congress detailing trends may be shared with the greater public, specific entries should remain for law enforcement use only and should not be shared with the public. Disassociating incidents from individuals in the dataset can mitigate concerns of a database turning into a watchlist, while keeping the system secure and classified will help prevent observers from drawing connections between recorded events in the database and other published reports about events. As mentioned earlier, no information from this dataset should be used in a court of law, as all inputs will be after court proceedings have taken place. The final step of this recommendation is to use the proposed database to aid in the production of Joint Intelligence Bulletins (JIBs).<sup>129</sup> These collaborative reports created by the FBI, DHS, and NCTC are shared to all levels of law enforcement as well as Congress. This information could potentially be shared with the public at Congress' discretion, but sensitive information must be removed first.

This recommendation can be immediately implemented without any major restructuring and would provide law enforcement with an improved tool to prevent and combat domestic violent extremist threats. While public discussions are ongoing and more substantial reforms may be required in the future, this recommendation is a tactical and effective first step in reducing the rise of DVE.

**Recommendation 2: Improve outreach efforts between federal, state, and local law enforcement and training courses and opportunities for personnel.**

Common concerns from the interviews included the quality of the analytical capabilities of law enforcement and federal agencies, the need to further involve law enforcement in addressing DVE, and the need to better disseminate information about the federal government's terminology and strategies. This recommendation aims to address these concerns by improving federal outreach to law enforcement, as well as analytical capabilities at both the law enforcement and federal agency level. Improving federal outreach to law enforcement would be implemented through briefings and training from federal agents to police departments across the country. These outreach efforts, mainly from the FBI and DOJ, would clarify definitions, the nature of the threat, and the federal action plan on DVE to increase law enforcement involvement, emphasize the severity and trends of the threat, and create

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<sup>129</sup> See e.g., Joint Intelligence Bulletin (Department of Homeland Security, Department of Justice, National Counterterrorism Center, dated January 13, 2021).

<https://www.justsecurity.org/wp-content/uploads/2021/06/Jan6-Clearinghouse-Joint-Intelligence-Bulletin.pdf>.

connections between federal agencies and smaller police departments. Donna Sedgwick and James Hawdon’s *Interagency Cooperation in the Era of Homeland Policing* note that collaboration between law enforcement and federal agencies has been “mutually beneficial,” but that leadership and the political context play a large role in positive relations, a point raised by the rural area sheriff who had experience collaborating with the FBI.<sup>130</sup>

Additionally, interviewed industry experts agreed that the FBI JTTFs and DHS Fusion Centers served as effective forums for local, state, and federal law enforcement officers to share intelligence. Improving these institutions is an area where the government can make efficient use of existing resources for DVE. The interviewees often discussed the importance of using existing resources when possible, as changing and creating resources can sometimes create additional problems. Though effective, these mechanisms can be improved. A senior FBI field agent shared that smaller police departments may not have the resources to connect with the JTTF. By expanding the reach of these organizations, federal agencies can have access to more local data and information, and local departments can access federal resources and intelligence. Maximizing the use and efficiency of the JTTF and Fusion Centers is the most practical way for the U.S. to make use of existing DVE resources. The last component focuses on improving the analytical capabilities of police departments and federal agencies. Government-led training programs, like the Federal Law Enforcement Training Center (run by DHS) and the FBI academies, would take the lead in increasing analytics training. Training programs on DVE and on information analysis could be added and made available to law enforcement, and to federal employees working in the IC and on DVE issues. Ideally, violent extremism training would aid law enforcement in identifying officers with DVE sympathies.<sup>131</sup>

**Recommendation 3: Create an ODNI Mission Center tasked with coordinating counter-DVE policies across the U.S. government and improving existing tools.**

During interviews, experts consistently agreed that the lack of a centralized guidance mechanism for disseminating streamlined and actionable threat assessments throughout the IC made it difficult for the U.S. government to understand and respond to the January 6<sup>th</sup> attack. Experts also noted that law enforcement and intelligence communities lack clear guidance for collecting and analyzing domestic intelligence consistent civil liberties protections. They noted that domestic intelligence collection often does not fit within the four corners of collection authorities, and law enforcement tends to be very worried about crossing the First Amendment line. They believe this lack of direction causes law

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<sup>130</sup>*Ibid.* Supported by information from interviews.

<sup>131</sup> Cynthia Miller-Idriss, *When the Far Right Penetrates Law Enforcement* (Foreign Affairs, September 28, 2021). <https://www.foreignaffairs.com/articles/united-states/2020-12-15/when-far-right-penetrates-law-enforcement>

enforcement and intelligence agencies to take a less robust approach to counter-DVE practices.<sup>132</sup> In sum, the challenges faced on January 6 were structural, not informational.

The ODNI is traditionally responsible for synthesizing information across the intelligence community and establishing intelligence priorities consistent with Executive priorities. In plain language, the ODNI is the institutional “point person” tasked with getting pertinent information to national security leadership, including the President, and for making sure the IC is running smoothly. To date, ODNI has been a highly successful “convening authority” for IC elements working to counter foreign-linked national security threats.<sup>133</sup> Additionally, the ODNI’s role in helping establish budget priorities across the IC makes it uniquely equipped to distribute resources to counter rising threats.<sup>134</sup> Moreover, the ODNI has become an invaluable spokesperson for the IC by communicating IC interests and priorities with Congress and the American public.<sup>135</sup> Finally, the ODNI’s place at the top of the national security totem pole makes it prime real estate for IC-wide civil liberties oversight functions. Currently, ODNI civil liberties and oversight experts guide IC-wide activities from the official ODNI Office of Civil Liberties, Privacy and Transparency (CLPT) and from mission-center specific posts.

To improve the IC’s ability to assess and respond to DVE threats, the DNI should create a fourth mission center to coordinate IC activities related to DVE (National Countering Domestic Violent Extremism Center). Per the National Security Act of 1947 (as amended), Congress has granted the Director of National Intelligence the authority to create new mission centers as the Director deems necessary.<sup>136</sup> Section 102A (f) (2) of the National Security Act reads, “[t]he Director of National Intelligence shall oversee the National Counterterrorism Center and may establish such other national intelligence centers as the Director determines necessary.”<sup>137</sup> This means that the creation of a National Countering Domestic Violent Extremism Center would likely not need partisan approval in Congress, though Congressional legislation implementing a fourth mission center would be welcome. A National Countering Domestic Violent Extremism Center could serve as the primary organization within the U.S. government for (1) coordinating intelligence analysis relating to domestic violent extremism, (2) coordinating counter-extremism activities, (3) assigning roles and responsibilities as part of its strategic planning duties (4) ensuring that agencies receive adequate intelligence support needed to execute their counter extremism missions or perform independent, alternative analysis, (5)

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<sup>132</sup> Supported by information from interviews.

<sup>133</sup> Stephen Slick and Michael Allen, *The Office of the DNI’s Greatest Hits* (Foreign Policy, April 21, 2015). <https://foreignpolicy.com/2015/04/21/dni-september-11-terrorism-clapper/>.

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

<sup>136</sup> National Security Act of 1947 (§ 102A (f) (2)), Pub. L. 80–253, 61 Stat. 495 (1947), *as amended*.

<sup>137</sup> National Security Act of 1947 (§ 102A (f) (2)), Pub. L. 80–253, 61 Stat. 495 (1947), *as amended*.



ensuring that such agencies have access to and receive intelligence needed to accomplish their assigned activities, and (6) providing civil liberties guidance on all counter extremism activities. Similar to NCTC, a National Countering Domestic Violent Extremism Center would not have operational capabilities.

The DNI could reach a reasonable determination that a National Countering Domestic Violent Extremism Center is necessary to protect U.S. national security given that DVE and domestic terrorism has been identified by high-level intelligence producers and consumers as a pressing national security challenge. Further, as DVE becomes an increasingly prevalent intelligence challenge, the DNI will bear the responsibility for disseminating information to the President, Vice President, Secretary of Homeland Security, Attorney General, Congress, and other officials as appropriate. The ODNI, via the National Countering Domestic Violent Extremism Center, will most effectively elevate DVE threat information and ensure it has a place among competing policy priorities. Finally, while the FBI and DHS have programmatic options for disseminating information upward through the national security hierarchy, it is not clear that FBI/DHS joint DVE efforts have a high-level advocate dedicated to synthesizing differing opinions and ensuring DVE issues receive adequate attention. A Director of the National Countering Domestic Violent Extremism Center would be able to spotlight DVE concerns with the same urgency that we currently reserve for foreign threats.

Notably, there are currently no legal or policy instruments granting an ODNI sub-structure the primary authority to assess and coordinate intelligence activities relating to domestic violent extremism not otherwise tied to a foreign entity.<sup>138</sup> The NCTC's mandate briefly touches on the issue of domestic threats when it provides that the NCTC may, "consistent with applicable law, the direction of the President, and the guidelines referred to in section 102A(b), receive intelligence pertaining exclusively to domestic counterterrorism from any Federal, State, or local government or other source necessary to fulfill its responsibilities and retain and disseminate such intelligence."<sup>139</sup> However, language within the National Security Act consistently distinguishes between "terrorism" as a foreign-based threat versus domestic matters, and stipulates that the NCTC's responsibility is to "[s]erve as the primary organization in the U.S. Government for analyzing and integrating all intelligence possessed or

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<sup>138</sup> Some argue that the NCTC should simply be expanded to include a unit dedicated to domestic terrorism and domestic extremism activities. See e.g., Mitchell D. Silber, *Domestic Violent Extremism and the Intelligence Challenge* (Atlantic Council, May 21, 2021).

<https://www.atlanticcouncil.org/in-depth-research-reports/domestic-violent-extremism-and-the-intelligence-challenge/>. For the reasons outlined in the section, and because the National Security Act expressly prohibits the NCTC from taking the lead on purely domestic matters, we do not advocate for expanding the NCTC to include purely domestic matters. National Security Act of 1947 (§ 119) Pub. L. 80-253, 61 Stat. 495 (1947), as amended. Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, 118 STAT. 3638 (2004).

<sup>139</sup> National Security Act of 1947 (§ 119), Pub. L. 80-253, 61 Stat. 495 (1947), as amended.

acquired by the U.S. Government pertaining to terrorism and counterterrorism, excepting intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism.”<sup>140</sup> Accordingly, we read the statutory language as granting NCTC authority over domestic violent extremism only where the domestic threat is tied to foreign entities that would otherwise fall under the scope of the NCTC’s mandate. ODNI appears to lack a sub-structure with comprehensive authority over domestic violent extremism and other domestic threats that cannot be tied to a foreign actor. This gap in policy potentially limits the extent to which ODNI can effectively assess and coordinate the federal government’s response to domestic violent extremism.

Establishing a new National Countering Domestic Violent Extremism Center would allow the DNI to work within the above-mentioned Congressionally mandated limits preventing the NCTC from engaging in purely domestic national security matters. Establishing a new National Countering Domestic Violent Extremism Center would also equip the ODNI to respect the long-established institutional boundaries between domestic and foreign national security issues. With the creation of a National Countering Domestic Violent Extremism Center, the NCTC would likely be absolved of any potential crisis-induced pressure to analyze information collected from domestic sources, and the ODNI could avoid potential pressure to establish foreign ties between domestic or foreign groups that are either not there or are not analytical relevant. Insomuch, a National Countering Domestic Violent Extremism Center would strengthen the existing Congressionally mandated limits preventing the NCTC from engaging in purely domestic national security matters not otherwise related to international terrorism.

Although the primary purpose of creating a National Countering Domestic Violent Extremism Center is to ensure that high-level DVE assessments percolate to top-level national security discussions, it would help ensure that pertinent information was adequately circulated through law enforcement and intelligence agencies on the ground as well. A National Countering Domestic Violent Extremism Center would serve as an excellent authority for evaluating and strengthening the FBI’s JTTF system and ensuring that counter-DVE resources were effectively distributed across all 200 JTTFs, regardless of its geographic location. Additionally, with insight on intelligence collection processes across different entities, a National Countering Domestic Violent Extremism Center would be able to assess trends in the overlap between civil liberties protection and counter-DVE activities, and create and distribute authoritative guidance on preserving civil liberties while conducting counter-DVE missions. Lastly, a National Countering Domestic Violent Extremism Center would provide a crucial link

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<sup>140</sup> *National Counterterrorism Center Implementation Procedures for the ODNI Intelligence Activities Procedures Approved by the Attorney General Pursuant to Executive Order 12,333* (Office of the Director of National Intelligence, March 22, 2021). [https://www.odni.gov/files/NCTC/documents/news\\_documents/NCTC\\_Implementation\\_Procedures\\_executed\\_3\\_22\\_21\\_U\\_final.pdf](https://www.odni.gov/files/NCTC/documents/news_documents/NCTC_Implementation_Procedures_executed_3_22_21_U_final.pdf)

between high-level intelligence consumers and intelligence collectors on the ground. A Director of the National Counter Domestic Violent Extremism Center would therefore be able to streamline coordination throughout the intelligence collection process.

## Conclusion

Though the January 6th attack on the U.S. Capitol is unique from the DVE events that preceded it, January 6th represents a watershed moment and wake-up call for policymakers and intelligence and law enforcement officials. This threat on U.S. soil can no longer be ignored, and officials have begun to recognize this in statements and strategies. Action is needed to ensure that the U.S. government is sufficiently prepared to counter this threat. By implementing these three recommendations, (1) using post-conviction data to populate a classified and anonymized database for tracking DVE incidents, (2) improving federal, state, and local law enforcement communication and intelligence capabilities, and (3) creating an ODNI Mission Center tasked with coordinating counter-DVE policies across the U.S. government and improving existing tools, the U.S. government will be better suited to detect, prevent, and respond to DVE attacks.

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