



July 27, 2023

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, DC 20528

Via electronic mail

RE: DHS's Use of "Domestic Violent Extremism" Negatively Impacts Civil Rights and Liberties

Dear Secretary Mayorkas:

The undersigned civil rights, civil liberties, and racial justice organizations write to express our deep concern about the Department of Homeland Security's (DHS's) "domestic violent extremism" label, standards for collecting and disseminating information to state and local law enforcement agencies, and the impacts this can have particularly on disparately surveilled and policed communities. Recent events in Atlanta make clear that lax DHS standards and intelligence practices have contributed to concerning arrests and prosecution of individuals associated with a movement to stop the construction of the Atlanta Public Safety Training Center ("Cop City" or "the Atlanta Training Center").

These events are the latest example of inadequate DHS protections for people's constitutional rights as they starkly illustrate the dangers of DHS's use of vague, overbroad, and stigmatizing terms like "domestic violent extremist" and "militant" to describe individuals who may be engaged in protected First Amendment activity. DHS policy effectively permits the monitoring, collection, and retention of a broad range of First Amendment-protected speech, association, and activity and risks contributing to violations of other constitutional rights.¹

Together, these failings have long contributed to wrongful federal surveillance and investigations of disparately policed Black, Brown, and Muslim communities, environmental activists, and immigrants. The risk of harm caused by DHS is exacerbated by the racially discriminatory and other systemic unconstitutional practices by state and local law enforcement agencies, as DOJ investigations have repeatedly shown.² We urge DHS to adopt more stringent standards for its collection and dissemination of information and ensure its intelligence products do not contribute to abuse by local and state authorities. We also urge DHS to provide full transparency and accountability regarding information it has shared with state and local law enforcement relating to individuals' activities connected to Cop City.

I. DHS's use of "domestic violent extremism" and policies permit the collection of unreliable information and risk violations of constitutional rights.

In implementing federal "domestic terrorism" policy in recent years, DHS and its intelligence personnel have used the term "domestic violent extremists" (DVE) to describe individuals in the United States who have committed minor offenses or expressed "grievances" online regarding governmental conduct.³ The term "DVE" is overly broad and lacks specific legal parameters and reliable factual and evidentiary thresholds.⁴ DHS has, for example, used this language in 2020 to describe individuals protesting police brutality and racial injustice after the killings of George Floyd and multiple other Black victims of police violence.⁵ DHS intelligence reports claimed that "DVEs" attempted to "exploit" protests,⁶ rhetoric that served to undermine

the movement for racial equality and justice. Recent DHS terrorism bulletins have also characterized the sharing of “narratives” (*i.e.*, people expressing political viewpoints online) as leading to domestic violent extremism.⁷

This troubling conduct is sanctioned by DHS policy. DHS’s Office of Intelligence and Analysis (I&A) permits its officials to collect information about people in the United States when they have a “reasonable belief” that the collection furthers one or more of DHS’s broad missions.⁸ This low standard can be satisfied by speculative or hearsay information, including from unreliable sources⁹ on social media,¹⁰ and I&A policies do not require officers to corroborate or document their justification for collecting information.¹¹ As a result, I&A collects vast amounts of information about people’s political expression and association.¹² For example, after the Supreme Court overturned *Roe v. Wade*, I&A monitored “social media reactions” and “reflections” of people discussing abortion online—core First Amendment-protected speech—without articulating any credible or valid justification.¹³

As federal courts have acknowledged, the government’s mere inquiry into an individual’s exercise of First Amendment rights can constitute an intrusion meriting stringent safeguards.¹⁴ DHS’s collection and retention of information containing First Amendment protected expression is a matter of grave concern that is compounded by DHS’s broad dissemination of this information to state and local law enforcement.

II. DHS’s dissemination of unreliable and potentially biased “domestic violent extremism” information to state and local law enforcement can contribute to constitutional violations.

Appropriately, DHS does not formally designate domestic groups as “terrorists” or “domestic violent extremists,”¹⁵ and similarly should not designate individuals with those labels; doing so would almost certainly run afoul of First Amendment protections. Even so, in its communications to state and local law enforcement, DHS regularly uses the term “domestic violent extremist” to describe U.S. groups.¹⁶ This practice has dire consequences and invites abuse. DHS transmits information to tens of thousands of state and local law enforcement officers, and DHS’s information is likely viewed as authoritative. By improperly using DVE-related language, DHS stigmatizes individuals engaged in First Amendment-protected protest and contributes to abusive and potentially unlawful state and local law enforcement activity.

Recent arrests and prosecutions related to the Atlanta Training Center offer a stark example. Between December 2022 and May 2023, Georgia authorities obtained at least 17 arrest warrants based on sworn affidavits describing Defend the Atlanta Forest (DTAF)—which opposes Cop City—as “a group classified by the United States Department of Homeland Security as Domestic Violent Extremists.”¹⁷ These affidavits—which targeted protesters, a legal observer, and three operators of a nonprofit bail fund—were incorrect: DHS has never classified or designated DTAF as a DVE group. Nevertheless, contemporaneous DHS communications appear to have lent the “classifications” in the affidavits some legitimacy. For instance, a December 2022 report disseminated by DHS’s Cybersecurity and Infrastructure Security Agency referred to opponents of Cop City as “militants” comprising a “violent far-left occupation”—language that is notably identical to how conservative activist Andy Ngo described them.¹⁸ Similarly, a bulletin disseminated by DHS on May 24, 2023, stated that “alleged DVEs in Georgia have cited anarchist violent extremism . . . to justify criminal activity.”¹⁹ While a small subset of the activities related to opposition to the construction of the Atlanta Training Center may have resulted in minor offenses, such as property damage, these type of offenses should be a local matter rather than a DHS issue.²⁰ Yet, DHS’s use of “domestic violent extremism” to describe groups opposed to Cop City is contributing to a false narrative that individuals engaged in lawful protest are a national security threat, thus risking heightened aggressive policing of protesters.

To date, more than 40 people have been arrested and charged under state law for “domestic terrorism” allegedly in connection with the Cop City protests.²¹ Their charges are controversial even among Georgia authorities: DeKalb County District Attorney Sherry Boston recently withdrew from all prosecutions of Cop City protesters within her jurisdiction, explaining that she disagreed with the Georgia Attorney General’s office (which continues to prosecute the cases) about “who should be charged and what they should be charged with.”²²

While we do not know the full scope of DHS’s communications relating to activities and groups opposing the construction of the Atlanta Training Center, these communications have plainly contributed to the controversial arrests and prosecutions of protesters and activists. DHS’s characterization of individuals and groups in opposition to Cop City as “violent,” “extremist,” and “part of a far-left occupation” has undermined DHS’s practice to not officially designate U.S. entities as “domestic terrorists” or “domestic violent extremists.”

III. DHS must take measures to protect protesters’ and activists’ constitutional rights and ensure that its activities do not contribute to law enforcement abuses.

To address the above concerns, we urge DHS to:

1. Provide full transparency and accountability for information it has collected and disseminated to Georgia state and local law enforcement regarding individuals opposing the Atlanta Training Center, including:
 - a. Publicly disclosing all information and DHS intelligence or situational awareness reports that DHS provided to Georgia state and local law enforcement, as well as the House Homeland Security Committee and the Senate Committee on Homeland Security and Governmental Affairs;
 - b. Withdrawing all DHS bulletins and products related to activists expressing opposition to the Atlanta Public Safety Training Center; and
 - c. Requesting the Office of the Inspector General to initiate an investigation into DHS’s collection and dissemination of DHS reports construing activists in Georgia as domestic violent extremists;
2. Review and revise its policies, standards, and procedures in consultation with the DHS Privacy Office, the DHS Office of Civil Rights and Civil Liberties, the DOJ Civil Rights Division, and civil rights and community groups to ensure the protection of constitutional rights, including:
 - a. The definition and application of the “domestic violent extremism” label;
 - b. Requiring the corroboration, verification, and documentation of information used and disseminated in DHS intelligence products; ceasing all suspicionless monitoring of social media activity given its broad intrusion on First Amendment protected speech and association, and establishing a credible, independent mechanism to oversee DHS intelligence programs;
 - c. Creating meaningful and effective protections for speech, association, and activities protected by the First Amendment; and
 - d. Ensuring respect for and guarantee of people’s Fourth, Fourteenth, and other constitutional rights that may be impacted by the use of “domestic violent extremism” and collection and dissemination of DHS information.

We would appreciate an opportunity to meet with you or your staff to discuss the concerns and recommendations outlined in this letter. Please do not hesitate to contact Puneet Cheema,

Manager of the Justice in Public Safety Project at NAACP LDF, at pcheema@naacpldf.org, Hina Shamsi, Director of the National Security Project at ACLU, at hshamsi@aclu.org, Faiza Patel, Senior Director of the Liberty and National Security Program at the Brennan Center for Justice, at PatelF@brennan.law.nyu.edu, and Emily Early, Associate Director of the Southern Regional Office at Center for Constitutional Rights, at early@ccrjustice.org, with any questions or concerns.

Sincerely,
NAACP Legal Defense and Educational Fund, Inc.
American Civil Liberties Union
Brennan Center for Justice
Center for Constitutional Rights

cc:

The Honorable Merrick B. Garland, Attorney General of the United States
The Honorable Vanita Gupta, Associate Attorney General of the United States
The Honorable Avril Haines, Director of National Intelligence
The Honorable Gary Peters, Chairman, U.S. Senate Committee on Homeland Security & Governmental Affairs
The Honorable Bennie G. Thompson, Ranking Member, House Committee on Homeland Security

¹ See, e.g., Spencer Reynolds & Faiza Patel, *A New Vision for Domestic Intelligence: Fixing Overbroad Mandates and Flimsy Safeguards*, Brennan Ctr. for Just. 5, 7 (Mar. 30, 2023); Amended Complaint at 4, ¶ 5, *Black Millennial Movement v. Trump*, No. 3:20-cv-01464 (D. Or. Jan. 8, 2021), ECF No. 18 (“Defendants’ [DONALD J. TRUMP, in his official capacity; CHAD F. WOLF, in his individual and official capacity; GABRIEL RUSSELL, in his individual and official capacity; JOHN DOES 1-200, in their individual capacities; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; and UNITED STATES MARSHALS SERVICE] conduct and “Operation Diligent Valor” reflect Defendants’ broader policy of violating Plaintiffs’ First and Fourth Amendment rights through the use of excessive force and illegal detentions.”)

² See, e.g., U.S. Dep’t of Just., Civ. Rts. Div. & U.S. Att’y’s Off. of W.D. Ky. Civ. Div., *Investigation of the Louisville Metro Police Department and Louisville Metro Government* (Mar. 2023), www.justice.gov/crt/case-document/file/1572951/download (Louisville Metro Police Department “engages in racially disparate enforcement that harms Black people”); U.S. Dep’t of Just., Civ. Rts. Div. & U.S. Att’y’s Off. D. Minn. Civ. Div., *Investigation of the City of Minneapolis and the Minneapolis Police Department* (June 2023), www.justice.gov/opa/press-release/file/1587661/download (Minneapolis Police Department “unlawfully discriminates against Black and Native American People when enforcing the law”); Mylan Denerstein, *Nineteenth Report of the Independent Monitor, Monitor’s Audit of the Neighborhood Safety Teams* (June 2023), filed in *Davis v. New York City*, No. 1:10-cv-00699-AT (June 5, 2023), ECF No. 642-1, www.legalaidnyc.org/wp-content/uploads/2023/06/Monitors-report.pdf (Reporting that based on the stop reports of Neighborhood Safety Teams in the NYPD, “more than 97% of the people encountered were Black or Hispanic”); George Joseph & Murtaza Hussain, *FBI tracked An Activist Involved with Black Lives Matter As They Travelled Across the US, Documents Show*, Intercept (Mar. 19, 2018, 11:29 AM), www.theintercept.com/2018/03/19/black-lives-matter-fbi-surveillance/.

³ See, e.g., U.S. Dep’t of Homeland Sec., Nat’l Terrorism Advisory Bulletin, *Summary of the Terrorism Threat to the United States* (June 7, 2022) [hereinafter “NTAS June 7, 2022 Bulletin”], www.dhs.gov/sites/default/files/ntas/alerts/22_0607_S1_NTAS-Bulletin_508.pdf (“Some domestic violent

extremists have expressed grievances related to their perception that the U.S. government is unwilling or unable to secure the U.S.-Mexico border...); U.S. Dep't of Homeland Sec., (*U//FOUO*) *Ongoing Violence, Information Narratives Nationwide Poses Continued Threat to Law Enforcement* 1 (May 30, 2020) (Unclassified) [hereinafter "DHS Intelligence May 2020 Note"], <https://info.publicintelligence.net/DHS-OngoingViolenceThreatLawEnforcement.pdf> ("Since 2017, domestic violent extremists (DVEs) have conducted reprisal attacks against law enforcement officers following incidents of officer-involved shootings, which could inspire others to attempt similar acts."); FBI & U.S. Dep't of Homeland Sec., *Strategic Intelligence Assessment and Data on Domestic Terrorism*, Appendix A (Oct. 2022) (Unclassified) [hereinafter "FBI & DHS October 2022 Report"], https://www.dni.gov/files/NCTC/documents/news_documents/2022_10_FBI-DHS_Strategic_Intelligence_Assessment_and_Data_on_Domestic_Terrorism.pdf ("Significant Domestic Terrorism Incidents in the United States from 2020 and 2021").

⁴ FBI & DHS October 2022 Report, *supra* note 3, at 4. ("A 'domestic violent extremist' (DVE) is defined as an individual based and operating primarily within the United States or its territories without direction or inspiration from a foreign terrorist group or other foreign power who seeks to further political or social goals, wholly or in part, through unlawful acts of force or violence dangerous to human life.")

⁵ Dell Cameron, *Homeland Security Admits It Tried to Manufacture Fake Terrorists for Trump*, Yahoo! (Nov. 5, 2022), <https://www.yahoo.com/video/homeland-security-admits-tried-manufacture-114500599.html>; *see, e.g.*, Production of Internal Reports, U.S. Dep't of Homeland Sec. 16 – 23 (June 2023 – July 2023), <https://www.citizensforethics.org/wp-content/uploads/2022/01/2021.08.13-Responsive-Records-2021-HQLI-00009-20-cv-02553-TJK.pdf>; U.S. Dep't of Homeland Sec., (*U//FOUO*) *Ongoing Violence, Information Narratives Nationwide Poses Continued Threat to Law Enforcement* (May 30, 2023) (Unclassified), <https://www.documentcloud.org/documents/6981476-May-30-2020-DHS-Report-on-Floyd-Protests.html> (Report on George Floyd protests).

⁶ U.S. Dep't of Homeland Sec., *Homeland Threat Assessment* 17–19 (Oct. 2020), https://www.dhs.gov/sites/default/files/publications/2020_10_06_homeland-threat-assessment.pdf ("Violent extremists will continue their efforts to exploit public fears associated with COVID-19 and social grievances driving lawful protests to incite violence, intimidate targets, and promote their violent extremist ideologies. . . . Other racially or ethnically motivated violent extremists could seek to exploit concerns about social injustice issues to incite violence and exploit otherwise peaceful protests movements.")

⁷ NTAS June 7, 2022 Bulletin, *supra* note 3, at 1 ("The continued proliferation of false or misleading narratives regarding current events could reinforce existing personal grievances or ideologies, and in combination with other factors, could inspire individuals to mobilize to violence."); Faiza Patel & Spencer Reynolds, *Oversight Reports Raise Questions About Value of DHS Counterterrorism Efforts*, Just Security (Aug. 17, 2022), www.justsecurity.org/82635/oversight-reports-raise-questions-about-value-of-dhs-counterterrorism-efforts/ ("Recent NTAS dispatches have focused on what DHS calls false or harmful 'narratives' and 'conspiracy theories' that it believes will lead to violence.")

⁸ U.S. Dep't of Homeland Sec., Off. of Intelligence & Analysis, *Office of Intelligence and Analysis Intelligence Oversight Program and Guidelines* 3 (Jan. 19, 2017) (Unclassified) [hereinafter "*Intelligence Oversight 2017 Program and Guidelines*"] ("I&A personnel are authorized to engage in intelligence activities where they have a reasonable belief that the activity supports one or more of the national or departmental missions listed below." Departmental missions include "[t]hreats to critical infrastructure and key resources" and "[s]ignificant threats to the Nation's . . . public safety . . ." (emphasis in original) <https://www.dhs.gov/sites/default/files/publications/office-of-intelligence-and-analysis-intelligence-oversight-program-and-guidelines.pdf>).

⁹ *See id.* at Glossary-5 (defining "reasonable belief" as "[a] belief based on facts and circumstances such that a reasonable person would hold that belief. A reasonable belief must rest on facts and circumstances that can be articulated; 'hunches' or intuitions are not sufficient. A reasonable belief can be based on experience, training, and knowledge as applied to particular facts and circumstances, and a trained and experienced intelligence professional can hold a reasonable belief that is sufficient to satisfy these criteria when someone lacking such training or experience would not hold such a belief"; *Examining the January 6 Attack on the U.S. Capitol: Hearing Before the United States Senate Comm. on Homeland Security and Governmental Affs. and Comm. on Rules and Administration*, 3 (Mar. 3, 2021) (Testimony of Melissa Smislova, Acting Under Sec'y Off. of Intelligence & Analysis, U.S. Dep't of Homeland Sec.), <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/Testimony-Smislova-2021-03-03.pdf> ("We are also mindful that actual intent to carry out violence can be difficult to discern from the angry, hyperbolic – and constitutionally protected – speech and information commonly found on social media and other online platforms."); Memorandum from Joseph V. Cuffari, Inspector Gen. to Hon. Kenneth Wainstein, Sec'y Off. of Intelligence & Analysis 11 (July 6, 2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-07/OIG-22-50-July22.pdf> (I&A "staff said they struggle with determining whether a statement is hyperbole or reportable as an actual threat.")

¹⁰ *But see Intelligence Oversight 2017 Program and Guidelines*, *supra* note 8, at 6 (specifying “I&A personnel are only authorized to (1) use overt collection methods or (2) to collect information from publicly available sources.”; Reynolds & Faiza Patel, *supra* note 1, at 1, 6.

¹¹ *See* Reynolds & Patel, *supra* note 1, at 1, 6.

¹² *Id.* at 5-6; Spencer Reynolds, *DHS Intelligence Rearranges the Deck Chairs – Again*, Just Security (May 10, 2023), <https://www.justsecurity.org/86524/dhs-intelligence-rearranges-the-deck-chairs-again/>.

¹³ Jana Winter, *DHS monitored ‘social media reactions’ to Roe, collected legally protected speech, bulletin shows*, Yahoo! News (Nov. 16, 2022), <https://news.yahoo.com/dhs-monitored-social-media-reactions-to-roe-collected-legally-protected-speech-bulletin-shows-001254616.html>.

¹⁴ *See, e.g., Albright v. United States*, 631 F.2d 915, 919 (D.C. Cir. 1980) (“Similarly, although not expressly provided for in the Constitution, courts have long recognized that ‘the First Amendment has a penumbra where privacy is protected from governmental intrusion.’ This penumbra of privacy can be invaded, under certain circumstances, by the mere inquiry of government into an individual’s exercise of First Amendment rights. Thus[,] it is not surprising that Congress would have provided in this Act, dedicated to the protection of privacy, that an agency may not so much as collect information about an individual’s exercise of First Amendment rights except under very circumscribed conditions.”) (internal citations omitted).

¹⁵ *See* Kate Brumbuck, *Bond granted for 3 activists whose fund bailed out people protesting Atlanta ‘Cop City’ project*, AP News (June 2, 2023, 4:17 PM), <https://apnews.com/article/police-training-center-arrests-cop-city-1468a138ed4b17ed394e4b1e4fe202fe>; Tia Mitchell, *Feds: ‘No ‘violent extremist’ label on Defend the Atlanta Forest Group*, Atl. J.-Const. (June 7, 2023), <https://www.ajc.com/politics/arrest-of-activists-references-homeland-security-flag-that-doesnt-exist/3P3DA7SM4FA77FTU6HLRRHD22Y/>.

¹⁶ *See, e.g., U.S. Dep’t of Homeland Sec., Summary of Terrorism-Related Threat to the United States* (May 24, 2023, 2:00 PM), <https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-may-24-2023>; *See, e.g., NTAS June 7, 2022 Bulletin*, *supra* note 3, at 1–2. (“Some domestic violent extremists have expressed grievances related to their perception that the U.S. government is unwilling or unable to secure the U.S.-Mexico border”); DHS Intelligence May 2020 Note, *supra* note 3, at 1 (“Since 2017, domestic violent extremists (DVEs) have conducted reprisal attacks against law enforcement officers following incidents of officer-involved shootings, which could inspire others to attempt similar acts.”).

¹⁷ *See* Affidavit of SA Ryan Long, State Warrant and Mittimus-Georgia, DeKalb Cnty. (Do293186) (Dec. 15, 2022), https://s3.documentcloud.org/documents/23463024/domestic_terrorism_warrants.pdf#page=5; Alleen Brown, *Documents show how 19 ‘Cop City’ activists got charged with terrorism*, Grist (Jan. 27, 2023), <https://grist.org/protest/atlanta-cop-city-terrorism/>; *see also* Warrants for three Atlanta Solidarity Fund (the nonprofit bail fund) staff members (on file with LDF); *See* Kate Brumbuck, *supra* note 15.

¹⁸ Ken Klippenstein, *DHS Intel Report on Cop City Protesters Cribbed Far-Right Activist Andy NGO*, Intercept (updated June 6, 2023), <https://theintercept.com/2023/06/05/dhs-cop-city-andy-ngo/>.

¹⁹ U.S. Dep’t of Homeland Sec., *supra* note 16.

²⁰ *Id.*

²¹ Closer Look Staff, WABE News, *DeKalb DA withdraws from all cases against ‘Cop City’ protesters, state AG charges still stand*, WABE (June 23, 2023, 4:15 PM), <https://www.wabe.org/breaking-dekalb-da-withdraws-from-all-cases-against-cop-city-protesters-state-ag-charges-still-stand/> (“DeKalb County District Attorney Sherry Boston announced Friday that her office is withdrawing from all cases related to the Atlanta Public Safety Training Center that opponents have dubbed ‘Cop City.’ This includes domestic terrorism and related charges for approximately 42 people arrested during demonstrations against the center.”); Odette Yousef, *Rights groups are alarmed over domestic terrorist charges in ‘Cop City’ protests*, NPR (June 28, 2023, 5:06 AM ET), <https://www.npr.org/2023/06/28/1184726273/rights-groups-are-alarmed-over-domestic-terrorist-charges-in-cop-city-protests> (“There may be signs that the prosecution is now struggling with how to charge Cop City defendants. So far, none of the 42 accused of domestic terrorism has been indicted.”)

²² Closer Look Staff, *supra* note 21 (quoting Boston as saying, “We had some differences . . . about who should be charged and what they should be charged with.”).