



**Written Statement of Maya Berry
Executive Director
Arab American Institute**

**“Confronting White Supremacy (Part II): The Adequacy of the Federal Response”
Hearing Before the Subcommittee on Civil Rights and Civil Liberties
House Committee on Oversight and Reform**

June 4, 2019

The Arab American Institute is pleased to submit this statement for the record of today’s hearing. We support the subcommittee in its intentions to examine the federal government’s efforts to address the threat of white supremacist violence in the United States. This statement focuses on the federal government’s data collection practices relating to white supremacist violence, including acts that meet the definition of hate crime, domestic terrorism, or both. While today’s hearing evaluates the data collection practices of the Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS), this statement widens the aperture to consider potential sources of data from other components of the federal government, namely the National Security Division within the Department of Justice.

Following a short introduction, this statement considers two potential sources of federal data on acts meeting the definition of domestic terrorism, which would include some incidents of white supremacist violence. The first source of data exists within FBI records of terrorism-related investigations. Between the mid-1980s and early 2000s, the FBI published an annual report entitled *Terrorism in the United States*. Were the FBI to resume publication of this or a similar report, the American public would acquire a better understanding of the nature and extent of various threats, including that of white supremacist violence, in addition to a better sense of the FBI’s approach to investigating such threats. A similar assessment can be made of the second potential source of data: records related to domestic terrorism and terrorism-related cases prosecuted by the federal government. An example of this type of data collection would be the National Security Division’s chart of public or unsealed international terrorism or terrorism-related convictions.

The statement concludes with a consideration of a separate data-related concern that was discussed during a previous hearing before this subcommittee, on May 15, 2019, and that is at least in some part relevant to this hearing: data collected under the Hate Crime Statistics Act (HCSA, 28 U.S.C. § 534 note) and published in annual statistics from the FBI. While the HCSA

data are limited in their capacity to describe the nature and extent of white supremacist violence in the United States, it is nevertheless important to ensure that federal hate crime statistics are to the greatest degree accurate and indicative of the threats facing particular communities.

I. The Arab American Institute

The Arab American Institute (AAI) is a nonprofit, nonpartisan organization founded in 1985 to nurture and encourage Arab American participation in political and civic life. Historically, as has been the case for many communities in the United States, threats of hate crime and violence, including white supremacist violence or conduct meeting the definition of domestic terrorism,¹ have prevented Arab Americans from full participation in the democratic process.² Despite considerable progress, for our community and others, this remains a persistent threat.³ Recognizing the recent increase of reported hate crime incidents and escalating concerns over white supremacist violence,⁴ AAI devotes a considerable amount of time and resources to promoting hate crime prevention and related efforts to protect communities from crimes motivated by race or ethnicity, religion, sexual orientation, gender, disability, or gender identity.

AAI provides analysis of state and federal hate crime data submitted through the Uniform Crime Reporting (UCR) system, publishes a comparative review of laws and policies designed to prevent hate crime in each state and the District of Columbia, works in coalition with fellow national civil rights organizations to improve the federal response to hate crime, and convenes working groups with community leaders to promote state and local hate crime reform. Later this year, AAI will publish its 2019 Hate Crime Index. AAI's current focus is advancing efforts in Congress that would improve the data collected under the Hate Crime Statistics Act (HCSA).

Additionally, AAI works on ensuring that U.S. counterterrorism efforts, including those focused on domestic terrorism, do not undermine constitutional or human rights.

II. FBI Records of Terrorism-Related Investigations

Terrorism-related investigative records represent one source of data on the threat of white supremacist violence and the federal government's efforts to address that threat. This portion of the statement contemplates the FBI's investigative authorities relating to domestic terrorism, white supremacist violence, and hate crime before considering the FBI's defunct practice of publishing an annual report on domestic terrorism investigations.

¹ Paraphrasing intelligence assessments from the Federal Bureau of Investigation, "white supremacist violence" can be defined as unlawful acts of force or violence that are motivated, in whole or in part, by a belief in the intellectual or moral superiority of the white race over other races. *See* U.S. Fed. Bureau of Investigation & Dep't of Homeland Security, Joint Intelligence Bulletin: White Supremacist Extremism Poses Persistent Threat of Lethal Violence, 1A-0154-17 (May 10, 2017), available at <https://assets.documentcloud.org/documents/3924852/White-Supremacist-Extremism-JIB.pdf>. For a definition of domestic terrorism, *see* 18 U.S.C. § 2331(5).

² *Ethnically Motivated Violence Against Arab-Americans: Hearing Before the Subcomm. on Criminal Justice, Comm. on the Judiciary, House of Representatives*, 99th Cong. 130 (1986) (statement of James Zogby, Executive Director, Arab American Institute), <https://babel.hathitrust.org/cgi/pt?id=pst.000014264429;view=1up;seq=134>.

³ Press Release, U.S. Dep't of Justice, Office of Public Affairs, Virginia Man Convicted of Threatening Employees of the Arab American Institute (May 9, 2019), <https://www.justice.gov/opa/pr/virginia-man-convicted-threatening-employees-arab-american-institute>.

⁴ Press Release, Arab American Institute, Hate Crimes Continue to Surge in America (Nov. 13, 2018), http://www.aaiusa.org/hate_crimes_continue_to_surge_in_america.

A. The FBI's Investigative Authorities Relating to Domestic Terrorism, White Supremacist Violence, and Hate Crime

The FBI is the lead federal law enforcement agency charged with investigating and preventing acts of domestic and international terrorism.⁵ According to the FBI's Domestic Investigations and Operations Guide (DIOG), terrorism is "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, to further political or social objectives."⁶ This definition can be found in the Code of Federal Regulations.⁷ The DIOG also identifies the FBI as the lead federal investigative agency for all "federal crimes of terrorism," which are defined as offenses that are (i) "calculated to influence or affect the conduct of government by intimidation or coercion or to retaliate against government conduct," and (ii) violate any one of nearly 60 federal statutes,⁸ most of which, according to analysis from the Brennan Center for Justice, are applicable to conduct meeting the definition of domestic terrorism.⁹ Furthermore, Congress has granted the Attorney General primary investigative authority for additional offenses not defined as federal crimes of terrorism, over which sole or concurrent authority is delegated to the FBI.¹⁰

The FBI has additional investigative authorities that are relevant to addressing white supremacist violence. The Attorney General's Guidelines for Domestic FBI Operations authorize the FBI to conduct what are known as enterprise investigations, which may include a "general examination of the structure, scope, and nature of [a] group or organization," provided there is an "articulable factual basis for the investigation that reasonably indicates that the group or organization" may be engaged in, among other things, "domestic terrorism as defined in 18 U.S.C. 2331(5) involving a violation of federal criminal law."¹¹ Domestic terrorism is defined in that section as activities that—

- (a) involve acts dangerous to human life that are a violation of the criminal laws of the United States or any State;
- (b) appear to be intended—
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (c) occur primarily within the territorial jurisdiction of the United States.

⁵ Fed. Bureau of Investigation, *What Is the FBI's Role in Combating Terrorism?* (accessed Jun. 3, 2019), <https://www.fbi.gov/about/faqs/what-is-the-fbis-role-in-combating-terrorism>.

⁶ Fed. Bureau of Investigation, *Domestic Investigations and Operations Guide*, 2-3 (Mar. 3, 2016), available at <https://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29%202016%20Version>.

⁷ 28 C.F.R. § 0.85(1).

⁸ Those statutes are listed in 18 U.S.C. § 2332b(g)(5).

⁹ Michael German and Sara Robinson, Brennan Center for Justice, *Wrong Priorities on Fighting Terrorism* (Oct. 31, 2018), <https://www.brennancenter.org/publication/wrong-priorities-fighting-terrorism>.

¹⁰ 18 U.S.C. § 2332b(f).

¹¹ U.S. Department of Justice, *The Attorney General's Guidelines for Domestic FBI Operations*, 23 (2008), available at <https://www.justice.gov/archive/opa/docs/guidelines.pdf>.

Aside from enterprise investigations related to domestic terrorism, the FBI also maintains investigative authority over criminal violations of federal civil rights statutes, including the five federal hate crime statutes that Congress has enacted over the past 70 years.¹² The federal government has prosecuted multiple acts of white supremacist violence under federal hate crime statutes. Some of these acts include: the fatal mass shooting at Emanuel African Methodist Episcopal Church in Charleston, S.C., on June 17, 2015¹³; the killing of Heather Heyer and wounding of many others in a vehicular attack in Charlottesville, Va., on August 12, 2017¹⁴; the fatal mass shooting at Tree of Life Synagogue in Pittsburgh, Pa., on October 27, 2018¹⁵; and the fatal mass shooting at the Chabad of Poway Synagogue in Poway, Calif., on April 27, 2019, and related arson of a nearby mosque in Escondido, Calif., on March 24, 2019.¹⁶

Based on the particular circumstances of each case, some hate crime investigations involving white supremacist violence may prompt domestic terrorism enterprise investigations. According to the Policy Implementation Guide for the FBI's Civil Rights Program, dated October 18, 2010, when the FBI is investigating a hate crime in which the subject is found to have a nexus to a white supremacist group, that investigation must have a "dual caption" under one of the investigative classifications used for designating hate crime investigations and the one used for designating domestic terrorism investigations.¹⁷ If it becomes apparent during a hate crime investigation that the subject has a nexus to a white supremacist group, "or the crime escalates into a [domestic terrorism] matter," an electronic communication with that information must be submitted to the FBI's Civil Rights Unit, which oversees the Civil Rights Program, and the FBI's Domestic Terrorism Operations Unit, which "provides programmatic and operational oversight in cases that involve threats of domestic terrorism."¹⁸

¹² 18 U.S.C. §§ 241, 245, 247, 249; 42 U.S.C. § 3631.

¹³ Press Release, U.S. Attorney's Office, District of South Carolina, U.S. Department of Justice, Attorney General Lynch Statement Following the Federal Grand Jury Indictment Against Dylann Storm Roof (Jun. 22, 2015), <https://www.justice.gov/usao-sc/pr/attorney-general-lynch-statement-following-federal-grand-jury-indictment-against-dylann>.

¹⁴ Press Release, U.S. Department of Justice, Ohio Man Charged with Federal Hate Crimes Related to August 2017 Rally in Charlottesville (Jun. 27, 2018), <https://www.justice.gov/opa/pr/ohio-man-charged-federal-hate-crimes-related-august-2017-rally-charlottesville>.

¹⁵ Press Release, U.S. Department of Justice, Additional Charges Filed in Tree of Life Synagogue Shooting (Jan. 29, 2019), <https://www.justice.gov/opa/pr/additional-charges-filed-tree-life-synagogue-shooting>.

¹⁶ Press Release, U.S. Department of Justice, California Man Indicted for Federal Hate Crimes Related to Poway Synagogue Shooting and Arson of Escondido Mosque (May 21, 2019), <https://www.justice.gov/opa/pr/california-man-indicted-federal-hate-crimes-related-poway-synagogue-shooting-and-arson>.

¹⁷ Civil Rights Program, Fed. Bureau of Investigation, *Policy Implementation Guide* (Oct. 18, 2010), available at https://www.aclu.org/sites/default/files/field_document/ACLURM003541.pdf. The investigative classifications for hate crime are "44" and "177." The classification for domestic terrorism is "266." For archived documentation of the investigative classifications, see Fed. Bureau of Investigation, *Manual of Administrative Operations and Procedures Part 2*, 23 (unclassified Feb. 26, 2007), available at <https://vault.fbi.gov/maop/maop-part-05-of-07>.

¹⁸ Office of the Inspector General, U.S. Department of Justice, *A Review of the FBI's Investigative Activities Concerning Potential Protesters at the 2004 Democratic and Republican National Political Conventions*, 7 (Apr. 2006), available at <https://www.hsdl.org/?abstract&did=464320>.

B. The FBI's Defunct Practice of Publishing Data on Domestic Terrorism Investigations

Publishing data based on investigative activities related to white supremacist violence, including hate crime investigations and domestic terrorism investigations, would help the general public better understand the threat of white supremacist violence and the efforts of a key component of the federal government to address that threat. According to recent reporting that cites an unnamed FBI senior counterterrorism official, the bureau has seen a “significant rise in the number of white supremacist domestic terrorism cases in recent months.”¹⁹ While the official did not disclose how many such arrests or investigations were related to individuals or groups engaged in white supremacist violence, the official said the FBI’s total number of “arrests on charges the FBI classifies as domestic terror” in fiscal year 2019 could exceed totals of the past two years. The official also said the FBI has approximately 850 open investigations related to domestic terrorism.

Aside from this information, the general public has a limited understanding of the FBI’s investigative activities related to white supremacist violence. Moreover, without additional context, the recent reported statements from this unnamed counterterrorism official do little more than to affirm a general sense that white supremacist violence is on the rise. The regular provision of statistics on domestic terrorism or related investigations, disaggregated according to specific investigative classifications or subcategories, such that investigations related to white supremacist violence are segregated from other types of domestic terrorism threats, would be far more informative. The same would apply to reporting on arrests involving “charge[s] the FBI classifies as domestic terror,” as phrased above.

Not only would these statistics better illustrate the nature and extent of white supremacist violence in the United States, they would also shed light on the FBI’s efforts to address that threat, not to mention the bureau’s approach to domestic terrorism investigations in general.

While the FBI does not currently publish such statistics, there is a precedent.²⁰ Between the mid-1980s and 2005, the FBI published reports on terrorism in the United States.²¹ Based on investigative records related to both international and domestic terrorism, the reports featured data separated into three categories. Those categories were “terrorist incidents,” “suspected terrorist incidents,” and “terrorism preventions,” the latter two referring to acts for which responsibility could not be attributed to a known or suspected group, and acts prevented by investigative activity, respectively. Beginning with the 2000/2001 edition of the *Terrorism* report,²² the FBI broadened the scope of the data to include overseas investigations. The bureau ceased publication in 2005.

¹⁹ Evan Perez, *FBI has Seen Significant Rise in White Supremacist Domestic Terrorism in Recent Months*, CNN (May 23, 2019), <https://www.cnn.com/2019/05/23/politics/fbi-white-supremacist-domestic-terror/index.html>.

²⁰ Kai Wiggins, *Finding the Federal Data on Domestic Terrorism*, Just Security (May 31, 2019), <https://www.justsecurity.org/64323/finding-the-federal-data-on-domestic-terrorism>.

²¹ Fed. Bureau of Investigation, *FBI Publications on Terrorism* (accessed Jun. 3, 2019), <https://www.fbi.gov/investigate/terrorism/publications>.

²² Fed. Bureau of Investigation, *Terrorism 2000/2001* (2002), available at https://www.fbi.gov/file-repository/stats-services-publications-terror-terror00_01.pdf/view.

III. Records on Domestic Terrorism and Terrorism-Related Cases Prosecuted by the Federal Government.

Records related to domestic terrorism and terrorism-related cases prosecuted by the federal government represent a second source of federal data on the threat of white supremacist violence and the federal government's efforts to address that threat. This portion of the statement considers existing data collection practices of the Justice Department's National Security Division on international terrorism and terrorism-related convictions, which could serve as a template for collecting data on domestic terrorism and terrorism-related convictions. These data collections would include certain acts or attempted acts of white supremacist violence prosecuted under federal hate crime statutes and other federal criminal statutes not directly related to terrorism.

The National Security Division maintains a chart of public or unsealed international terrorism and terrorism-related convictions. Much like investigative records from the FBI, a domestic equivalent to this chart would illustrate, in part, the nature and extent of white supremacist violence in the United States. Additionally, a chart of public or unsealed domestic terrorism and terrorism-related convictions would illuminate the federal government's efforts to address that threat, not to mention its approach to prosecuting domestic terrorism in general. According to the introduction of the most recent known edition, which reflects the period between Sept. 11, 2001, and Dec. 31, 2016, the chart demonstrates "the use of a variety of [f]ederal criminal statutes available to prevent, disrupt, and punish international terrorism and related criminal activity."²³

The convictions listed in the chart include violations of "federal statutes that are directly related to international terrorism" and "a variety of other statutes where the investigation involved an identified link to international terrorism." The National Security Division divides cases into separate classifications based on these distinctions. For example, while some cases in the chart were prosecuted under terrorism-related statutes, others were prosecuted under federal statutes involving fraud, firearms, drugs, and other offenses not inherently related to international terrorism. According to the National Security Division, "this approach underscores the wide variety of tools available in the U.S. criminal justice system for disrupting terror activity." In this respect, classifying something as an international terrorism or terrorism-related conviction does not require a prosecution under terrorism-related statutes. Instead, the federal government relies on various statutes to prosecute international terrorism and terrorism-related offenses, and the data reflect this approach.

The same can be said about domestic terrorism and terrorism-related offenses, including acts of white supremacist violence that meet the definition of domestic terrorism. While such acts might be prosecuted under terrorism-related statutes, others might be prosecuted under statutes not directly related to terrorism. In testimony before the House Committee on Homeland Security on May 8, 2019, Brad Weigmann, Deputy Assistant Attorney General for National Security, described 10 different "domestic terrorism cases" prosecuted under terrorism-related statutes or federal statutes not directly related to domestic terrorism. The list included acts of

²³ National Security Division, U.S. Department of Justice, *Chart of Public/Unsealed International Terrorism and Terrorism-Related Convictions from 9/11/01 to 12/31/16*, 1 (Feb. 8, 2017), available at <https://www.muckrock.com/foi/united-states-of-america-10/doj-national-security-divisions-international-terrorism-and-terrorism-related-statistics-chart-56128/#file-199418>.

white supremacist violence prosecuted under federal hate crime statutes and various kinds of criminal activity perpetrated by members of militant neo-Nazi groups prosecuted under federal rioting and conspiracy statutes.²⁴

Maintaining public records of federal prosecutions related to domestic terrorism, including acts of white supremacist violence, would enable the general public to better understand the threat of white supremacist violence and the federal government's efforts to address that threat. Currently, the federal government does not publish such data. That does not mean the federal government is incapable of doing so, nor does it suggest more resources or authorities are required.²⁵ We do not support the enactment of a new federal criminal statute of "domestic terrorism," nor do we support the authorization of additional offices within federal agencies to address or prevent domestic terrorism.

IV. Data Collected Under the Hate Crime Statistics Act

The data collected under the Hate Crime Statistics Act (HCSA, 28 U.S.C. § 534 note) are another potential source of information on white supremacist violence. The data are limited in the extent to which they can demonstrate that threat and subject to limitations related to underreporting and inaccuracy. However, it is important to ensure that federal data collections on hate crime are to the greatest degree accurate and indicative of the threats facing particular communities.

Under the HCSA, which was first signed into law in 1990, the attorney general is required to collect data on "crimes that manifest evidence of prejudice based on race, gender and gender identity, religion, disability, sexual orientation, or ethnicity." The FBI carries out this requirement through its administration of the Uniform Crime Reporting (UCR) Program, which publishes annual statistics based on crime data submitted by federal, state, and local law enforcement agencies.²⁶

Theoretically, most, if not all, acts of white supremacist violence would be captured in the HCSA data. For example, the mass shooting at Emanuel African Methodist Episcopal Church in 2015 in Charleston, S.C., was reported as a hate crime by the Charleston Police Department and published in the FBI's annual *Hate Crime Statistics* report.²⁷ However, hate crime incidents are classified in the HCSA data collections according to bias motivations based on protected characteristics, for example, "Anti-Black," "Anti-Jewish," or Anti-Gender Non-Conforming," and not tabulated in a way that distinguishes acts according to the ideologies, such as white

²⁴ *Confronting the Rise of Domestic Terrorism in the Homeland, Hearing Before the Committee on Homeland Security, U.S. House of Representatives*, 116th Cong. (May 8, 2019) (written statement of Brad Wiegmann, Deputy Assistant Attorney General, National Security Division, U.S. Department of Justice), available at <https://homeland.house.gov/sites/democrats.homeland.house.gov/files/documents/Testimony-Wiegmann.pdf>.

²⁵ A new federal domestic terrorism statute is not required to improve federal data collection practices on domestic terrorism investigations or prosecutions. See Michael German, *Why New Laws Aren't Needed to Take Domestic Terrorism More Seriously*, Just Security (Dec. 14, 2018), <https://www.justsecurity.org/61876/laws-needed-domestic-terrorism/>.

²⁶ Fed. Bureau of Investigation, Uniform Crime Reporting (UCR) Program (accessed Jun. 4, 2019), <https://www.fbi.gov/services/cjis/ucr>.

²⁷ Criminal Justice Information Services Division, Fed. Bureau of Investigation, *Hate Crime Statistics, 2015* (Nov. 2016), <https://ucr.fbi.gov/hate-crime/2015>.

supremacy, to which they were linked.

The other limitation of this data source is underreporting or inaccuracies reflected in the government's hate crime statistics. Participation in the UCR system is voluntary, and while some agencies are required under state law to report hate crimes, mandatory reporting is not synonymous with accurate reporting. Numerous high-profile hate crime murders, including acts of white supremacist violence, are not reflected in the FBI's annual *Hate Crime Statistics* report.²⁸ These acts of violence, which include the 2017 Portland train stabbing²⁹ and Charlottesville vehicular attack,³⁰ occurred in states with mandatory hate crime reporting laws.

These and other glaring omissions from federal hate crime statistics cast doubt as to the quality and accuracy of HCSA data. Congress can and should consider legislation that would improve the data collected under the HCSA and provide the general public with a better understanding of the nature and extent of hate crime in our communities. The Khalid Jabara and Heather Heyer Hate Crime Reporting Act, which is pending introduction in Congress, would do just that. The Act would promote more accurate hate crime data collection and assist hate crime victims and their communities. Through the implementation of an innovative reporting framework, the Act would also promote an improved response to hate crime in the United States—not only within the federal government, but within state and local law enforcement agencies as well.

Conclusion

Thank you for considering this statement for the record. We are grateful to the subcommittee for holding a hearing on this critical issue. All inquiries may be directed to AAI's Policy Counsel, Ryan J. Suto, at rsuto@aaiusa.org, or 202-429-9210.

²⁸ Maya Berry and Kai Wiggins, *FBI Stats on Hate Crime Are Scary. So Is What's Missing*, CNN (Nov. 14, 2018), <https://www.cnn.com/2018/11/14/opinions/fbi-hate-crimes-data-whats-missing-berry-wiggins/index.html>.

²⁹ Ericka Cruz Guevarra, *Hate Crime On The Rise In Oregon, But Possibly More Than Data Show*, Oregon Public Broadcasting (Nov. 15, 2018), <https://www.opb.org/news/article/hate-crime-oregon-increase-fbi-eugene-portland-2017>.

³⁰ Maya Berry, *Charlottesville Won't Show Up in Federal Hate Crime Stats*, Washington Post (Sept. 21, 2018), https://www.washingtonpost.com/outlook/2018/09/24/charlottesville-wont-show-up-federal-hate-crime-stats/?noredirect=on&utm_term=.0aa09b0371a6.