

Alt-ternative Perspective: Can Gang Classification Mitigate the Threat of Violent Extremism?

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The United States is conflicted in its approach to tackling domestic violent extremism. Federal laws and regulations lack a dedicated statute to charge acts of domestic terrorism, while more specific laws for enforcing transnational terrorism exist. This gap has created debate on whether Congress should pass a domestic terrorism statute. Those who favor a new law argue it will attach a label to acts of domestic extremism, signaling the significance of the threat when based on American political, social, and religious discourse. Meanwhile, those against a new law worry about the potential for government agencies to abuse a new power, arguing that existing laws on the books sufficiently mitigate the threat. This paper seeks to add commentary to the latter's argument and examine if criminal gang classification can reduce the threat of domestic extremism. Research shows that domestic extremist groups and criminal street gangs often exhibit the same characteristics. Gang classification could provide federal authorities with established tools that lead to proactive enforcement and threat reduction without expanding government powers in a manner that violates civil liberties. Upon using 18 USC § 521's definition of a criminal street gang and comparing it to the activities of both the Proud Boys and Oath Keepers, findings indicate that criminal street gang classification of domestic extremist groups could lead to proactive enforcement measures and mitigation strategies. However, if federal authorities are too broad in their street gang classification, the risk of civil rights violations and "net widening" remains significant.

Introduction

The Department of Justice (DOJ) charged certain members of the Proud Boys and Oath Keepers with seditious conspiracy for their conduct during the January 6th Capitol Riot. But was this the best approach to reduce the threat they pose? Another option may have been to classify these extremist groups as criminal street gangs. Gang classification could provide federal authorities with established tools that lead to proactive enforcement and threat reduction without expanding government powers in a manner that violates civil liberties. These tools include using existing gang database infrastructure, Civil Gang Injunctions (CGI), and the Racketeering and Influenced Corrupt Organization Act (RICO).

This paper assesses whether the Proud Boys and Oath Keepers could qualify as a criminal street gang under 18 USC § 521 and, if so, what prosecutorial options this classification makes available. Under this

general framework, the paper is organized into four parts. First, in the background discussion, I highlight how federal authorities have traditionally approached domestic extremist groups and where these efforts fall short. Second, I discuss current gang classification research and highlight its practical implications. Third, using the criminal street gang definition in 18 USC § 521, I analyze the characteristics of the Proud Boys and Oath Keepers and determine if these groups could qualify as criminal street gangs. Fourth, I examine the tools gang classification of domestic extremist groups could provide to federal authorities and outline the potential issues that could arise with this approach. In closing, I summarize the key points and offer recommendations for future research.

Background

Historically, the United States has been conflicted in its approach to mitigating the threat of domestic terrorism.¹ Central to this debate is whether the United States needs a statute that criminalizes acts of domestic terror and provides new tools for preventative action.² While federal law currently defines acts of domestic terror, it does not include a chargeable criminal offense for domestic terrorism.³

In comparison, international terrorism laws under 18 USC Chapter 113B allow the federal government to designate groups as foreign terrorist organizations (FTO) and embargo material support provided knowingly in support of FTOs.⁴ For example, an individual pledging themselves servant to a designated FTO and providing resources in support of the organization could be subjected to criminal prosecution under 18 USC § 2339B, or other statutory sections in chapter 113B.⁵ The scope of Chapter 113B allows prosecutors to proactively mitigate the threat of international terrorism by charging dangerous individuals that are not linked to specific terror attacks and conspiracies but are knowingly and materially involved in the general support of the foreign terroristic enterprise.⁶

The discrepancy between domestic and international terrorism laws often forces authorities to rely on conduct-based criminal charges to hold domestic extremists accountable for their violent behavior.⁷ For example, authorities can charge domestic extremists with violating 18 USC 2332a when they unlawfully use a weapon of mass destruction (WMD) or explosive.⁸ The DOJ charged Cesar Sayoc with a violation of 18 USC 2332a in 2018 after he mailed 16 bombs to current and former elected leaders across the United States.⁹ Section 2332a, unlike the other statutory sections in Chapter

113b that apply to FTOs, only applies to individuals that use, threaten, attempt, or conspire to use weapons of mass destruction or explosives.¹⁰ It does not apply to the domestic terrorists' counterparts that knowingly and materially support the domestic terror attack, or the broader terrorist organization.¹¹

Some argue that this reactive approach—charging only those individuals directly responsible for committing the criminal act after its commission—is not effective and the United States instead needs a more robust domestic terrorism statute. Mary McCord, a law professor at Georgetown University Law School, argues that current charges do not signal the significance of their crimes—a key factor, she argues, in reducing domestic terrorism.¹² She argues the “[domestic terrorism] label carries weight...it signals to Americans that the threat of extremism is just as significant when it is based on domestic political, economic, religious, or social ideologies....”¹³

Bruce Hoffman, a professor at the Georgetown University School of Foreign Service, similarly argues for a domestic terror law and echoes the points of McCord.¹⁴ Specifically, he claims a new law could lessen the sentencing disparity between individuals that are convicted of committing acts of domestic terrorism and those found to have committed violent acts of Islamic extremism.¹⁵ To illustrate, he found that individuals convicted of supporting the Islamic State received an average prison sentence of 13.2 years.¹⁶ In contrast, a member of the neo-Nazi group Atomwaffen Division received a one-year prison sentence for gathering weapons and ammunition for the group.¹⁷ Echoing McCord's argument, Hoffman asserts that this sentencing discrepancy lessens the

significance of domestic terrorism and lowers its priority among law enforcement.¹⁸

Opponents of a domestic terrorism law argue that a new law is unnecessary and that the current federal code provides sufficient tools to mitigate the threat of domestic terrorism. Michael German, a fellow at the Brennan Center for Justice, claims that the current federal code provides the tools needed to reduce domestic terror, and the issue lies not with a lack of available charging instruments but in prioritization.¹⁹ He argues that it is easier to charge domestic terrorists with existing laws and that creating statutes with the label of domestic terrorism does not warrant a broad expansion of government power.²⁰ Specifically, he points to powerful tools like hate crime laws, RICO, and conspiracy charges that provide charging ability to prevent future action and support broad prosecutorial discretion.²¹ The use of these charges avoids politically inflammatory courtroom arguments over who qualifies as a terrorist, making it easier for juries to focus on the facts and adjudicate a conviction.²²

Others, like Robert Chesney, the dean of the University of Texas School of Law, highlight that *any* move to expand federal powers toward domestic terrorism will face scrutiny.²³ Constitutional speech and assembly protections would make it difficult to determine what actions qualify as terrorism.²⁴ He argues political adversaries with deep disagreements would abuse such a tool in a domestic context.²⁵ Indeed, in the 1920s, 1960s, and 1970s, the federal government cracked down on perceived Marxist or leftist groups and individuals. This included the infamous “Palmer raids” and the FBI’s extralegal counterintelligence program (COINTELPRO).²⁶

As the debate over whether to codify a new domestic terrorism statute continues, authorities should examine another approach

that reduces the threat of domestic extremism and prevents events such as the January 6th Capitol Riot. Authorities could consider classifying domestic extremist groups as criminal street gangs. Research shows that domestic extremist groups and criminal street gangs share similar characteristics and that such classification could provide new tools for law enforcement in mitigating the threat domestic extremist groups pose. The following section examines this research and attempts to establish a baseline of similarities that, in turn, can help determine a potential 18 USC § 521 criminal street gang classification for the Proud Boys and Oath Keepers.

Current Gang Classification Research

Research suggests that street gang classification of domestic extremist groups could provide a new approach for law enforcement in preventing acts of domestic terrorism. Notably, Shannon E. Reid and Matthew Valasik point out in their book *Alt-Right Gangs: A Hazy Shade of White* that street gangs and far-right extremist groups are characteristically similar in their behavior, use of territory, and adoption of signs and symbols.²⁷

Reid and Valasik note that gangs commonly pursue territorial dominance and tend to loiter in specific public locations.²⁸ Referred to as “gang set-space,” these locations provide sanctuary and protection from rival gangs and allow members to avoid confrontations with law enforcement.²⁹

The authors argue that far-right extremists place a similar priority on territory. Far-right groups claim territory through the concept of “natural dominion.”³⁰ Natural dominion is the belief that members of the far-right have ownership of any space they occupy.³¹ Examples of far-right groups exercising this belief include conducting hate crimes

directed at nonwhite minorities moving into predominantly white communities and participating in free speech rallies, such as the Unite the Right rally in Charlottesville, Virginia, in 2017.³²

Some far-right groups also use territory through the use of “Aryan free spaces.”³³ Similar to gang-set space, an Aryan free space allows far-right extremists—in this case, white supremacists—to openly express their beliefs and organize their activities.³⁴ These spaces include white supremacist bars, music festivals, and conventions.³⁵ For example, “Hammerfest” was an Aryan community music festival where adherents could openly wear extremist paraphernalia and listen to racist music.³⁶ These spaces similarly provide territory without formal control and that offers a safe space for members to freely engage in inappropriate and illegal behavior.³⁷

Far-right groups are also similar to gangs in their criminal activity. Known as cafeteria-style offending, gang crimes are typically varied and unplanned.³⁸ A gang may participate in various crimes, from theft to murder, with little or no planning.³⁹ Reid and Valasik contend that far-right groups participate in a similar pattern of behavior.⁴⁰

Some far-right groups participate in drug trafficking, counterfeiting, and armed robbery to create a financial incentive for recruits.⁴¹ For example, in 2019, members of the New Aryan Empire were indicted for their efforts to murder, kidnap, and maim individuals.⁴² This indictment was coupled with other charges, including a conspiracy to distribute methamphetamine.⁴³ Other examples of external extremist activity include authorities recently indicting members of the Atomwaffen Division for sex crimes and firearm violations.⁴⁴

Reid and Valasik also claim that far-right extremist groups, similarly to gangs, adopt

signs and symbols to create group solidarity.⁴⁵ Many far-right groups display banners and tattoos that depict traditional Nazi iconographies, like the SS bolt and swastika.⁴⁶ In other instances, far-right groups have adopted uniform clothing, mascots, and hand signals. Members of the Proud Boys typically wear black and yellow polo shirts to distinguish themselves and have adopted a cockerel mascot that serves as a symbol on patches, hats, and clothing.⁴⁷ Furthermore, members of the Proud Boys have regularly displayed the “OK” hand signal to signal solidarity and white supremacist intentions.⁴⁸

Despite these stark similarities, some scholars disagree with Reid and Valasik’s argument for classifying far-right groups as gangs. Specifically, they argue that authorities should not categorize far-right groups as gangs because far-right groups focus their activities on political action, whereas gang activity is financially motivated.⁴⁹

In response, Reid and Valasik argue that far-right groups have other goals in conjunction with their political objectives.⁵⁰ For example, some far-right groups are not interested in political action and only want to “red-pill” large parts of society. Red pilling is influencing an individual to change their beliefs, specifically to a disturbing and extreme point of view that society is controlled by a secret cabal.⁵¹ Therefore, Reid and Valasik contend that while some of these groups incorporate political messaging, many only use politics to support their broader far-right agenda.⁵²

Scholars also point out that authorities should not classify far-right groups as gangs because they focus on hate crimes rather than financially motivated crimes.⁵³ Reid and Valasik argue that this may not be the case. Their book demonstrates that far-right groups engage in criminal activity outside of

bias-related hate crimes. In 2010, the Attorney General of California cited a report that claimed a rise in illegal activity among white power groups.⁵⁴ This report included reports of credit card theft, vehicle theft, and robbery. Furthermore, Reid and Valasik argue that hate crimes against people of color and criminal street gang activity are not mutually exclusive.⁵⁵ They point out that gangs may attack fellow gangs of different races. Notably, Black and Hispanic gangs have historically attacked each other for race-based reasons.⁵⁶

Reid and Valasik's analysis of criminal street gangs and far-right groups helps illustrate the reality of far-right activity while addressing common misperceptions. The similarities in criminal behavior, use of territory, and adoption of signs and symbols help inform whether categorizing domestic extremist groups as criminal street gangs is a practical approach.

Similar to Reid and Valasik's approach in *Alt-Right Gangs*, David C. Pyrooz and James A. Densley also contribute to the discussion of whether authorities could categorize domestic extremist groups as criminal street gangs. In their article "On Public Protest, Violence, and Street Gangs," Pyrooz and Densley argue that authorities could categorize the far-left extremist network, Antifa, as a street gang.⁵⁷ The authors use the principles of violent criminal activity, collective identity, durability, and street orientation described in the California Penal Code (CPC) and the *Eurogang* program of research to illustrate that Antifa's behavior warrants a street gang classification.⁵⁸

First, Pyrooz and Densley point out that Antifa participates in the violent criminal activity described in the *Eurogang* and CPC definition.⁵⁹ Antifa implements a direct action strategy that includes illegal tactics such as arson, vandalism, and attacks on

public institutions.⁶⁰ For example, in 2017, Antifa caused considerable damage at the University of California Berkeley when a far-right activist was scheduled to conduct a speech on campus.⁶¹ During the disturbance, Antifa attacked police with fireworks and Molotov cocktails and used chemical irritants on individuals.⁶²

Second, Pyrooz and Densley point out that Antifa is a group with a collective identity.⁶³ This identity, known as Black Bloc, encourages members to dress up in all black and display signs and symbols such as the *Antifaschistische Aktion* flag.⁶⁴ Like Reid and Valasik's argument regarding the use of signs and symbols, Pyrooz and Densley argue that Antifa is a gang in that "Bloods wear red; Crips wear blue; Antifa wear Black."⁶⁵

Third, Pyrooz and Densley argue that Antifa, like other gangs, is durable and exists over long periods of time. This is a product of their ongoing presence at rallies and consistent street brawls with far-right groups such as the Proud Boys.⁶⁶ They argue that instead of being a small movement that shows up to public protests, Antifa has frequently persisted in its goal to attack fascist adherents.⁶⁷ Much like gangs, violence and threats against Antifa fuel its existence and maintain its continuity.⁶⁸

Finally, Pyrooz and Densley argue that authorities could classify Antifa as a gang due to its street orientation.⁶⁹ Common among gangs is that their behavior typically takes place in public settings.⁷⁰ The authors argue that Antifa is not a private group, and its actions to destroy capitalistic symbols like Starbucks and Bank of America constitute street-level violence.⁷¹ Moreover, Pyrooz and Densley assert that when Antifa violently brawls with its far-right opponents, it takes place in public.⁷²

The case study of classifying Antifa as a street gang provides more evidence that street gangs and domestic extremists share the same characteristics. Pyrooz and Densley's illustration breaks down the stereotype that gangs only focus on homicides and drug sales and that their members only consist of at-risk youth. Pyrooz and Densley, and Reid and Valasik, inform this paper's approach to applying the federal definition of a criminal street gang to the Proud Boys and Oath Keepers. Next, I will assess whether the Proud Boys and Oath Keepers can fit into this legal categorization and, accordingly, whether the DOJ should consider utilizing criminal street gang classification as a viable option for prosecuting members of these groups.

Analysis

The following section considers the previous research and attempts to determine if federal authorities can categorize the Proud Boys and Oath Keepers as a criminal street gang. This classification will inform whether federal authorities can employ more effective tools to reduce the threat of domestic extremism. To render this determination, I will analyze whether the Proud Boys and Oath Keepers satisfy each of the elements in 18 USC § 521.⁷³

Section 521(a) defines a criminal street gang as:

*(a) [A]n ongoing group, club, organization, or association of 5 or more persons—
(A) that has as 1 of its primary purposes the commission of 1 or more of the criminal offenses described in subsection (c);
(B) the members of which engage, or have engaged*

*within the past 5 years, in a continuing series of offenses described in subsection (c);
and
(C) the activities of which affect interstate or foreign commerce.*

The offenses listed in § 521(c), referenced in subsection (a), include:

*(1) a Federal felony involving a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which the maximum penalty is not less than 5 years;
(2) a Federal felony crime of violence that has as an element the use or attempted use of physical force against the person of another;
(3) a Federal offense involving human trafficking, sexual abuse, sexual exploitation, or transportation for prostitution or any illegal sexual activity; and
(4) a conspiracy to commit an offense described in paragraph (1), (2), or (3).*

Proud Boys

The Proud Boys likely satisfy the requirement for criminal street gang classification under § 521(a). First, evidence shows that the Proud Boys are an ongoing group, club, organization, or association of five or more persons. Proud Boys' rallies are typically larger than five people and consist of members who occupy leadership positions.⁷⁴ Additionally, clubs and organizations typically have an entrance policy or initiation process that members

must participate in to gain membership. For example, a gang might have an initiation process for prospective members to participate in to gain entry.⁷⁵ The Proud Boys are no different. According to the Southern Poverty Law Center (SPLC), the Proud Boys openly declare themselves as a “pro-West fraternal organization.”⁷⁶ Moreover, Proud Boy recruits must engage in a ceremonial beating to become a member.⁷⁷ This ceremony involves other members beating the recruit until they can yell out five breakfast cereal names.⁷⁸

On the other hand, the Proud Boys do not readily satisfy the second requirement in § 521(A). The stated purpose of the Proud Boys appears to fall in subsection (c). The Proud Boys argue that their goal is to advocate Western chauvinism.⁷⁹ This entails spreading “anti-political correctness” and “anti-white guilt.”⁸⁰ While inappropriate, this behavior is not likely to constitute any of the federal offenses listed in subsection (c).” However, one can argue that members have engaged in offenses described in subsection (c) within the last five years, particularly the offenses listed in (c)(2), federal felony crimes of violence. In 2018, Proud Boys members committed violent crimes when they physically assaulted counter-protestors at a far-right rally in New York City.⁸¹ Moreover, Proud Boys members violently attacked members of law enforcement during the January 6th Capitol Riot.⁸²

Next, the Proud Boys commit violent crimes across state boundaries, thus affecting interstate commerce. Along with the incidents in New York City and Washington, DC, the Proud Boys have engaged in violent behavior in other states.⁸³ Specifically, the Proud Boys have engaged in violent brawls and attacks against leftist protestors in Portland, Oregon.⁸⁴ In 2018, members of the Proud Boys physically

assaulted a pedestrian in Portland after the individual began arguing with them over the Proud Boys chanting, “Build the Wall!”⁸⁵ The same year, Proud Boys assaulted leftist activists with chemical irritants in Kentucky while sitting at a bar.⁸⁶

Based on the above analysis, there is a strong case that the Proud Boys fit the legal definition of a street gang in 18 USC § 521. The Proud Boys explicitly declare themselves an organization and the size of their rallies suggests their group is more significant than five persons. Moreover, while their intent is not explicitly focused on criminal offenses, members of the organization frequently engage in activities that § 521(c) defines as criminal offenses. These criminal offenses have occurred in multiple states, making them a matter of interstate commerce. By satisfying each clause in 18 USC § 521, this paper concludes that the Proud Boys likely qualify as a criminal street gang.

Oath Keepers

The evidence supporting the criminal street gang classification of the Oath Keepers is less clear. First, evidence supports that the Oath Keepers are an ongoing club, organization, or association of five or more persons. Similar to a fraternity, the Oath Keepers are organized into chapters at the national, state, and county levels.⁸⁷ Moreover, its leader, Stewart Rhodes, claims the group has 35,000 dues-paying members.⁸⁸ While it is unclear if the Oath Keepers have an initiation process like the Proud Boys, they are particular in whom they recruit. Like gangs, who focus on recruiting youth, the Oath Keepers focus on recruiting former members of the military and law enforcement.⁸⁹ According to the SPLC, the Oath Keepers “openly and intentionally [recruit] these individuals to their ranks, mostly in an effort to capitalize on the skills and knowledge these

individuals acquired during their time of service.”⁹⁰

Second, it is unclear whether federal authorities could argue that the Oath Keepers’ explicit purpose is committing criminal offenses. Rhodes claims the purpose of the Oath Keepers is to reinvigorate the militia movement that relies on the US Constitution’s Second Amendment by having veterans help individuals “take back into their own hands their own personal self-defense and security.”⁹¹

Additionally, much of the Oath Keepers’ activity rests on vigilante activism that falls short of crimes of violence and could be interpreted as constitutionally protected speech and activity. The Oath Keepers’ activity usually includes individuals forming armed groups to protect businesses and individuals from whom they believe to be tyrannical elements like the federal government and racial justice protestors.⁹² Compared to the Proud Boys, the organized activity of the Oath Keepers tends to hide behind constitutionally protected speech and activity. But, with proper evidence, federal authorities could argue that their activity could fall under subsection (c)(4), conspiracy to commit a federal felony crime of violence.

Third, if there was evidence of a conspiracy to commit a felony crime of violence, it is plausible that it would affect interstate commerce. Given the national organization of the Oath Keepers, the group transcends state boundaries, making it a federal matter. Moreover, its constant involvement in standoffs with federal agents, such as the one with Clive Bundy in 2014, automatically creates a situation that affects interstate commerce because of their obstruction of federal enforcement matters.⁹³

The case to classify the Oath Keepers as a criminal street gang is weaker than the case for the Proud Boys. The Oath Keepers are an organized group of five or more people whose activity transcends state boundaries. But, their stated intent, along with the typical behavior of their members, makes it hard to classify them as a gang because their activity usually stays within the boundaries of constitutionally protected speech and activity. As a result, the Oath Keepers likely fail to satisfy the second and third requirements for §521 classification.

This is not to say federal authorities cannot ever classify the Oath Keepers as a gang. If the evidence establishes a conspiracy to commit a federal felony crime of violence, the group would satisfy § 521 and authorities could classify them as a street gang. Notably, Rhodes and other members were convicted of seditious conspiracy in 2022 for their role in planning to oppose the federal government forcefully during the January 6th Capitol Riot.⁹⁴ Thus, like the evidence available for the Proud Boys, these isolated criminal incidents could support characterizing the Oath Keepers as a criminal street gang.

Options & Issues

A gang classification of the Proud Boys and a potential classification of the Oath Keepers could lend new tools to reduce the threat domestic extremists pose in the United States. Specifically, gang classification could allow authorities to be proactive and engage in anticipatory enforcement. These tools can improve early warning and prevent events like the January 6th Capitol Riot from occurring again. The following section discusses these tools and explains how they can reduce the harm extremist groups pose.

First, a gang classification of the Proud Boys or Oath Keepers could allow law

enforcement to track their smaller-scale acts of violence through existing gang databases.⁹⁵ For example, suppose a Proud Boy frequently participates in violent assaults against leftist protestors. In that case, that information should be made available to law enforcement and prosecutors so they can aggressively prosecute that member for their more minor crimes.⁹⁶ This can degrade the threat the Proud Boys pose by taking members off the street before they can participate in serious acts of violence like the January 6th Capitol Riot.

Additionally, gang databases can help law enforcement track and monitor arrested Proud Boys and Oath Keepers as soon as they are released from prison.⁹⁷ A prison could pass information and intelligence to the FBI field office, including where the inmate is going to live.⁹⁸ This could allow for targeted monitoring and intervention programs designed to reduce the chance of an individual quickly rejoining the extremist organization.⁹⁹

Classifying the Proud Boys and Oath Keepers as a criminal street gang could also allow federal authorities to disrupt their activity using civil gang injunctions (CGI).¹⁰⁰ A CGI is a restraining order prohibiting gang members from activity in a designated area, bringing criminal penalties if violated.¹⁰¹ Historically, this tool has been used to disrupt illegal gang activity, namely graffiti, drug sales, and firearm possession.¹⁰² A CGI can also be easier and quicker to obtain because it is applied through civil courts.¹⁰³ Compared to criminal courts, civil courts do not require high standards of evidence to adjudicate legal motions.¹⁰⁴ A CGI applied to the Proud Boys and Oath Keepers could allow preventative action by expressly enjoining their violent behavior in sensitive locations, such as federal buildings, and at scheduled

protests and other high-profile events.¹⁰⁵ This would allow these groups to participate in constitutionally protected protest, but carry the added weight of criminal charges if members pursued violence.

Finally, gang classification of the Proud Boys and Oath Keepers can expose these groups to criminal liability under 18 USC CH 96, Racketeer Influenced and Corrupt Organization (RICO). Originally codified to prosecute the mafia for their organized crime activity, this statute allows prosecutors to charge individuals associated with a criminal enterprise, even if they did not directly participate in the enterprise's criminal activity.¹⁰⁶ Central to a RICO charge is establishing an enterprise, which can include crime families, drug cartels, and street gangs.¹⁰⁷

Given the possibility that the Proud Boys and, to some extent, the Oath Keepers qualify as a criminal street gang under 18 USC § 521, prosecutors could use RICO as a powerful tool to reduce the harm these groups pose. Upon establishing a pattern of racketeering activity—which could include assault, intimidation, and, more recently, seditious conspiracy—prosecutors could declare the Proud Boys were engaging in a “racket,” allowing them to charge individuals who claim membership.¹⁰⁸ This could enable law enforcement to proactively dismantle the group and reduce its ability to conduct future acts of violence.¹⁰⁹

Notwithstanding the benefits derived from classifying the Proud Boys and Oath Keepers as criminal street gangs, this approach also presents several issues. First, gang classification could present issues regarding constitutionally protected speech and activity. For example, a CGI could infringe on an individual's freedom to associate if the injunction's scope was not narrow enough to only prohibit certain individuals from committing offenses in

targeted regions.¹¹⁰ Moreover, courts may still interpret 18 USC § 521 as overly broad. However, gang definitions at the state level have routinely been upheld.¹¹¹

Second, gang classification could result in disproportionate harm and lead to a rise in incarcerations, also known as “net widening.”¹¹² Indeed, the DOJ inappropriately engaged in net widening when it classified the “Juggalos” as a criminal street gang in 2017.¹¹³ The Juggalos are a group of Insane Clown Posse fans who dress up as clowns to show their support.¹¹⁴ Members often engage in inappropriate behavior involving violent imagery and discussion of murder scenarios.¹¹⁵ After Juggalo members engaged in a pair of crimes in 2014, the DOJ moved to classify the Juggalos as a criminal street gang.¹¹⁶ It became apparent, though, that a few individuals’ activities did not involve the rest of the group, leading the American Civil Liberties Union (ACLU) to file a lawsuit successfully challenging the gang classification.¹¹⁷

Finally, the FBI’s unwillingness to prioritize far-right extremism like it prioritizes other forms of domestic extremism could render a gang classification approach moot. For gang classification to work and afford prosecutors the enforcement tools listed in this paper, the FBI must prioritize investigating far-right groups. Historically, the FBI has been reluctant to do this.¹¹⁸ Between 2004 and 2005, the FBI declared eco-terrorism the number one domestic terror threat, even though the number of deaths from eco-terrorism was zero.¹¹⁹ Moreover, when eco-terrorists raided a Smithfield pork factory in 2017, the FBI launched an extensive investigation viewed as disproportionate to a crime involving the theft of two piglets worth \$40 each.¹²⁰ A continuation of this trend—deflecting attention from the seriousness of far-right extremism and

focusing on other politically popular objectives—will reduce the benefits gang classification can yield and fail to mitigate the harm domestic extremists pose.

Conclusion

The January 6th Capitol Riot has renewed the debate over how the United States should mitigate the threat of domestic extremist groups. Unlike transnational terrorism, the United States does not have a domestic terrorism law that authorities can use to charge individuals for acts of domestic terrorism. Instead, prosecutors rely on existing criminal statutes to hold far-right groups accountable for their violent actions. This approach precludes anticipatory enforcement. The absence of a charging practice specifically tailored to curtail domestic terrorism inhibits law enforcement from preventing violent events like the January 6th Capitol Riots because extremist groups often operate within constitutionally protected speech and activity.

Street gang classification under existing federal statutes may provide an enforcement option to offset these deficiencies. Street gang classification can allow for better information sharing with existing gang databases and enable prosecutors to use RICO charges and CGIs to dismantle groups that commit violent crimes across state boundaries.

While gang classification is a promising solution for domestic extremist groups, it does not come without issues. Gang classification could easily lead to the “net widening” of groups on the edge of gang classification and increase unjust incarcerations. Moreover, CGIs could be ruled unconstitutional if prosecutors do not narrowly tailor the injunction to violent activity. Future research should investigate

if and how current federal gang enforcement disproportionately harms minority groups and determine the likelihood that such harm could transfer onto efforts to counter domestic extremists.

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⁴ Ibid and 18 USC Ch. 113B. <https://www.law.cornell.edu/uscode/text/18/part-I/chapter-113B>.

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⁷ Ibid.

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¹¹ Ibid.

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²¹ Ibid.

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²³ Chesney, “Should We.”

²⁴ Ibid.

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²⁶ William Rosenau, *Tonight We Bombed the U.S. Capitol: The Explosive Story of M19, America’s First Female Terrorist Group*, (New York: Atria Books, 2019), 168 and Jeffrey A. Johnson, *The 1916 Preparedness Day Bombings: Anarchy and Terrorism in Progressive Era America*, (New York: Routledge, 2017), 124.

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²⁹ Ibid, 83.

³⁰ Ibid, 86.

³¹ Ibid.

³² Ibid, 87.

³³ Ibid, 87-90.

³⁴ Ibid, 88.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid, 112.

³⁹ Ibid, 112-113

⁴⁰ Ibid.

⁴¹ Ibid, 113.

⁴² Ibid, 113.

⁴³ Ibid, 113, and Office of Public Affairs, “Multiple White Supremacist Gang Members among 54 Defendants Charged in RICO Indictment,” Department of Justice, February 12, 2019. <https://www.justice.gov/opa/pr/multiple-white-supremacist-gang-members-among-54-defendants-charged-rico-indictment>.

⁴⁴ Reid and Valasik, “Gangs,” 113.
⁴⁵ Ibid, 21.
⁴⁶ Ibid.
⁴⁷ Ibid, 24.
⁴⁸ Ibid.
⁴⁹ Ibid, 38.
⁵⁰ Ibid, 39.
⁵¹ Ibid.
⁵² Ibid.
⁵³ Ibid, 35.
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