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Discord and the Pentagon's Watchdog: Countering Extremism in the U.S. Military

Amy Gaudion

Penn State Dickinson Law, acg14@psu.edu

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Discord and the Pentagon's Watchdog: Countering Extremism in the U.S. Military

AMY C. GAUDION*

In his 2022 book, Ward Farnsworth crafts a metaphor from the lead-pipe theory for the fall of Rome to consider how rage and misinformation traveling through today's technology-enabled pipes are poisoning our civic engagement and threatening our governmental structures: "We have built networks for the delivery of information—the internet, and especially social media. These networks too, are a marvel. But they also carry a kind of poison with them. The mind fed from those sources learns to subsist happily on quick reactions, easy certainties, one-liners, and rage."¹ This Article carries the metaphor into a new context and considers what should be done when the poison being transported through the digital pipes is directed at members of the U.S. military. While extremism in the U.S. military is not a new threat, the events of January 6, 2021, brought the threat into much sharper focus. It exposed three preexisting trends, each sitting in plain sight but not yet woven together. These trends include a growing acceptance of extremist views and ideologies in U.S. military and veteran communities, an increase in violent extremist acts committed by individuals with military backgrounds, and the enhanced use of digital platforms by extremist groups to target their messaging to and strengthen their recruitment of individuals with military experience. To return to the metaphor, the extremist poison is teeming through the pipes at an alarming rate, and the number of pipes has increased to include social media platforms, encrypted chat tools, gaming platforms, podcasts, and music streaming apps, including YouTube, Discord, Gab, Telegram, and WhatsApp, among many others. In offering these observations, the author is mindful of not overstating the threat and takes seriously warnings as to the adverse consequences that follow from hyperbole and exaggeration. Indeed, a fundamental difficulty is the lack of understanding as to scope and scale of the extremism threat in the U.S. military. This Article attempts to draw the contours of that threat, exposes the structural and legal obstacles that make countering extremism in the military such a fraught exercise, and identifies actors, tools, and mechanisms—beyond the

* Associate Professor of Law, Penn State Dickinson Law. For insightful and instructive conversations and feedback on earlier iterations of this project, the author is grateful to Margaret Hu, Asaf Lubin, and the participants of the 2023 National Conference of Constitutional Law Scholars at the University of Arizona James E. Rogers College of Law, the 2024 National Security Conference on Data & Democracy: AI, Cyber Defense, & National Security at William & Mary Law School, and the 2024 *Indiana Law Journal's* symposium on Law & Technology at the Crossroads at the Indiana University Maurer School of Law. This Article benefitted from the excellent research assistance of Rebecka Bronkema, Jeremy Garica, and Maria Germanetti. The author also would like to thank Allyson McBride, Alivia Benedict, and the other members of the *Indiana Law Journal* for their terrific work as they skillfully navigated the piece through the editorial process while allowing for updates to reflect recent events and ongoing developments. This Article reflects developments through May 2025, when it was finalized for publication.

1. WARD FARNSWORTH, *THE SOCRATIC METHOD: A PRACTITIONER'S HANDBOOK* 3 (2021).

conventional options—able to overcome these long-standing structural and institutional obstacles.

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INTRODUCTION

In his 2022 book, Ward Farnsworth crafts a metaphor from the lead-pipe theory for the fall of Rome to consider how rage and misinformation traveling through today's technology-enabled pipes are poisoning our civic engagement and threatening our governmental structures: "We have built networks for the delivery of information—the internet, and especially social media. These networks too, are a marvel. But they also carry a kind of poison with them. The mind fed from those sources learns to subsist happily on quick reactions, easy certainties, one-liners, and rage."² This Article carries the metaphor into a new context and considers what should be done when the poison being transported through the digital pipes includes extremist ideologies directed at members of the U.S. military and veterans.

January 6, 2021, brought the threat of extremism in the U.S. military into sharp relief. One of the images from that day shows a group of men "walking up the Capitol

2. *Id.* Farnsworth fully acknowledges the disputed nature of the lead-pipe theory as the cause of Rome's fall; nonetheless he finds it a compelling comparison for studying the ills stemming from reliance on today's "internet pipes." *Id.*

steps in a line, each holding onto the back of the man in front of him”—a military tactic “used in areas of restrictive terrain, under conditions of low visibility, or when a rifle team is unlikely to come under enemy fire.”³ Journalists Michael Biesecker, Jake Bleiberg, and James Laporta observed that it was “instantly recognizable to any U.S. soldier or Marine who served in Iraq or Afghanistan” and presented a “a chilling sign that the vanguard of the mob that stormed the seat of American democracy either had military training or were trained by those who did.”⁴ The visceral response to images from that day was followed by documentation in the press, government publications, and academic research that a small yet significant number of the individuals who participated in the breach of the U.S. Capitol were members of the U.S. military or veterans.⁵ Of the 1,561 individuals charged with crimes connected to January 6, at least 231 of them (approximately 14.8 percent) have U.S. military backgrounds.⁶ Subsequent research has indicated that a small number of the

3. Abigail R. Hall, Jerod T. Hassell & Chivon H. Fitch, *Militarized Extremism*, 26 INDEP. REV. 225, 225 (2021) (citing Michael Biesecker, Jake Bleiberg & James Laporta, *Capitol Rioters Included Highly Trained Ex-Military and Cops*, AP NEWS (Jan. 15, 2021, 6:59 PM), <https://apnews.com/article/ex-military-cops-us-capitol-riot-a1cb17201dfddc98291e5badc257> [<https://perma.cc/UXG2-DFNA>]).

4. Biesecker, Bleiberg & Laporta, *supra* note 3.

5. See, e.g., Tom Dreisbach & Meg Anderson, *Nearly 1 in 5 Defendants in Capitol Riot Cases Served in the Military*, NPR (Jan. 21, 2021, 3:01 PM), <https://www.npr.org/2021/01/21/958915267/nearly-one-in-five-defendants-in-capitol-riot-cases-served-in-the-military> [<https://perma.cc/S5E3-37YR>] (describing analysis in two weeks following the breach that “nearly 1 in 5 people charged over their alleged involvement in the attack on the U.S. Capitol appear to have a military history”); Memorandum from Sec’y of Def. to Senior Pentagon Leadership, Defense Agency and DoD Field Activity Directors, *Stand Down to Address Extremism in the Ranks* (Feb. 5, 2021) (stating that the DoD “will not tolerate actions that go against the fundamental principles of the oath we share, including actions associated with extremist or dissident ideologies,” and directing a one-day “stand down” in response to involvement of individuals with military backgrounds in the January 6, 2021, breach of the U.S. Capitol); JONATHAN M. GAFFNEY & KRISTY N. KAMARCK, CONG. RSCH. SERV., IF11762, *VETERAN INVOLVEMENT IN THE U.S. CAPITOL BREACH: POSSIBLE EFFECTS ON VA BENEFITS* (Feb. 16, 2021) [hereinafter GAFFNEY & KAMARCK, IF11762] (“According to some media reports’ analysis of the Department of Justice’s list of individuals charged, approximately 20% of those involved in the disturbances at the U.S. Capitol have served or are currently serving in the U.S. military.”); MICHAEL A. JENSEN, SHEEHAN KANE, SEAN DOODY & ELENA AKERS, NAT’L CONSORTIUM FOR THE STUDY OF TERRORISM AND RESPONSES TO TERRORISM (START), *RADICALIZATION IN THE RANKS: AN ASSESSMENT OF THE SCOPE AND NATURE OF CRIMINAL EXTREMISM IN THE UNITED STATES MILITARY 15–16* (Dec. 2024) [hereinafter JENSEN, KANE, DOODY & AKERS (START), *RADICALIZATION IN THE RANKS*] (analyzing individuals with U.S. military backgrounds identified as participants in the January 6, 2021, breach of U.S. Capitol, including their branch affiliations and military status); ROBERT A. PAPE, *AMERICAN FACE OF INSURRECTION: ANALYSIS OF INDIVIDUALS CHARGED FOR STORMING THE U.S. CAPITOL ON JANUARY 6, 2021*, CHI. PROJECT ON SEC. & THREATS (CPOST) 11 (Jan. 5, 2022) (finding that 15% of individuals charged had “some military experience”).

6. JENSEN, KANE, DOODY & AKERS (START), *RADICALIZATION IN THE RANKS*, *supra* note 5, at 15–16 (“Through 2023, 231 individuals with U.S. military backgrounds were identified as participants in the Capitol breach of January 6, 2021. . . . Subjects with U.S. military backgrounds represent 14.8 percent of the 1,561 individuals who have faced, or are

servicemembers and veterans that participated in the breach of the Capitol expressed support for extremist ideologies and/or were affiliated with extremist groups.⁷ While

facing, charges for the siege of the Capitol building and related events, which is slightly higher but comparable to overall rates of military service among the broader set of criminal extremists that were reviewed for this study.”). More recent reports put the percentage at 18 percent. Michelle R. Smith & Jason Dearen, *AP Finds that a Pentagon-Funded Study on Extremism in the Military Relied on Old Data*, AP NEWS (Nov. 26, 2024), <https://www.ap.org/news-highlights/spotlights/2024/ap-finds-that-a-pentagon-funded-study-on-extremism-in-the-military-relied-on-old-data/> [https://perma.cc/R72B-QJCP].

On January 20, 2025, President Donald Trump signed an executive order that commuted the sentences of the following individuals convicted of offenses related to events that occurred at or near the United States Capitol on January 6, 2021, to time served as of January 20, 2025: Stewart Rhodes, Kelly Meggs, Kenneth Harrelson, Thomas Caldwell, Jessica Watkins, Roberto Minuta, Edward Vallejo, David Moerschel, Joseph Hackett, Ethan Nordean, Joseph Biggs, Zachary Rehl, Dominic Pezzola, and Jeremy Bertino. Proclamation No. 10887 (Granting Pardons and Commutation of Sentences for Certain Offenses Relating to the Events at or Near the United States Capitol on January 6, 2021), 90 Fed. Reg. 8331 (Jan. 20, 2025). In the same proclamation, the President granted “a full, complete and unconditional pardon to all other individuals convicted of offenses related to events that occurred at or near the United States Capitol on January 6, 2021.” *Id.* At the time of the proclamation, there had been 1,583 arrests relating to alleged criminal activities on January 6, 2021. Roger Parloff, *The High-Water Mark of the Jan. 6 Prosecutions*, LAWFARE (Jan. 6, 2025, 9:49 AM), <https://www.lawfaremedia.org/article/the-high-water-mark-of-the-jan.-6-prosecutions> [https://perma.cc/U9SR-MLJQ]. Of those arrested, 1,270 individuals, 80 percent, were already convicted. *Id.*

7. See JENSEN, KANE, DOODY & AKERS (START), *RADICALIZATION IN THE RANKS*, *supra* note 5, at 16 (explaining that “most (68%) of the individuals who have been charged with breaching the Capitol are not members of organized extremist groups or followers of named extremist movements” but finding that “Capitol defendants with U.S. military backgrounds include individuals who are tied to antigovernment, white supremacist, and conspiracy theory groups,” including “26 members of the Proud Boys, 22 individuals who expressed support for the QAnon conspiracy theory, and 21 members of the Oath Keepers”); Hall, Hassell & Fitch, *supra* note 3, at 226 (identifying January 6 arrestees with military experience and extremist group affiliation and stating “[p]erhaps more concerning than the presence of so many military members among the rioters was how many of them are also known far-right extremists (FREs) or members of far-right extremist groups (FREGs)”). See generally Robert A. Pape, Keven G. Ruby, Kyle D. Larson & Kentaro Nakamura, *Understanding the Impact of Military Service on Support for the Insurrection in the United States*, 69 J. CONFLICT RESOLUTION 599 (2024).

Following the events of January 6, 2021, the Department of Defense commissioned a comprehensive report to be produced by the Institute for Defense Analyses to examine the military’s history with extremism, to assess current levels of extremism within the military, and to make recommendations. PETER K. LEVINE, JOSEPH F. ADAMS, AMY A. ALRICH, RACHEL G. AUGUSTINE, MARGARET D.M. BARBER, SUJEETA B. BHATT, KATHLEEN M. CONLEY, DAVE I. COTTING, ALAN B. GELDER, JEFFERY M. JAWORSKI, MARK F. KAYE, CARRINGTON A. METTS, NEIL V. MITHAL & MATTHEW J. REED, INST. FOR DEF. ANALYSES, *PROHIBITED EXTREMIST ACTIVITIES IN THE U.S. DEPARTMENT OF DEFENSE* (Dec. 2023) [hereinafter IDA REPORT (2023)]. The report’s background and definition sections are comprehensive and well-sourced; however, the report’s findings and recommendations relating to current extremism levels in the U.S. military were criticized for relying on old data when newer data was available and ignoring evidence that contradicted its conclusions. Will Carless, *Pentagon Study on Military*

not the first or only instance of extremist conduct by members of the military, January 6 has become a temporal marker because it exposed three preexisting trends, each one sitting in plain sight but not yet woven together. These trends include a growing acceptance of extremist views and ideologies in U.S. military and veteran communities, an increase in violent extremist acts committed by individuals with military backgrounds, and the enhanced use of digital platforms by extremist groups to target their messaging to and strengthen their recruitment of individuals with military experience.⁸

Extremism Used Old Data to Downplay Problem: Report, USA TODAY (Nov. 30, 2024, 5:41 AM), <https://www.usatoday.com/story/news/investigations/2024/11/30/pentagon-extremism-study-on-armed-forces-used-old-flawed-data/76660681007/> [<https://perma.cc/GBH8-2TFU>]; Smith & Dearen, *supra* note 6. In response, IDA issued a clarification as to the dates of its field work, and included the following explanation and attestation of its work: “IDA remains confident that the findings of its report, including findings with regard to the prevalence of violent extremism in the Department of Defense, were solidly based on the best data available at the time the work was conducted, between June 2021 and March 2022.” INST. FOR DEF. ANALYSES, CLARIFICATION REGARDING REPORT ON ‘PROHIBITED EXTREMIST ACTIVITIES IN THE U.S. DEPARTMENT OF DEFENSE’ (2024) <https://www.ida.org/-/media/documents/2024/ida-clarification-regarding-extremism-report.ashx> [<https://perma.cc/MND2-EEY8>]. This Article references the report’s background and definitions sections, however, it does not include references to the report’s substantive findings or recommendations.

8. In offering these observations, the author is mindful of not overstating the military’s extremism threat and takes seriously warnings as to the adverse consequences that follow hyperbole and exaggeration. *See, e.g.*, Charles J. Dunlap, *On “The Alt-Right Movement and US National Security” and Authors’ Response*, 52 *PARAMETERS* 181, 184 (2022) (“Exaggerating the problem beyond what the data show, however, dangerously erodes public confidence in the armed forces, diminishes the propensity of minorities to join, and gives succor to America’s enemies around the world.”). Indeed, one of the fundamental hurdles is a lack of understanding as to scope and scale of the extremism threat in the U.S. military: “is this a real problem, or isn’t it? And if it is, then what are we supposed to do about it?” Carrie Cordero, *Keynote Speech: “Protecting the Protectors: Preventing and Mitigating Domestic Violent Extremism in the Military, Veterans and Law Enforcement Communities”*, CTR. NEW AM. SEC. (Oct. 15, 2022), <https://www.cnas.org/publications/commentary/carrie-cordero-keynote-speech-protecting-the-protectors-preventing-and-mitigating-domestic-violent-extremism-in-the-military-veterans-and-law-enforcement-communities> [<https://perma.cc/GAZ6-BHR9>]. This Article attempts to answer these questions and to suggest an entity capable of addressing the threat in a calibrated and appropriate manner.

Section I.B explores the persistence of extremism in the U.S. military, including recent upticks in the acceptance of extremist ideologies in military and veteran communities and recent increases in violent extremist acts committed by individuals with military backgrounds. *See infra* Section I.B; *see also* Leo Shane, *Signs of White Supremacy, Extremism Up Again in Poll of Active-Duty Troops*, MIL. TIMES (Feb. 6, 2020), <https://www.militarytimes.com/news/pentagon-congress/2020/02/06/signs-of-white-supremacy-extremism-up-again-in-poll-of-active-duty-troops/> [<https://perma.cc/HZ47-KH8R>] (“More than one-third of all active-duty troops and more than half of minority service members say they have personally witnessed examples of white nationalism or ideological-driven racism within the ranks in recent months”); CARRIE CORDERO, KATHERINE L. KUZMINSKI, ARONA BAIGAL & JOSH CAMPBELL, *PROTECTING THE PROTECTORS: PREVENTING AND MITIGATING DOMESTIC VIOLENT EXTREMISM IN THE MILITARY, VETERAN, AND LAW ENFORCEMENT COMMUNITIES*, CTR. FOR NEW AM. SEC. 3–4 (Dec. 2022) [hereinafter CORDERO,

Extremism is a complicated term that defies easy definition. It can encompass thoughts, beliefs, or actions, and is often loosely grouped with terrorism. It is context-dependent, so the ideologies and conduct “considered to be extremist are highly subjective and depend on a number of factors, including the nature of the political system, prevailing political culture, system of values, ideology, personal characteristics, experiences, and ethnocentrism.”⁹ There is significant definitional variety between academic fields, between academics and government officials, and even within the U.S. government, there is variation among different agencies.¹⁰ The

KUZMINSKI, BAIGAL & CAMPBELL, PROTECTING THE PROTECTORS] (listing instances of violent extremist acts by individuals with military experience to “highlight that perpetrators of domestic violent extremism have had connections to the military community long before January 6, 2021”); Catrina Doxsee & Michelle Macander, *Assessing the Pentagon’s Progress on Countering Extremism in the Military*, CTR. FOR STRATEGIC & INT’L STUD. (Apr. 8, 2022), <https://bit.ly/3jfG9iE> [<https://perma.cc/S6X4-BTFN>] (“[R]ecent voluntary surveys conducted by the *Military Times* indicate that the percentage of active-duty service members who have witnessed examples of white nationalism and racist ideologies has increased in recent years, with 36 percent of respondents affirming that they had witnessed such behavior in 2019, compared to 22 percent the previous year.”).

Section I.C examines the growing use of digital platforms and other social media tools by extremist groups to amplify their ideologies and to recruit individuals with military experience. *See infra* Section II.C; *see also* CORDERO, KUZMINSKI, BAIGAL & CAMPBELL, PROTECTING THE PROTECTORS, *supra*, at 23 n.51 (“Online engagement—posts, likes and retweets—is where those who may engage in domestic violent extremism may show early signs of their intent to do so.”); John M. Donnelly, *Pentagon Report Reveals Inroads White Supremacists Have Made in Military*, ROLL CALL (Feb. 16, 2021, 12:16 PM), <https://rollcall.com/2021/02/16/pentagon-report-reveals-inroads-white-supremacists-have-made-in-military/> [<https://perma.cc/EX6R-PHYA>] (describing statement made by Florida National Guard member that “he felt free to be a neo-Nazi in the U.S. Army” during chat with fellow white supremacists in the extremist “Iron March” online forum); U.S. GOV’T ACCOUNTABILITY OFF., GAO-24-106262, COUNTERING VIOLENT EXTREMISM: FBI AND DHS NEED STRATEGIES AND GOALS FOR SHARING THREAT INFORMATION WITH SOCIAL MEDIA AND GAMING COMPANIES 15 (Jan. 2024) [hereinafter GAO-24-106262, COUNTERING VIOLENT EXTREMISM (2024)] (concluding that “violent extremists use platforms with less restrictive policies to build a culture and narrative around their worldview that can draw in users looking for an identity and a community”).

9. IDA REPORT (2023), *supra* note 7, at 39. Extremism is a relative term; it “requires the definition of the norm and the assertion that someone’s views deviate from the norm.” Dakota Foster & Kai Wiggins, *What Extremism Means to the Federal Government*, LAWFARE (May 2, 2022, 9:01 AM). “[S]ocial and behavioral scientists have historically defined the term in reference to cultural norms and prevailing societal values—but what happens when society is deeply divided, and cultural norms appear to be either changing or in dispute?” IDA REPORT (2023), *supra* note 7, at 48. Extremism is “in the eye of the beholder . . . what may appear ‘extreme’ to a person with one set of political or ideological beliefs may appear perfectly normal to a person of opposing beliefs.” *Id.*

10. IDA REPORT (2023), *supra* note 7, at 39, 47 (comparing definitions of extremism and associated terms by different academic and governmental entities); Michael K. Logan, Clara Braun & Seamus Hughes, *Comparing Significant Acts of Anti-Government Violent Extremism: A Research Note*, 20 HOMELAND SEC. AFFS., Nov. 2024, www.hsaj.org/articles23020 [<https://perma.cc/V8HU-9VFJ>]; Foster & Wiggins, *supra* note 9 (explaining why difficulties in defining extremism “make it challenging to develop federal

challenges that stem from this variation and lack of consistency will be considered more fully below, but are exemplified by looking at the term's varied use and meaning in several federal government entities. Federal law enforcement entities focus on conduct and actions that include an "aspect of violence" and are less focused on the underlying extremist ideology.¹¹ For example, the FBI and the Department of Homeland Security (DHS) use the term Domestic Violent Extremist (DVE) to mean:

[A]n 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. The mere advocacy of political or social positions, political activism, use of strong rhetoric, or generalized philosophic embrace of violent tactics alone does not constitute violent extremism and may be constitutionally protected. DVEs can fit within one or multiple categories of ideological motivation and can span a broad range of groups or movements.¹²

DVEs may be further divided into the following categories: Racially or Ethnically Motivated Violent Extremists (RMVEs);¹³ Animal Rights/Environmental Violent

definitions of extremism and extremism-related policies"); Jacob Ware, *Nihilistic Violent Extremism: A Valuable Stride Forward in American Counterterrorism*, JUST SEC. (May 21, 2025), <https://www.justsecurity.org/113463/nihilistic-violent-extremism-american-counterterrorism/> [<https://perma.cc/ME7B-WDCC>] (describing the U.S. government's use of a new category of extremism: nihilist violent extremism (NVE), defined by the FBI as "individuals who engage in criminal conduct within the United States and abroad, in furtherance of political, social, or religious goals that derive primarily from a hatred of society at large and a desire to bring about its collapse by sowing indiscriminate chaos, destruction, and social instability").

11. IDA REPORT (2023), *supra* note 7, at 41.

12. U.S. DEP'T OF HOMELAND SEC., HOMELAND THREAT ASSESSMENT 2025, at 33 (Oct. 2, 2024), https://www.dhs.gov/sites/default/files/2024-10/24_0930_ia_24-320-ia-publication-2025-hta-final-30sep24-508.pdf [<https://perma.cc/R97F-FMUU>]. The current law enforcement categories are a result of a congressional requirement that the FBI and Department of Homeland Security, in consultation with the Director of National Intelligence, develop standard definitions of terminology relating to domestic terrorism and uniform methodologies for tracking domestic terrorism incidents. National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 5602(a)(1), 133 Stat. 2154 (Dec. 20, 2019); *see also* U.S. FED. BUREAU OF INVEST. & DEP'T OF HOMELAND SEC., DOMESTIC TERRORISM: DEFINITIONS, TERMINOLOGY, AND METHODOLOGY (2020), <https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-definitions-terminology-methodology.pdf/view> [<https://perma.cc/8FSK-74SP>]. *But see* Camden Carmichael & Brooke Buxton, *The Blind Spot in America's Legal Framework*, LAWFARE (Dec. 19, 2024, 1:00 PM), <https://www.lawfaremedia.org/article/the-blind-spot-in-america-s-legal-framework--when-ideology-escapes-justice> [<https://perma.cc/78DB-W9UK>] (urging a reimagining of how the U.S. government's law enforcement entities categorize ideological threats and proposing two additional ideological DVE threat categories: Misogyny-Motivated Violent Extremism (MMVE) and Conspiracy Theory-Motivated Violent Extremism (CTMVE)).

13. OFF. OF THE DIR. OF NAT'L INTEL., (U) DOMESTIC VIOLENT EXTREMISM POSES HEIGHTENED THREAT IN 2021, at 4 (Mar. 1, 2021), <https://www.dni.gov/files/ODNI/>

Extremists;¹⁴ Abortion-Related Violent Extremists;¹⁵ Anti-Governmental/Anti-Authority Violent Extremists (AGAVE);¹⁶ and all other Domestic Terrorism Threats.¹⁷ In March 2021, the U.S. Intelligence Community “assesse[d] that racially or ethnically motivated violent extremists (RMVEs) and militia violent extremists (MVEs) present the most lethal DVE threats, with RMVEs most likely to conduct mass-casualty attacks against civilians and MVEs typically targeting law enforcement and government personnel and facilities.”¹⁸ The assessment also provides definitions of Homegrown Violent Extremist (HVE)¹⁹ and Foreign Terrorist Organization.²⁰

While law enforcement entities necessarily focus on extremist conduct, thus defining the term to require a threat or act of force or violence, the Department of Defense has a wider area of concern relating to extremism:

The Department has a legitimate interest in regulating extremist behaviors and activities because violent and divisive actions are inconsistent with core military values such as dignity and respect, and risk undermining the military mission. Even advocacy and association

documents/assessments/UnclassSummaryofDVEAssessment-17MAR21.pdf

[<https://perma.cc/7R53-HB2C>]. An earlier publication, from 2017, used the term “White Supremacist Extremists (WSE)” to describe “individuals who seek, wholly or in part, through unlawful acts of force or violence, to support their belief in the intellectual and moral superiority of the white race over other races. The mere advocacy of political or social positions, political activism, use of strong rhetoric, or generalized philosophic embrace of violent tactics may be constitutionally protected activities.” U.S. DEP’T OF HOMELAND SEC. COUNTERING VIOLENT EXTREMISM TASK FORCE, REFERENCE AID: US VIOLENT WHITE SUPREMACIST EXTREMISTS (2017), <https://www.dhs.gov/publication/reference-aid-us-violent-white-supremacist-extremists> [<https://perma.cc/7K3D-FR2E>].

14. OFF. OF THE DIR. OF NAT’L INTEL., *supra* note 13, at 4.

15. *Id.*

16. *Id.* (including Militia Violent Extremists, Anarchist Violent Extremists, and Sovereign Citizen Violent Extremists).

17. *Id.*

18. *Id.*

19. U.S. DEP’T OF HOMELAND SEC., *supra* note 12 (defining a “Homegrown Domestic Extremist” as “a person of any citizenship who has lived and/or operated primarily in the United States or its territories who advocates, is engaged in, or is preparing to engage in ideologically motivated terrorist activities (including providing support to terrorism) in furtherance of political or social objectives promoted by a foreign terrorist organization but is acting independently of direction by a foreign terrorist organization. HVEs are distinct from traditional domestic terrorists who engage in unlawful acts of violence to intimidate civilian populations or attempt to influence domestic policy without direction or influence from a foreign actor”).

20. *Id.* (“Foreign Terrorist Organization (FTO)” is “any foreign organization that is designated by the Secretary of State in accordance with the criteria section 219 of the Immigration and Nationality Act (INA), which are 1) It must be a foreign organization; 2) The organization must engage in terrorist activity or retain the capability and intent to engage in terrorist activity or terrorism; and 3) The organization’s terrorist activity or terrorism must threaten the security of US nationals or the national security (national defense, foreign relations, or economic interest) of the United States.”).

with abhorrent ideologies can be destructive of the cohesiveness of the force and have the potential to weaken public support for the armed forces. For these reasons, the Department seeks to get “left of the bang” by identifying and addressing extremist behaviors and activities before they express themselves in specific criminal actions.²¹

This Article uses “extremism” in its broadest sense, to include thoughts, beliefs and actions, and considers threats emanating from extremism in the military, whether from the acceptance of extremist ideology, affiliation with extremist groups, or engagement in violent extremist acts. Where appropriate, the Article will distinguish acts of violent extremism and identify the relevant law enforcement categories.

The idea that members of the military (even if only a small portion) would join an extremist organization or be accepting of extremist ideologies is deeply disconcerting. Upon entering the military, individuals swear an oath to defend the Constitution and the nation, and they are given tools and legal authorities to use force in defense of the nation. Thus, it warrants scrutiny when these individuals endorse ideologies that promote violence against the very system they swore an oath to protect.²² At a more instinctual level, this threat is concerning because attempts by extremist groups to engage in violent acts will be more potent and more effectively executed if individuals with tactical training and technical weapons expertise are involved.²³ When extremists with military backgrounds “re-enter civil society

21. IDA REPORT (2023), *supra* note 7, at 48.

22. See CORDERO, KUZMINSKI, BAIGAL & CAMPBELL, PROTECTING THE PROTECTORS, *supra* note 8, at 2 (describing the “social contract between citizens and those sworn to protect them” because “[m]embers of the military and law enforcement communities hold distinct authorities and responsibilities within American society, which uniquely entrusts them to use force and other techniques that infringe on privacy and civil liberties”). The report explains the need for “additional scrutiny, given the nature of their professions—which includes taking a sworn oath to defend the Constitution and the nation, possessing the authority to use force to safeguard national security and public safety, and adhering to a professional ethic.” *Id.* at 1.

23. MICHAEL JENSEN, SHEEHAN KANE & ELENA AKERS, NAT’L CONSORTIUM FOR THE STUDY OF TERRORISM AND RESPONSES TO TERRORISM (START), PROFILES OF INDIVIDUAL RADICALIZATION IN THE UNITED STATES (PIRUS): MASS CASUALTY EXTREMIST OFFENDERS WITH U.S. MILITARY BACKGROUNDS 2 (June 2023) [hereinafter JENSEN, KANE & AKERS (START), MASS CASUALTY EXTREMIST OFFENDERS WITH U.S. MILITARY BACKGROUNDS] (“Subjects in the PIRUS database (which includes information on more than 3,000 subjects who committed extremist crimes in the United States) with U.S. military backgrounds are 2.41 times more likely to be classified as mass casualty offenders (defined as an event in which the perpetrator(s) intended to injure or kill four or more victims) than individuals who did not serve in the armed forces.”); see also U.S. DEP’T OF DEF., REPORT ON COUNTERING EXTREMIST ACTIVITY WITHIN THE DEPARTMENT OF DEFENSE 8 (Dec. 2021) [hereinafter DoD CEAWG REPORT 2021] (noting that, although military servicemembers involved in violent extremism acts make up a small fraction of all servicemembers, “even a small number of cases can pose a significant problem”); Doxsee & Macander, *supra* note 8 (explaining that military members of DVE groups “can add larger-than-average value to extremist networks due to their specialized knowledge and abilities—including communications, logistics, and tactical skills”). Research from the START dataset shows that “when service members and veterans do radicalize, they may be more likely to plan for, or commit, mass casualty crimes, thus having an outsized impact on public safety.” JENSEN, KANE, DOODY & AKERS (START),

trained in how to effectively perpetuate violence,” their military training “makes terrorist attacks more achievable and more deadly.”²⁴ Indeed, this is precisely why servicemembers and veterans are such desirable recruits for extremist groups. In addition to weapons and tactical training, association with the military’s professionalism and discipline provides an aura of credibility to these extremist groups.²⁵

Extremist groups actively recruit military members because of their inherent value to the group. All military members undergo basic training during which they learn how to handle weapons, and many learn far more during their time in the military than what is offered in basic training. Military members also have access to the military itself — strategy, intelligence, insider information, and weapons — all things that can be valuable to those who seek to enact violent extremist attacks. Military members are taught a sense of discipline and structure while serving, qualities that are highly valued by violent extremist leaders, especially in groups that lack well-educated members. In addition, having military members lends extremist groups an “air of legitimacy.” The groups with military members are able to paint themselves as orderly and rational and thus respectable members of society. This also allows the extremist group to paint itself as patriotic — doing what is needed to protect individual rights.²⁶

RADICALIZATION IN THE RANKS, *supra* note 5, at 5.

24. *Alarming Incidents of White Supremacy in the Military – How to Stop It?: Hearing Before the Subcomm. on Mil. Pers. of the H. Comm. on Armed Services*, 116th Cong. 2, 4 (2020) [hereinafter Beirich Testimony] (written testimony of Heidi L. Beirich, Co-Founder, Global Project Against Hate and Extremism) (“Recruitment of active duty military and veterans has been a staple tool of white supremacist groups for decades and many former soldiers have risen to lead violent white supremacist groups in the United States after separating from the service. Military training is seen as vital to the ‘coming race war’ and to those who are actively working to instigate such violence.”).

25. See Sarah Armstrong, *Fertile Ground for Violent Extremists: A New Framework to Protect Military Servicemembers and Their Civil Liberties*, 2 FORDHAM L. VOTING RTS. & DEMOCRACY F. 63, 76–80 (2023) (explaining why veterans and active-duty members of the armed forces are popular and vulnerable targets for recruitment by alt-right and violent white extremist (“VWE”) groups, and exploring tactics used by such groups to recruit U.S. servicemembers).

26. Michael Schrama, *Creating a Codified Legal Response to Domestic Extremism in the Ranks*, WAR ON THE ROCKS (July 19, 2023), <https://warontherocks.com/2023/07/creating-a-codified-legal-response-to-domestic-extremism-in-the-ranks/> [https://perma.cc/SEH9-QVD4]. A further advantage is achieved when servicemembers themselves actively engage in the recruitment of other servicemembers, given the high level of trust. *Id.*

The recruiting messages from extremist groups “prioritize action and a sense of community; manipulate concepts of civic nationalism; create an ‘other;’ provide justification for extrajudicial violence; and celebrate the skills and experiences of veterans, current or former law enforcement, and military members.” *Testimony: A Rights-Centered Approach to Violent Extremism*, HUM. RTS. FIRST (Oct. 27, 2021), <https://humanrightsfirst.org/library/testimony-a-rights-centered-approach-to-violent-extremism/> [https://perma.cc/A2PA-HJUR] (summarizing testimony of Human Rights

The attraction appears to be mutual, at least for a small subset of individuals with military experience. Research shows individuals with military backgrounds may be particularly susceptible to extremist recruiting messages during periods of transition, such as following separation from service and upon returning from combat deployments.²⁷ “The need for belonging is frequently cited amongst veterans as a motivation for joining terrorist and violent extremist groups. For people with prior military experience, the need for belonging often comes as a desire for a lost sense of community — the opportunity to join a group that can offer them a similar sense of camaraderie, mission, and loyalty can be incredibly enticing.”²⁸ The sense of order and the “pursuit of a perceived common good” that extremist groups seem to offer fill a void for those who feel these attributes are missing from civilian life.²⁹ When veterans experience “animosity toward the government for not offering them the physical, psychological, or vocational support that they need to succeed in civilian life,” they may be particularly receptive to extremist group narratives “that veterans are not valued or that the ideals they fought for in the military are now under assault.”³⁰ In sum, extremist groups engage in aggressive recruiting of servicemembers and veterans, and the extremist message appears to resonate with a small subset of those who have served.

In the days following January 6, calls for attention and reform came from many quarters, including retired servicemembers and veterans aware of—and deeply concerned by—the threat posed by extremism in the U.S. military.³¹ Addressing the

First President and CEO Michael Breen at the DHS Center for Prevention Programs and Partnerships (CP3) 8th Digital Forum, “Moving Past the CVE Era: The New National Strategy for Countering Domestic Terrorism” on October 27, 2021).

27. See Armstrong, *supra* note 25 (explaining why veterans and active-duty members of the armed forces are popular and vulnerable targets for recruitment by alt-right and VWE groups, and exploring tactics used by such groups to recruit U.S. servicemembers); Sonner Kehrt, *Most Veterans Who Support Extremism Had Negative Military Experiences, Study Finds*, WAR HORSE (Apr. 9, 2024), <https://thewarhorse.org/rand-study-examines-veteran-military-links-to-extremism/> [<https://perma.cc/M9XB-JBLU>] (showing possible connection between negative service experiences and embrace of extremist ideologies).

28. Schrama, *supra* note 26; see also Matthew Valasik & Shannon E. Reid, *The Alt-Right Movement and National Security*, 51 PARAMETERS 5, 12 (Aug. 25, 2021) (explaining that the most at-risk transitional phase is when a servicemember exits the military, often due to trauma, lack of opportunities, and the removal of rules that safeguard veterans); JENSEN, KANE, DOODY & AKERS (START), *RADICALIZATION IN THE RANKS*, *supra* note 5, at 1 (explaining heightened appeal of extremism to veterans is due to “age-related risk factors for radicalization, such as failed relationships, unemployment, and previous encounters with the criminal justice system, as well as psychological vulnerabilities tied to their military service, including high rates of post-traumatic stress disorder”).

29. Schrama, *supra* note 26.

30. *Id.*

31. An op-ed in *The Washington Post* by three retired generals in December 2021 stated: “We are chilled to our bones at the thought of a coup succeeding next time.” Paul D. Eaton, Antonio M. Taguba & Steven M. Anderson, Opinion, *3 Retired Generals: The Military Must Prepare Now for a 2024 Insurrection*, WASH. POST (Dec. 17, 2021), <https://www.washingtonpost.com/opinions/2021/12/17/eaton-taguba-anderson-generals-military/> [<https://perma.cc/BTM8-KDLS>]. Veterans’ groups also have been vocal about the

threat is a daunting task, one that must avert the legal and blowback consequences of exaggeration and overreaction while also avoiding the catastrophe of underestimating the problem or miscalculating the threat level. In the early stages of this project, I was often reminded of the excellent book by Sebastian Junger, *The Perfect Storm*, which described an actual weather event in 1991 where a hurricane merged with two other powerful weather fronts with devastating effects and fatal consequences for the crew of the *Andrea Gail*.³² But in the case of this Article, it seems to be a perfect storm of constitutional doctrines (the need for alternative checking mechanisms when Congress abandons its military oversight and regulatory roles, the appropriate level of judicial deference to the military's claims of necessity, and the scope of servicemembers' First Amendment rights) swirling chaotically around persistently gnarly questions of civil-military relations, abysmal civic knowledge levels, increasing acceptance of extremist ideologies, and a rise in acts of violent extremism in the United States. A perfect storm indeed, and one which this Article attempts to navigate. Its aims are to delineate the contours of the extremism threat within the U.S. military, to examine the role that digital platforms play in spreading extremist ideologies to servicemembers and enhancing extremist group recruitment of servicemembers, to explain the legal and practical obstacles that make countering extremism in the military such a fraught exercise, and to identify actors, tools, and mechanisms—beyond the conventional options—that may be better suited to the task.

Part I examines the military's relationship with extremism, cataloging its steady and persistent presence and identifying the prevalence of white supremacist ideology as a particularly animating strain.³³ This Part starts by flagging the definitional

extremism threat, proposing and undertaking a number of initiatives to counter the rise of extremist views and extremist group membership among veterans, including serving as poll workers, setting up internal support groups, simulating a post-election military coup and creating a documentary film about it. Rebecca Beitsch, *With Democracy in Balance, Veterans Take up New Fight at Home*, THE HILL (July 31, 2024, 6:00 AM), <https://thehill.com/policy/national-security/4800677-veterans-democracy-trump-november-election-2024-jan-6/> [https://perma.cc/99VW-DTD7]; Manohla Dargis, 'War Game' Review: *It Can't Happen Here (Right?)*, N.Y. TIMES (Aug. 1, 2024), <https://www.nytimes.com/2024/08/01/movies/war-game-documentary-review.html> [https://perma.cc/75CC-Z53J]; Shane Harris & Jesse Moss, *Chatter: Gaming Out an Insurrection with Jesse Moss*, LAWFARE (Aug. 20, 2024, 8:02 AM), <https://www.lawfaremedia.org/article/chatter--gaming-out-an-insurrection-with-jesse-moss> [https://perma.cc/MR3U-TYVM]; Quil Lawrence, *As Fears About Election Security Grow, Military Veterans Are Filling as Poll Workers*, NPR (Oct. 14, 2024, 5:40 PM), <https://www.npr.org/2024/10/14/nx-s1-5144186/as-fears-about-election-security-grow-military-veterans-are-filling-as-poll-workers> [https://perma.cc/H52K-YYCM]; Richard Sisk, *163,000 Veterans and Military Family Members Fall in for Poll Worker Duty on Election Day*, MIL. TIMES (Oct. 31, 2024, 5:11 PM), <https://www.military.com/daily-news/2024/10/31/163000-veterans-and-military-family-members-fall-poll-worker-duty-election-day.html> [https://perma.cc/ZD3F-PC5F].

32. SEBASTIAN JUNGER, *THE PERFECT STORM* (2000).

33. MICHAEL JENSEN, SHEEHAN KANE & ELENA AKERS, NAT'L CONSORTIUM FOR THE STUDY OF TERRORISM AND RESPONSES TO TERRORISM (START), *EXTREMISM IN THE RANKS AND AFTER 4* (2024) [hereinafter JENSEN, KANE & AKERS (START), *EXTREMISM IN THE RANKS*].

challenge that hampers counter-extremism efforts, in both civil society, law enforcement, and the military. It then provides a summary of the U.S. military's history of embracing extremist ideologies and profiles several instances of criminal extremist actions by individuals with military backgrounds. The Part then turns its focus to examining the extent to which a rise in social media and digital platform use by servicemembers and veterans has intensified and multiplied this long-present extremism threat. It assesses recent efforts by extremist groups to recruit veterans and active-duty military servicemembers, describes the online platforms where such recruitment occurs, and explores why these online communities tend to provide such fertile recruiting environments for extremist groups.

Part II considers the obstacles that make countering extremism in the military so difficult. It starts by describing the general tendency of congressional and military leadership toward inattention and inaction, best captured by the critique that the military “quietly discharge[s] people involved in white-supremacist incidents,”³⁴ while avoiding inquiry into the larger institutional or cultural dynamics that might account for such incidents. It then explores a blip of focused governmental action—counter to the usual tendency—from 2017 to 2022, and catalogs the flurry of

AND AFTER] (finding that 32.45% of U.S. extremists with military backgrounds have an ideological affiliation of white supremacist/REMVE [racially-or ethnically-motivated violent extremist]). Specifically, of the 145 individuals who were members of known skinhead, white supremacist, or white nationalist groups, 35 were members of the Proud Boys, 16 were members of the Ku Klux Klan, and 11 were members of the Aryan Nations. *Id.* Additional research by START shows that white nationalism and antigovernment extremism make up the bulk of the radicalized veterans and active-duty military extremists, at more than 80%, while Jihadist-inspired ideology makes up a little more than 6% of the cases. JENSEN, KANE & AKERS (START), MASS CASUALTY EXTREMIST OFFENDERS WITH U.S. MILITARY BACKGROUNDS, *supra* note 23, at 1, 4.

Government reports show the same observation outside the military-specific setting, noting the prevalence and lethality of extremist groups with animating ideologies that are racially or ethnically motivated, particularly those promoting the superiority of the white race. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-23-104720 DOMESTIC TERRORISM: FURTHER ACTIONS NEEDED TO STRENGTHEN FBI AND DHS COLLABORATION TO COUNTER THREATS, 23–24 (Feb. 2023) [hereinafter GAO-23-104720, DOMESTIC TERRORISM (2023)] (“From fiscal years 2013 through 2021, the FBI’s number of open domestic terrorism-related cases grew by 357 percent from 1,981 to 9,049. From calendar year 2010 to 2021, I&A tracked a total of 231 domestic terrorism incidents, with racially- or ethnically-motivated violent extremists committing the most violent incidents during the time period.”); NAT’L SEC. COUNCIL, NATIONAL STRATEGY FOR COUNTERING DOMESTIC TERRORISM 6 (2021), <https://int.nyt.com/data/documenttools/biden-s-strategy-for-combating-domestic-extremism/22ddf1f2f328e688/full.pdf> [<https://perma.cc/89AL-AUGH>] (“Among that wide range of animating ideologies, racially or ethnically motivated violent extremists (principally those who promote the superiority of the white race) and militia violent extremists are assessed as presenting the most persistent and lethal threats.”); U.S. DEP’T OF HOMELAND SEC., STRATEGIC FRAMEWORK FOR COUNTERING TERRORISM AND TARGETED VIOLENCE 10 (Sept. 2019) (“[W]hite supremacist violent extremism, one type of racially- and ethnically-motivated violent extremism, is one of the most potent forces driving domestic terrorism.”).

34. *The U.S. Military’s Pattern of Failing to Confront White Supremacy Within Its Ranks*, AM. OVERSIGHT (Apr. 13, 2021), <https://americanoversight.org/the-u-s-militarys-pattern-of-failing-to-confront-white-supremacy-within-its-ranks/> [<https://perma.cc/C69P-6KHX>].

initiatives, studies, and policy directives that followed the Unite the Right rally in Charlottesville in 2017 and the breach of the U.S. Capitol on January 6, 2021. During this blip, the Department of Defense and Congress took action to stem the rise in acceptance of extremist ideologies and counter recruitment efforts by extremist groups. This Part then profiles how quickly support for these efforts faded. In less than three years, the promises of commitment from congressional and Pentagon leadership morphed into funding cuts, skepticism, and what some have labeled a “war on wokeness,” which has caught counter-extremism efforts in its cross-fire.³⁵ This Part then explores the persistent structural obstacles and flawed disciplinary responses that have made countering the extremism threat so daunting and ineffective to date. These include: the lack of consistent data collection and tracking mechanisms which mask the scale and scope of extremism in the military; ineffective and constitutionally flawed conduct standards, charging articles, and disciplinary systems within the military; and the inconsistent and constitutionally questionable use of federal law enforcement authorities.

In Part III, the Article turns its focus to an assessment of two developments with potential staying power: the 2021 extremism-related reporting requirements placed on the Department of Defense Office of Inspector General (DoD OIG) and the establishment of the Deputy Inspector General for Diversity and Inclusion and Extremism in the Military. These important developments have received little notice or attention, and in some instances have been dismissed as meaningless. This Part offers a counternarrative, explaining why these developments have staying power,

35. See Shannon Bond, Tom Bowman, Odette Yousef & Quil Lawrence, *What's Behind Defense Secretary Pick Hegseth's War on 'Woke'*, NPR (Nov. 15, 2024, 5:00 AM), <https://www.npr.org/2024/11/14/nx-s1-5191941/pete-hegseth-defense-department-dei> [https://perma.cc/H38R-XS3Z] (“‘First of all you gotta fire the Chairman of the Joint Chiefs,’ Hegseth said on the Shawn Ryan podcast. ‘Any general that was involved, general, admiral, whatever, that was involved in any of the DEI woke s***, has got to go. Either you’re in for warfighting and that’s it. That’s the only litmus test we care about.’”); Zachary Cohen, Oren Liebermann & Haley Britzky, *How GOP Attacks on ‘Wokeism’ Helped Lead the Pentagon to Abandon Its Effort to Combat Extremism in the Military*, CNN (May 20, 2023, 9:53 AM), <https://www.cnn.com/2023/05/19/politics/pentagon-combat-extremism-military-republican-attacks-teixeira-leaks/index.html> [https://perma.cc/3ECV-2E75] (describing “interviews with multiple sources familiar with the [DoD CEAWG] reveal that the Pentagon largely abandoned the effort to combat extremism in its ranks, as senior officials folded under political pressure from Republicans who lashed out at the initiative as an example of so-called wokeism in the military”); Tara Copp & Lolita Baldor, *Military Leaders Are Rattled by a List of ‘Woke’ Officers that a Group Urges Hegseth to Fire*, AP NEWS, <https://apnews.com/article/hegseth-trump-diversity-pentagon-list-602477b6e80641b53f4f9b640a14f4ce> [https://perma.cc/V79C-F3BQ] (Dec. 6, 2024, 5:56 PM) (describing letter from head of American Accountability Foundation to the Secretary of Defense nominee that says “purging the woke from the military is imperative”); Nikki Wentling, *Advocates Fear Dismantling of DOD’s Extremism Prevention, DEI Programs*, MIL. TIMES (Nov. 21, 2024), <https://www.militarytimes.com/flashpoints/extremism-disinformation/2024/11/21/advocates-fear-dismantling-of-dods-extremism-prevention-dei-programs/> [https://perma.cc/P7EW-XT3Y] (“Some GOP lawmakers, including Rep. Jim Banks, R-Ind., who sits on the House Armed Services Committee, have vowed to expunge ‘wokeism’ from the military, referring to what they see as a rise in radically progressive policies at the Pentagon.”).

giving the DoD OIG responsibility—and tools—for tackling some of the persistent obstacles that have dogged the military’s prior counter-extremism efforts. A review of recent DoD OIG work product reveals the unique attributes and tools it brings to the task. These include: embracing the office’s role as an independent internal critic (even in the face of presidential removal); effectively scoping the extremism threat through consistent data collection, tracking and reporting (thereby cracking the “lack of data” nut that has impaired prior reform efforts, while avoiding exaggeration and hyperbole); assessing the effectiveness, legality, and continuing need for counter-extremism efforts in the military (thereby flagging those initiatives that may be constitutionally wobbly and avoiding overreach, particularly in the area of servicemembers’ use of online platforms); and providing transparency and accountability (thereby serving as an oversight substitute when the usual players have left the field). This Part also considers constraints on the DoD OIG’s ability to implement its extremism-related tasks, including structural and practical limits common to all inspectors general and highlighting constraints specific to the office’s counter-extremism work. It then suggests recommendations designed to incentivize reflection and inquiry within the Department’s leadership and the relevant congressional committees about how best to accurately assess the scope and scale of the extremism threat and how to appropriately calibrate an effective counter-extremism response, ideally one that avoids the harm of overreaction as well as the mistake of underestimation.

The Article concludes by considering recent actions by the new administration and assessing whether and how these actions may impact the office’s counter-extremism work. It concludes on a sober note, taking stock of the current legal constraints and political climate and yet remaining hopeful of the office’s ability to find an antidote to the extremist poison teeming through today’s technology-enabled pipes.

I. THE U.S. MILITARY AND EXTREMISM

While the extremism threat is not a new one, the potential for a violent overthrow of our government—and our foundational constitutional structures—by groups with military training and weapon expertise seems significantly more plausible after January 6, 2021. This Part begins by describing how the difficulty in defining extremism hinders counter-extremism efforts, and then attempts to contour the current threat within the U.S. military and veteran communities, paying particular attention to its more prevalent and animating ideologies, and profiling efforts by extremist groups to recruit veterans and active-duty military servicemembers. This Part then shifts to consider a new dimension to the threat—the role of digital platforms in amplifying and strengthening the ability of extremist groups to reach into military and veteran communities.

A. A Definitional Challenge

As noted above, a persistent challenge in the counter-extremism task is the lack of agreed upon categories or definitions for extremism and associated terms.³⁶ The definitional variety is not merely an academic problem. The lack of common categories adversely impacts efforts to counteract the rise of extremist ideologies and conduct. The U.S. military's failure to define extremism has plagued the Pentagon's efforts to thwart the reach of extremist groups within the ranks or to staunch the growing acceptance of extremist ideologies among members.³⁷ The failure to define extremism contributes to a slew of additional problems; these include an inadequate focus on effects rather than causes of extremism, a failure to "explain what it is about extremism that affects unit cohesion," and the exclusion in current policies of prohibitions on behavior that "hurt people *not* protected by anti-discrimination laws."³⁸

B. A Persistent Threat

The problem of extremism in the U.S. military and among veterans is not new. The founding of the United States took place alongside incredible levels of political violence, and the U.S. military has a long history of embracing white supremacist and white nationalist ideologies and of its members engaging in acts of violence based on extremist ideologies. This history is well documented,³⁹ however, several

36. *See supra* Introduction.

37. *See infra* Section II.B.1 (describing how lack of common definitions exacerbates data collection and tracking challenges).

38. Keith S. Gibel, *Why Defining 'Extremism' Matters to the U.S. Military*, LAWFARE (Jun. 30, 2021, 8:01 AM), <https://www.lawfaremedia.org/article/why-defining-extremism-matters-us-military> [<https://perma.cc/FXE3-FF76>] (emphasis in original) (explaining that a "clear definition is needed to address extremism" in the military). Gibel proposes a definition focused on the servicemember's oath:

U.S. service members swear an oath to support and defend the Constitution against all enemies, foreign and domestic, which includes equal protection—for all Americans—under the law. Extremism violates a service member's oath to the Constitution if it is defined as: An inflexible ideology that instills hate or fear, and advocates, promotes, facilitates or condones violence, to advance its primacy over alternative or competing views. In other words, if a person can accept violence to further an ideology grounded in hate or fear, that person is adopting an extremist mindset. Defining extremism this way treats all extremist bases—race, color, sex, ethnicity, national origin, religion, identity, appearance, income, age, disability or politics—equally. This definition divorces the term "extremism" from any specific cause or basis of discrimination—any ideology could be considered extremism if it contains all of these factors.

Id.

39. *See, e.g.*, SETH G. JONES, CATRINA DOXSEE, GRACE HWANG & JARED THOMPSON, THE MILITARY, POLICE, AND THE RISE OF TERRORISM IN THE UNITED STATES, CTR. FOR STRATEGIC & INT'L STUD. 3–5 (Apr. 12, 2021), <https://www.csis.org/analysis/military-police-and-rise->

instances warrant additional description. The establishment of the U.S. military involved not only reliance on enslaved laborers for ship and fort building but many of its missions involved enforcing state slave codes and the Fugitive Slave Act.⁴⁰ While the Civil War saw the establishment of the first Black regiment in the Union Army (the Fifty-Fourth Massachusetts Volunteer Infantry Regiment) as well as the post-war use of the military to protect and enforce the civil rights of formerly enslaved persons and to investigate and prosecute acts of violence by the Ku Klux Klan (KKK), veterans of the Civil War (from both the Union and the Confederacy) embraced extremist ideologies and actively participated in extremist groups, including the KKK.⁴¹ Individuals with military experience, many of whom were veterans from World War I, were active in the Christian Front, a nationwide propaganda and terrorist movement active in the United States through the 1940s.⁴²

terrorism-united-states [https://perma.cc/7W6Y-XUW3] (providing historical overview of military and law enforcement personnel involved in domestic extremism); Paven S. Krishnamurthy, *Racial Bias in the United States Armed Forces: A Threat to National Security in the Era of Renewed Great Power Competition*, 29 VA. J.L. & SOC. POL'Y 32, 39–57 (2022) (examining explicit and implicit racial bias in U.S. Armed Forces from the cold war to present); Valasik & Reid, *supra* note 28, at 6–12 (analyzing historical relationship between white supremacy and U.S. military from Reconstruction to the present); Clint Watts, *Major Nidal Hasan and the Fort Hood Tragedy: Implications for the U.S. Armed Forces*, FOREIGN POL'Y RSCH. INST. (June 3, 2011), <https://www.fpri.org/article/2011/06/major-nidal-hasan-and-the-fort-hood-tragedy-implications-for-the-u-s-armed-forces/> [https://perma.cc/M8XL-UMPY] (profiling “lone-wolf extremists with U.S. Military Experience” including Timothy McVeigh (1995 Oklahoma City Bombing), Eric Rudolph (1996–97 Olympic Park/Abortion Clinic Bomber), Hasan Karim Akbar (2003 101st Airborne Operations Center Attack), and Nidal Hasan (2011 Fort Hood Shooting)); *see also* Jimmy Anderson, *In That Moment I Learned My Service to This Country Could Not Transcend My Skin Color*, WAR HORSE (Feb. 21, 2024), https://thewarhorse.org/military-service-not-a-shield-against-racism-veteran-finds/?mc_cid=426345ff7c&mc_eid=79166d24ed [https://perma.cc/CZ48-WVG3] (providing a recent personal account of how racism is experienced by servicemembers).

40. For a summary of racism-based acts of violent extremism by servicemembers in the U.S. armed forces during the founding era and the purchase and use of enslaved persons by the U.S. military, *see* David F. Ericson, *The United States Military, State Development, and Slavery in the Early Republic*, 31 STUD. AM. POL. DEV. 130 (2017) (profiling instances where U.S. troops enforced fugitive slave codes or other federal laws relating to slavery); Carl Herzog, *The Entwined History of Slavery and the U.S. Navy*, USS CONST. MUSEUM (Nov. 30, 2022), <https://ussconstitutionmuseum.org/2022/11/30/the-entwined-history-of-slavery-and-the-u-s-navy/> [https://perma.cc/NX9F-6L7Y] (describing the U.S. Navy's purchase of enslaved persons from various plantation owners to build ships).

41. Valasik & Reid, *supra* note 28, at 6. For descriptions of the short-lived but impactful use of the military during Reconstruction to protect and enforce the civil rights of formerly enslaved persons and to investigate and prosecute acts of violence by the Ku Klux Klan (KKK), *see* FERGUS M. BORDEWICH, *KLAN WAR: ULYSSES S. GRANT AND THE BATTLE TO SAVE RECONSTRUCTION* 154–250 (2023); BRUCE HOFFMAN & JACOB WARE, *GOD, GUNS, AND SEDITION: FAR-RIGHT TERRORISM IN AMERICA* 73–75 (2024); Daniel Byman, *White Supremacy, Terrorism, and the Failure of Reconstruction in the United States*, 46 INT'L SEC. 53, 68–85 (2021).

42. *See Plot to Seize U.S. Traced by Witness; Healy Says He Abetted Plans and Kept FBI Informed-- Red 'Plant,' Defense Holds*, N.Y. TIMES (Apr. 6, 1940),

Although the U.S. military was integrated in 1948 via Executive Order 9981, the conditions and treatment of Black servicemembers tracked the disparate and discriminatory treatment of Black civilians; Black servicemembers were housed in segregated quarters (described as “slave-like”⁴³), barred from officers’ clubs, relegated to labor and service units, and frequently subjected to harassment and physical attack by white servicemembers.⁴⁴ The period following the Vietnam War saw a rise in servicemember and veteran affiliation with white supremacist and nationalist groups, due in part to aggressive recruiting by such groups.⁴⁵ Prominent

<https://www.nytimes.com/1940/04/06/archives/plot-to-seize-us-traced-by-witness-healy-says-he-abetted-plans-and.html?smid=url-share> [https://perma.cc/2WMK-YLGQ] (describing trial testimony of member of the Christian Front that the group included many members of the military, including Brigadier General Alexander E. Anderson, the commanding officer of the Ninety-Third Infantry Brigade of the New York National Guard); Jan Hoffman, *Lawyer’s 50-Year Journey to the Bar; Christian Rightist from Long Ago Says It’s Justice, Finally*, N.Y. TIMES (May 31, 1995), <https://www.nytimes.com/1995/05/31/nyregion/lawyer-s-50-year-journey-bar-christian-rightist-long-ago-says-it-s-justice.html> [https://perma.cc/Z9PS-GX9A] (describing investigation, arrests, and trial of Christian Front members and referencing Christian Front speaking events before the American Legion, the Veterans of Foreign Wars, and other organizations). See generally CHARLES R. GALLAGHER, *NAZIS OF COPLEY SQUARE: THE FORGOTTEN STORY OF THE CHRISTIAN FRONT* (2021) (describing rise of Christian Front and the scope of its influence at its zenith); MICHAEL SAYERS & ALBERT E. KAHN, *THE PLOT AGAINST THE PEACE: A WARNING TO THE NATION!* (1945) (describing FBI investigation of the Christian Front and charges of sedition for the group’s plans to seize armories, steal guns, assassinate members of Congress, and plant bombs in several sites throughout New York).

43. Alexis Clark, *Black Americans Who Served in WWII Faced Segregation Abroad and at Home*, HISTORY (Aug. 3, 2023), <https://www.history.com/news/black-soldiers-world-war-ii-discrimination> [https://perma.cc/5KWD-UZDX].

44. See Krishnamurthy, *supra* note 39, at 40–43 (describing racial bias in the U.S. military during WWII, the Korean War, and during the Cold War era); STEVE SHEINKIN, *THE PORT CHICAGO 50: DISASTER, MUTINY, AND THE FIGHT FOR CIVIL RIGHTS* (2014) (telling the story of fifty African American sailors who were charged with mutiny for challenging working conditions after a horrific munitions explosion in 1944 that killed 320 sailors and civilians in Port Chicago, California); see also Alexis Clark, *When Jim Crow Reigned Amid the Rubble of Nazi Germany*, N.Y. TIMES (Feb. 19, 2020), <https://www.nytimes.com/2020/02/19/magazine/blacks-wwii-racism-germany.html> [https://perma.cc/JU8A-6MBB].

45. KATHLEEN BELEW, *BRINGING THE WAR HOME: THE WHITE POWER MOVEMENT AND PARAMILITARY AMERICA* 4, 76 (2018); *Extremism in the Armed Forces: Hearing Before the H. Comm. on Armed Services*, 117th Cong. 85–86 (2021) [hereinafter Brooks Testimony] (statement of Lecia Brooks, Chief of Staff, Southern Poverty Law Center) (describing impact of Vietnam War on white power movement of the 1970s and 1980s); AMY COOTER, *VETERAN PERSPECTIVES ON EXTREMIST EXPLOITATION OF THE MILITARY: SOURCES AND SOLUTIONS*, CTR. ON TERRORISM, EXTREMISM, & COUNTER TERRORISM, MIDDLEBURY INST. OF INT’L STUD. 5 (March 2025) (describing how “the perceptions of Vietnam and domestic social change surrounding race, gender, and economy led to a surging extremism among U.S. military veterans who believed this conflict to be a failed effort that undermined the legitimacy of national policy and military strategy alike”); JONES, DOXSEE, HWANG & THOMPSON, *supra* note 39, at 3 (“In 1970 alone, the U.S. Marine Corps recorded over 1,000 incidents of racial violence at installations in the United States and Vietnam, including violent altercations between black and white Marines at Camp Lejeune, North Carolina.”); Everett R. Holles,

examples included Louis Beam (a vocal white supremacist, author of *Essays of a Klansman*, and an Army veteran), and Randy Duey (a member of the white supremacist group, The Order, and an Air Force veteran).⁴⁶

Another surge of violent extremist acts accompanied returning veterans after service in the first Persian Gulf War.⁴⁷ The most horrific of these acts was committed on April 19, 1995, by Timothy McVeigh, an ex-Army soldier, who detonated a truck bomb in front of the Alfred P. Murrah Federal Building in downtown Oklahoma City, killing 168 individuals, including nineteen children.⁴⁸

Marines in Klan Openly Abused Blacks at Pendleton, Panel Hears, N.Y. TIMES (Jan. 9, 1997), <https://www.nytimes.com/1977/01/09/archives/marines-in-klan-openly-abused-blacks-at-pendleton-panel-hears.html> [<https://perma.cc/3W83-NC24>] (providing comprehensive discussion of events preceding the violence and the trials of the Black servicemembers).

46. JONES, DOXSEE, HWANG & THOMPSON, *supra* note 39 (describing influential extremists who served in the military and law enforcement in the 1970s, 1980s, and 1990s); *see also* Krishnamurthy, *supra* note 39, at 43–45 (describing racial bias in the U.S. military during post-Cold War era); William E. Schmidt, *Soldiers Said to Attend Klan-Related Activities*, N.Y. TIMES (Apr. 15, 1986), <https://www.nytimes.com/1986/04/15/us/soldiers-said-to-attend-klan-related-activities.html> [<https://perma.cc/SSY7-9Z47>] (describing how spokespersons for both the Marine Corps and Army stated they were not aware of Klan involvement but that servicemembers were not barred from joining the Klan or other political organizations).

47. BELEW, *supra* note 45, at 187–208. The standoffs at the Ruby Ridge ranch property of Randy Weaver (a former U.S. Army engineer) in Idaho on August 21, 1992, and on the Branch Davidians property of David Koresh in Waco, Texas, on April 19, 1993, served as a catalyst for some white supremacist and antigovernment actors. Both Koresh and Weaver espoused anti-government and white separatist views, founded in Christian religious beliefs. Both standoffs ended in the loss of life. For detailed accounts of these episodes, see Clay Risen, *Randy Weaver, Who Confronted U.S. Agents at Ruby Ridge, Dies at 74*, N.Y. TIMES (May 13, 2022), <https://www.nytimes.com/2022/05/13/us/randy-weaver-dead.html> [<https://perma.cc/RAQ3-SX8H>]; JONES, DOXSEE, HWANG & THOMPSON, *supra* note 39, at 3–4.

In 1992, Steven Barry, a member of U.S. Army special forces, published a newsletter called *The Resister*, which he says was conceived following the incident at Ruby Ridge. Gregory A. Walker, *Steven Barry Becomes Important Figure in Paramilitary Underground*, S. POVERTY L. CTR. (Sept. 15, 1999), <https://www.splcenter.org/fighting-hate/intelligence-report/1999/steven-barry-becomes-important-figure-paramilitary-underground> [<https://perma.cc/TC6B-KG6H>]; Simone Askew, Jack Lowe, Nette Monaus & Kirsten L. Cooper, *We've Been Here Before: Learning From the Military's History with White Nationalism*, WAR ON THE ROCKS (Apr. 27, 2021), <https://warontherocks.com/2021/04/weve-been-here-before-learning-from-the-militarys-history-with-white-nationalism/> [<https://perma.cc/5QSU-VXL4>]. The newsletter was aimed at members of U.S. Special Forces, highlighted the efforts of the Special Forces Underground (SFU), and collaborated with other right-wing extremist organizations such as the Council of Conservative Citizens, the National Alliance, and Soldier of Fortune. Stan Goff, *The Racist Underbelly of the U.S. Occupation of Haiti*, CAN.-HAITI INFO. PROJECT (Oct. 13, 1999), <https://canada-haiti.ca/content/racist-underbelly-us-occupation-haiti> [<https://perma.cc/F8YZ-ZXPV>].

48. *Oklahoma City Bombing*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/history/famous-cases/oklahoma-city-bombing> [<https://perma.cc/PQ8X-GTNG>]. When McVeigh was arrested, police found in his car a photocopy of *The Resister*, the newsletter founded by Army veteran Steven Barry. Walker, *supra* note 47.

The first two decades of the twenty-first century saw additional acts of violent extremism and the prevalence of extremist ideologies within the armed forces.⁴⁹ Recent studies show growing acceptance of extremist views, often animated by white supremacist ideologies, within the active-duty military and veteran communities. According to a December 2024 report prepared by the National Consortium for the Study of Terrorism and Responses to Terrorism (START), more than 30% of U.S. extremists with military backgrounds in its dataset promoted views of white supremacy, white nationalism, and/or xenophobia.⁵⁰ A 2024 *Military Times* survey found an “alarming” level of support for the Great Replacement conspiracy theory among respondents, including veterans, servicemembers, contractors, and family members.⁵¹ A research project published in 2024, using survey data from the

For a summary of other instances of extremist acts by servicemembers and veterans during the 1990s, see Krishnamurthy, *supra* note 39, at 43–45; Watts, *supra* note 39.

49. COOTER, *supra* note 45, at 5 (describing 9/11 and the War on Terror as “pivotal points that likely increased extremist connections inside the U.S. military”); JENSEN, KANE, DOODY & AKERS (START), *RADICALIZATION IN THE RANKS*, *supra* note 5, at 11–12 (describing acts committed by U.S. extremists with military backgrounds from 1990–2023); Beirich Testimony, *supra* note 24, at 56–57 (describing recent arrests of servicemembers with white supremacist ties for criminal extremist acts); *Alarming Incidents of White Supremacy in the Military – How to Stop It?: Hearing Before the Subcomm. on Mil. Pers. of the H. Comm. on Armed Services*, 116th Cong. 92–97 (Feb. 11, 2020) [hereinafter Pitcavage Testimony] (testimony of Mark Pitcavage, Senior Research Fellow, Center on Extremism, Anti-Defamation League) (describing incidents of white supremacist-based extremism in the U.S. military from 2000–2020); David Sterman, *The Greater Danger: Military-Trained Right-Wing Extremists*, THE ATLANTIC (Apr. 24, 2013), <https://www.theatlantic.com/national/archive/2013/04/the-greater-danger-military-trained-right-wing-extremists/275277/> [https://perma.cc/G2D4-JMRA]; *Several High Profile Racist Extremists Serve in the U.S. Military*, S. POVERTY L. CTR. (July 7, 2006), <https://www.splcenter.org/fighting-hate/intelligence-report/2006/several-high-profile-racist-extremists-serve-us-military> [https://perma.cc/4NCT-SZN8].

50. JENSEN, KANE, DOODY & AKERS (START), *RADICALIZATION IN THE RANKS*, *supra* note 5, at 1, 9–10.

51. Nikki Wentling, *Military Times Survey: ‘Alarming’ Percentage Accept Conspiracies*, MIL. TIMES (Mar. 5, 2024), <https://www.militarytimes.com/flashpoints/extremism-disinformation/2024/03/05/military-times-survey-alarming-percentage-accept-conspiracies/> [https://perma.cc/GRP5-E6SX]. The *Military Times* survey asked respondents how strongly they agree or disagree with “the notion that a group of people in the U.S. is trying to replace native-born Americans with immigrants and people of color who share their political views.” *Id.* While 1,770 people completely or mostly disagree with that notion, 438 respondents, or 18%, said they mostly agree, and 223 people, or 9%, completely agree. *Id.* The survey included more than 2,400 respondents, which included veterans, servicemembers, contractors, and family members. *Id.* Their political ideologies were split: one-fourth identified as Republicans, 14% as Democrats, and 52% as Independents. *Id.* Of the respondents in the survey, 86% were men, 92% were white, 49% had earned master’s degrees, and 68% had completed combat deployments. *Id.* Participants were spread across the United States, but the highest number of people, about 30%, were located in the southeast. *Id.* The Army, Navy, Air Force, Marine Corps, Coast Guard, and National Guard were represented in the pool of respondents, with the highest concentration—about 37%—serving in the Army. *Id.* The average length of their military service was nineteen years. *Id.* A 2023 Rand survey showed similar veteran support

University of Chicago's Project on Security and Threats (CPOST), studied "insurrectionist sentiments" among U.S. military veterans, defined as "willingness to support violent efforts to overturn the results of an election in favor of another."⁵² According to the researchers, the "study provided new credible evidence that insurrectionist sentiments are greater among US military veterans than their civilian counterparts," and identified some of the drivers that contribute to the acceptance of such sentiments.⁵³

Growing acceptance of extremist views and ideologies has been matched by an increase in violent extremist criminal acts by individuals with military backgrounds. According to research from the Center for Strategic and International Studies, in 2018, there were no domestic terrorist attacks or plots committed by military personnel; in 2019, 1.5% of all domestic terrorist attacks and plots were committed by one or more active-duty or reserve military personnel; in 2020, 6.4% of all domestic terrorist attacks and plots were committed by one or more active-duty or reserve military personnel; and in 2021, the percentage decreased slightly to 5.2%.⁵⁴ According to the December 2024 START report, from "1990 through 2023, 730 individuals with U.S. military backgrounds committed criminal acts that were motivated by their political, economic, social, or religious goals."⁵⁵ From 1990–2010, an average of 7.1 subjects per year with U.S. military backgrounds committed extremist crimes, but since 2011, that number had grown to 44.6 subjects per year,⁵⁶ leading the report's authors to conclude that there has been "a notable recent uptick in the number of cases of criminal extremism in the United States that have a nexus

for the Great Replacement conspiracy theory, at 28.8 % (as compared to 34.4% for the general population). TODD C. HELMUS, RYAN ANDREW BROWN & RAJEEV RAMCHAND, PREVALENCE OF VETERAN SUPPORT FOR EXTREMIST GROUPS AND EXTREMIST BELIEFS, RAND CORP. 8-9 (2023). When broken down by military service, the support percentages for the Great Replacement Theory were: Army (26.0%), Navy (29.7%), Air Force (29.5%), and Marines (39.4%). *Id.* at 13. The authors of the RAND survey cautioned readers that the results of the surveys were limited by whether veteran respondents were willing to be honest about their extremist stances. *Id.* at 15 ("[I]n terms of response bias, it is unclear whether veteran respondents were more or less likely than the general population to confirm support for extremist causes (i.e., to report 'honestly').").

52. Pape, Ruby, Larson & Nakamura, *supra* note 7, at 7–9.

53. *Id.* at 20; *see also* ROBERT A. PAPE, DEEP, DESTRUCTIVE, AND DISTURBING: WHAT WE KNOW ABOUT TODAY'S AMERICAN INSURRECTIONIST MOVEMENT, CHI. PROJECT ON SEC. & THREATS (Aug. 6, 2021), https://d3qi0qp55mx5f5.cloudfront.net/cpost/i/docs/Pape_AmericanInsurrectionistMovement_2021-08-06.pdf [<https://perma.cc/248C-CBKZ>].

54. Doxsee & Macander, *supra* note 8 (referencing earlier CSIS research). According to an October 2022 report from the Majority Staff of the House Committee on Veterans Affairs, in the last thirty years, extremists with military backgrounds have killed 314 people and injured 1978 others, and that empirical evidence suggests that individuals with military backgrounds have become increasingly involved with violent extremist plots and attacks in recent years. STAFF OF H. COMM. ON VETERAN'S AFFS., 117TH CONG., REP. ON THE IMPORTANCE OF PEER SUPPORT IN PREVENTING DOMESTIC VIOLENT EXTREMISM 5 (2022).

55. JENSEN, KANE, DOODY & AKERS (START), RADICALIZATION IN THE RANKS, *supra* note 5, at 1.

56. *Id.*

to the military.”⁵⁷ This uptick exists even when January 6, 2021, is excluded from the analysis.⁵⁸ In a related research project, START found that from 1990–2022, 170 individuals with U.S. military backgrounds plotted 144 unique mass casualty terrorist attacks in the United States, representing approximately 25% of all individuals who plotted mass casualty extremist crimes during this period.⁵⁹

A sampling of headlines from just the last year is revealing: *Racist Memes Shared by Navy SEALs Prompt Investigation, Disciplinary Actions* (May 20, 2025), *What Inspires Veterans or Service Members to Carry Out Violence and Extremism?* (Jan. 2, 2025), *New Year's Attacks Fuel Fears of Extremism in Military* (Jan. 2, 2025), *White Supremacist Leader Found Guilty of Conspiring to Destroy Regional Power Grid* (Feb. 4, 2025), *Survivors of Maine Mass Shooting Take Step Toward Suing the Army* (Oct. 14, 2024), *U.S. Army Soldier Sentenced to 14 Years in Prison For Attempting to Assist ISIS to Conduct Deadly Ambush on U.S. Troops* (Oct. 11, 2024), *Former Marine Sentenced to 9 Years in Federal Prison for Molotov Cocktail Attack Against Planned Parenthood Clinic in Orange County* (Apr. 15, 2024).⁶⁰

57. *Id.* at 5.

58. *Id.*

59. JENSEN, KANE & AKERS (START), MASS CASUALTY EXTREMIST OFFENDERS WITH U.S. MILITARY BACKGROUNDS, *supra* note 23, at 2. The study notes further that the “rate of military service in the mass casualty offender population is more than three times that of military service in the general adult population, which is estimated at 8 percent.” *Id.*

60. Press Release, U.S. Dep’t of Just., White Supremacist Leader Found Guilty of Conspiring to Destroy Regional Power Grid (Feb. 4, 2025), <https://www.justice.gov/opa/pr/white-supremacist-leader-found-guilty-conspiring-destroy-regional-power-grid> [<https://perma.cc/RRX9-XJTQ>]; Press Release, U.S. Dep’t of Just., U.S. Army Soldier Sentenced to 14 Years in Prison For Attempting to Assist ISIS to Conduct Deadly Ambush on U.S. Troops (Oct. 11, 2024), <https://www.justice.gov/opa/pr/us-army-soldier-sentenced-14-years-prison-attempting-assist-isis-conduct-deadly-ambush-us> [<https://perma.cc/6N6E-LTN3>]; Press Release, U.S. Dep’t of Just., Former Marine Sentenced to 9 Years in Federal Prison for Molotov Cocktail Attack Against Planned Parenthood Clinic in Orange County (Apr. 15, 2024) (describing how former Marine was motivated by “extremist neo-Nazi ideology”); Lolita C. Baldor, *Racist Memes Shared by Navy SEALs Prompt Investigation, Disciplinary Actions*, MILITARY.COM (May 20, 2025, 5:35 PM), <https://www.military.com/daily-news/2025/05/20/racist-memes-shared-navy-seals-prompt-investigation-disciplinary-actions.html> [<https://perma.cc/BW77-XTDF>] (describing possible disciplinary action for two Navy Seals for developing racist memes targeting a Black sailor in their platoon and circulating them in a group chat); Brad Dress, *New Year's Attacks Fuel Fears of Extremism in Military*, THE HILL (Jan. 2, 2025, 6:22 PM), <https://thehill.com/policy/defense/5064459-military-extremism-new-orleans-las-vegas-attacks/> [<https://perma.cc/648Y-YJQN>] (explaining that suspect behind attack in New Orleans that killed fourteen people was an Army veteran, and suspect behind explosion of a Tesla Cybertruck in Las Vegas was an active-duty servicemember in the Army); PBS Newshour Transcript: *What Inspires Veterans or Service Members to Carry Out Violence and Extremism?* (Jan 2, 2025), <https://www.pbs.org/newshour/show/what-inspires-veterans-or-service-members-to-carry-out-violence-and-extremism> [<https://perma.cc/7JKJ-6A9P>] (noting that New Orleans and Las Vegas extremist criminal acts both involved suspects with military service experience, and exploring susceptibility to extremist ideology); Jenna Russell, *Survivors of Maine Mass Shooting Take Step Toward Suing the Army*, N.Y. TIMES (Oct. 15, 2024), <https://www.nytimes.com/2024/10/15/us/maine-mass-shooting-survivors-lawsuit->

The U.S. civilian population reflects similar trend lines: an increasing embrace of extremism, as well as a rise in acts of extremist violence. According to a 2023 report of the U.S. Government Accountability Office, cases of violent extremist in the U.S. have risen by 357 percent from 2013 to 2021.⁶¹ While political violence has been present for much of the nation's history, it was generally "relegated to the fringes of society."⁶² Recently, however, acceptance of the use of political violence has received broader public support, with backing across political parties. A Fall 2024 report from the Center for Strategic and International Studies showed that a growing number of Americans—of both political parties—support using political violence.⁶³ Research conducted by a team at the University of Chicago found "over 15 percent of Americans—12 percent of Democrats, 15 percent of independents, and 19 percent

army.html [https://perma.cc/F8S4-FXBT] (describing how survivors have notified the Defense Department that they intend to sue the military for negligence, alleging that the Army failed to address the shooter's declining mental health and threats of violence); see also James Risen, *Pentagon Analyst Kept Intel Job After Joining Jan. 6 Mob, Planned to Kidnap Jewish Leaders*, THE INTERCEPT (Mar. 13, 2023, 1:48 PM), <https://theintercept.com/2023/03/13/january-6-military-intelligence-hatchet-speed/> [https://perma.cc/3VGE-THLC].

61. GAO-23-104720, DOMESTIC TERRORISM (2023), *supra* note 33, at 23–24.

62. Robert A. Pape, *Our Own Worst Enemies: The Violent Style in American Politics*, FOREIGN AFFS. 143 (Nov./Dec. 2024).

63. Riley McCabe, *U.S. Domestic Terrorism Is Increasingly Motivated by Partisan Politics*, LAWFARE (Nov. 3, 2024, 9:00 AM), <https://www.lawfaremedia.org/article/u.s.-domestic-terrorism-is-increasingly-motivated-by-partisan-politics> [https://perma.cc/5F5L-4ZE7] (summarizing Riley McCabe, *The Rising Threat of Anti-Government Domestic Terrorism: What the Data Tells Us*, CSIS (Oct. 2024), https://csis-website-prod.s3.amazonaws.com/s3fs-public/2024-10/241021_McCabe_Domestic_Threat.pdf [https://perma.cc/E6X3-B7EA]) ("From January 2016 to April 2024, there were a total of 21 domestic terrorist attacks and plots against government targets motivated by partisan political beliefs, compared to a total of just two such incidents in the more than two preceding decades tracked in the CSIS dataset.").

For more detailed assessments of the growth in political violence and extremist activity, both within the United States and abroad, see RONALD J. DANIELS, GRANT SHREVE & PHILLIP SPECTOR, *WHAT UNIVERSITIES OWE DEMOCRACY* (2021); HOFFMAN & WARE, *supra* note 41; BARBARA MCQUADE, *ATTACK FROM WITHIN* (2024); TOM NICHOLS, *OUR OWN WORST ENEMY* (2021); Mary B. McCord & Jacob Glick, *The Threat from Unlawful Private Militias Has Evolved. The Federal Government's Response Must Evolve Too*, JUST SEC. (Oct. 4, 2024), <https://www.justsecurity.org/103433/unlawful-private-militias-government-response/> [https://perma.cc/GA5G-FEFK]; Pete Simi & Seamus Hughes, *The Slow Burn Threatening Our Democracy*, LAWFARE (Oct. 5, 2023, 2:16 PM), <https://www.lawfaremedia.org/article/the-slow-burn-threatening-our-democracy> [https://perma.cc/JQ2C-YSE7]; Mike German, Thomas A. Berry, Robert A. Pape & Patrick G. Eddington, *Domestic Terrorism Versus Constitutional Speech*, CATO INST. (June 7, 2023), <https://www.cato.org/events/domestic-terrorism-versus-constitutional-speech> [https://perma.cc/6LNP-TJN5]; The Daily, *The Re-Militarization of Germany*, N.Y. TIMES (June 21, 2023), <https://podcasts.apple.com/us/podcast/the-re-militarization-of-germany/id1200361736?i=1000617827364> [https://perma.cc/E9XP-LCS3].

of Republicans—agree that the ‘use of force is justified to ensure members of Congress and other government officials do the right thing.’”⁶⁴

Unsurprisingly, the growth in societal acceptance of political violence seems to coincide with a decline in civic knowledge levels. The most recent Annenberg Civics Knowledge Survey, conducted in September 2024, is revealing. While nearly two-thirds of Americans (65%) can name all three branches of government, 15% cannot name any of the three branches.⁶⁵ A little over half of U.S. adults know which party controls the Senate and which controls the House of Representatives.⁶⁶ Less than half of respondents could name any rights protected by the First Amendment beyond the freedom of expression; when survey respondents were asked if they could name the specific rights guaranteed under the First Amendment, only 11% of those who answered were able to identify the right to petition the government, and 22% of respondents incorrectly named the right to bear arms as one of the rights protected by the First Amendment.⁶⁷ The belief that political violence is acceptable becomes slightly more understandable—although no less frightening or appropriate—when one appreciates that there is a lack of knowledge about who controls the elected representative bodies, a lack of familiarity with the mechanisms designed to peacefully seek policy change through the petitioning of the government, and a flawed understanding of the First Amendment.⁶⁸ Put more bluntly, low civic knowledge levels create an environment where disinformation, misinformation, rage, and extremism thrive. Moreover, “public support for political violence encourages volatile people—those who may actually use force—to act on their own worst impulses” convinced that their attacks are “serving some greater good, or even that they will be glorified as warriors.”⁶⁹ The concern is heightened when those seeking glorified warrior status, pursuant to an extremist ideology, have military experience and training.

64. Pape, *supra* note 62, at 145 (summarizing results from January 2024 survey conducted by the Chicago Project on Security & Threats (CPOST)). Additional CPOST survey data on political violence in America is available at <https://cpost.uchicago.edu/research/apv/surveys/> [<https://perma.cc/EF5Y-BYJV>].

65. 2024 ANNENBERG CIVICS KNOWLEDGE SURVEY, ANNENBERG PUB. POL’Y CTR. (Sept. 12, 2024), <https://www.annenbergpublicpolicycenter.org/political-communication/civics-knowledge-survey/> [<https://perma.cc/66QS-HWH8>].

66. *Id.*

67. *A Majority of Americans Can’t Recall Most First Amendment Rights*, ANNENBERG PUB. POL’Y CTR. (Sept. 12, 2024), <https://www.annenbergpublicpolicycenter.org/most-americans-cant-recall-most-first-amendment-rights/> [<https://perma.cc/U5BV-G299>].

68. *See, e.g.*, ANTHONY W. CARROLL, CIVIC ANEMIA: LAW SCHOOLS SHOULD GIVE BOOSTERS TO COUNTER ITS EFFECTS, in BEYOND IMAGINATION? THE JANUARY 6 INSURRECTION 233–34 (2022) (“[W]hen the electorate lacks a foundational understanding of the basic structure and function of our democratic institutions and election processes, it will be ill-informed . . . [and] ill-prepared to carry-out their responsibilities as citizens and honor the outcome of our nation’s democratic mission, particularly elections.”).

69. Pape, *supra* note 62; *see also supra* note 23 and sources cited therein.

C. Understanding the Digital Dimension

While the threat of extremism in the U.S. military is not new, its potency has changed. To return to our metaphor, the poison is teeming through the pipes at an alarming rate, and the number of pipes has increased. According to Professor Bruce Hoffman, a counterterrorism specialist at Georgetown University, social media and the internet have provided a “propellant” for extremists giving them a much broader reach than in the past.⁷⁰ Social science research into misinformation bolsters the idea of the propellant-like character of these digital pipes. Findings in a November 2024 study show that misinformation sources evoke more outrage than do trustworthy sources, that outrage facilitates the sharing of misinformation at least as strongly as the sharing of trustworthy news, and users are more willing to share outrage-evoking misinformation without reading it first.⁷¹ The U.S. Intelligence Community reached a similar assessment: “DVEs exploit a variety of popular social media platforms, smaller websites with targeted audiences, and encrypted chat applications to recruit new adherents, plan and rally support for inperson actions, and disseminate materials that contribute to radicalization and mobilization to violence.”⁷² A September 2024 indictment of the Terrorgram extremists illustrates the above warnings on the weaponization of digital messaging platforms and their amplifying effect. The suspects used the Telegram messaging app to “promote a white supremacist ideology, spreading the message that society is corrupt and cannot be saved, and that violence and terrorism are necessary to ignite a race war” and to provide guidance

70. See Robert O’Harrow Jr., Andrew Ba Tran & Derek Hawkins, *The Rise of Domestic Extremism in America*, WASH. POST (Apr. 12, 2021), <https://www.washingtonpost.com/investigations/interactive/2021/domestic-terrorism-data/> [<https://perma.cc/8FKH-Y5RF>]; JACOB WARE, *THE THIRD GENERATION OF ONLINE RADICALIZATION*, GEO. WASH. PROGRAM ON EXTREMISM (June 2023), <https://extremism.gwu.edu/sites/g/files/zaxdzs5746/files/2023-06/third-generation-final.pdf> [<https://perma.cc/TY3B-NS8Y>] (describes three waves of online extremism, exploring the characteristics of each wave and how they manifest in real-world violence); Brian Fishman, *Dual-Use Regulation: Managing Hate and Terrorism Online Before and After Section 230 Reform*, BROOKINGS (Mar. 14, 2023), <https://www.brookings.edu/articles/dual-use-regulation-managing-hate-and-terrorism-online-before-and-after-section-230-reform/> [<https://perma.cc/4J8L-HTEA>] (explaining how technology platforms exacerbate the spread of terrorism and extremism rhetoric, but cautioning policymakers not to repeat—in their efforts to reform Section 230—the harms caused when the platforms tried to address Islamist-based terror). In 2021, the Office of the Director of National Intelligence explained that “DVE attackers often radicalize independently by consuming violent extremist material online and mobilize without direction from a violent extremist organization, making detection and disruption difficult.” OFF. OF THE DIR. OF NAT’L INTEL., *supra* note 13.

71. Killian L. McLoughlin, William J. Brady, Aden Goolsbee, Ben Kaiser, Kate Klonick & M.J. Crockett, *Misinformation Exploits Outrage to Spread Online*, 386 SCIENCE 991 (Nov. 28, 2024) (suggesting that current approaches may not be effective due to flawed assumptions: “outrage-evoking misinformation may be difficult to mitigate with interventions that assume users want to share accurate information”).

72. NAT’L SEC. COUNCIL, *supra* note 33, at 11.

and instructions for attacking critical infrastructure and assassinating government officials.⁷³

A rise in the use of digital platforms—to share extremist content and to recruit members to extremist groups—is also seen in military and veteran communities. Professor Audrey Kurth Cronin, of American University, testified in a 2021 congressional hearing that the “speed at which people are radicalized and mobilized via digital media has ramped up. This trend is heightening extremism and will not reverse itself because it is part of a new technological environment.”⁷⁴ Indeed, the initial exposure to extremist views most often occurs through digital platforms, including social media, gaming platforms, and encrypted chats.⁷⁵ A 2020 *Military Times* survey found that about one-third of active-duty personnel witnessed examples or instances of extremism in the ranks—often based in white nationalist and white supremacist ideologies—and the initial exposure to extremist views often occurred online.⁷⁶ This Section examines how extremist groups are using digital platforms to recruit new members and expand the reach of their messages. It focuses on digital efforts aimed at recruiting active-duty servicemembers and veterans and then describes the most common digital tools deployed.

While technology always serves as both a disruptive and transformative force, the use of social media and gaming platforms, encrypted chat tools, and podcasting by violent extremist groups has proved particularly pernicious. These digital platforms are increasingly the toolkit of choice for recruitment efforts of military members by extremist groups.⁷⁷ In an October 13, 2021, virtual hearing before the House

73. Daryna Antoniuk, *Feds Say ‘Terrorgram’ White Supremacists Used Telegram to Incite Attacks*, THE RECORD (Sept. 10, 2024), <https://therecord.media/feds-terrorgram-white-supremacists-telegram> [<https://perma.cc/NFH5-RR85>]; see also Paul Mozur, Adam Satariano, Aaron Krolik & Steven Lee Myers, *How Telegram Became a Playground for Criminals, Extremists and Terrorists*, N.Y. TIMES (Sept. 7, 2024), <https://www.nytimes.com/2024/09/07/technology/telegram-crime-terrorism.html> [<https://perma.cc/69N9-76E9>] (describing a “disparate collective on Telegram known as Terrorgram, where neo-fascists share messages and videos encouraging violence”); Megan Squire & Creede Newton, *Digital Threat Report: Telegram’s Toxic Recommendations Perpetuate Extremism*, S. POVERTY L. CTR. (Dec. 16, 2024), <https://www.splcenter.org/resources/hate-watch/telegrams-toxic-recommendations-perpetuate-extremism/> [<https://perma.cc/F9QB-LFEU>] (“Telegram’s combination of public channels, encrypted messaging and file storage makes it a potent tool for extremist groups. Users who have been deplatformed from other social media sites have found a haven on Telegram, exploiting its unique combination of technologies to further their agendas.”).

74. *Extremism in the Armed Forces: Hearing Before the H. Comm. on Armed Services*, 117th Cong. 58 (2021) [hereinafter Cronin Testimony], (statement of Audrey Kurth Cronin, Professor of International Security, Director, Center for Security, Innovation and New Technology, American University).

75. See CORDERO, KUZMINSKI, BAIGAL & CAMPBELL, PROTECTING THE PROTECTORS, *supra* note 8, at 23 n.51 (“Online engagement—posts, likes and retweets—is where those who may engage in domestic violent extremism may show early signs of their intent to do so.”).

76. See *supra* note 8 and sources cited therein.

77. GAO-24-106262, COUNTERING VIOLENT EXTREMISM (2024), *supra* note 8, at 5 (describing the increasing role of digital platforms by DVE groups for recruitment and using the term “content promoting domestic violent extremism” as a generic way to refer to “any

Committee on Veterans' Affairs, witnesses described the increase in and evolving methods for recruitment of veterans by domestic violent extremist groups.⁷⁸ At a forum examining the same issue hosted by the Department of Homeland Security later that month, a panelist explained that the "most dangerous digital activity no longer takes place on conventional social media but rather across rapidly growing far-right social media platforms and encrypted chat tools such as Telegram, Gab, Gettr, and others."⁷⁹ The post-January 6, 2021, "deplatforming" of many white supremacists led other extremists to move to (and, in some cases, create) "alternative social media platforms that cater to others with their ideological viewpoint," and that more effectively evaded law enforcement.⁸⁰ Thus, by 2022, a new set of go-to digital tools for extremist groups emerged, including alternative (often far-right) social

text, graphic, video, audio content, or other communication made on social media or gaming platforms, that supports or encourages the use of violence to further a political or social goal in the U.S.").

78. See *Domestic Violent Extremist Groups and the Recruitment of Veterans: Hearing Before the H. Comm. on Veterans' Affs.*, 117th Cong. (2021) (statements of Jeremy Butler, Chief Executive Officer, Iraq and Afghanistan Veterans of America, Dr. Seth Jones, Senior Vice President, Director of the Transnational Threats Project, Center for Strategic and International Studies, and Dr. Cynthia Miller-Idriss, Director of the Polarization and Extremism Research Innovation Lab, American University).

79. HUM. RTS. FIRST, *supra* note 26; see also U.S. DEP'T OF HOMELAND SEC., *supra* note 33 at 10 (2019) ("In addition to mainstream social media platforms, white supremacist violent extremists use lesser-known sites like Gab, 8chan, and EndChan, as well as encrypted channels. Celebration of violence and conspiracy theories about the 'ethnic replacement' of whites as the majority ethnicity in various Western countries are prominent in their online circles.").

80. Darin E.W. Johnson, *Homegrown and Global: The Rising Terror Movement*, 58 HOUST. L. REV. 1059, 1073–74 (2021). After January 6, 2021, many of the mainstream social media platforms "de-platformed" accounts that included white supremacist views and commentary because they violated the platform's internal policies due to the "hateful and extremist rhetoric." *Id.*

media platforms,⁸¹ encrypted chat tools,⁸² gaming platforms,⁸³ music streaming,⁸⁴ podcasting,⁸⁵ and imageboards.⁸⁶ The use of these digital tools is strengthened by the

81. Johnson, *supra* note 80, at 1073–74 (“One such platform, Gab.ai, operates like Twitter and allows extremist communities to exchange unfiltered extremist rhetoric that would be blocked on mainstream platforms.”).

82. Encrypted chat tools operate by allowing the user of a messaging service to select to have their messages encrypted when they are sent, either through a messaging service, such as WhatsApp, or through an email provider. See MIMECAST, *What Are Encrypted Messages?*, <https://www.mimecast.com/content/encrypted-messaging/> [https://perma.cc/JME8-DR6F]; WHATISMYIPADDRESS.COM, *How Do Encrypted Messaging Apps Work?*, <https://whatismyipaddress.com/how-do-encrypted-messaging-apps-work> [https://perma.cc/HR45-B7QS]. Encryption of chat messages and emails scrambles them into a code, whereby only the recipient with the correct decryption key is able to read them. See LENOVO, *What Is Encrypted Text Messaging?*, <https://www.lenovo.com/us/en/glossary/what-is-encrypted-text-messaging/> [https://perma.cc/QEW7-P52E]; see also, e.g., GOOGLE SUPPORT, *How End-to-End Encryption in Google Messages Provides More Security*, GOOGLE, <https://support.google.com/messages/answer/10262381?hl=en#:~:text=Encryption%20converts%20data%20into%20scrambled,only%20on%20these%20two%20devices> [https://perma.cc/8YZJ-9PLG].

83. See GAO-24-106262, COUNTERING VIOLENT EXTREMISM (2024), *supra* note 8, at 2.

84. Music has been a powerful recruiting tool for extremist groups while also serving as a vehicle for amplification of extremist content. Mariam Shah, *Amplifying Extremism: White Supremacists and Far-Right Groups on Spotify*, GLOBAL NETWORK ON EXTREMISM & TECH. (GNET): INSIGHTS (Oct. 25, 2024), <https://gnet-research.org/2024/10/25/amplifying-extremism-white-supremacists-and-far-right-groups-on-spotify/> [https://perma.cc/5AV6-U3CE] (“These far-right movements and ideologies are not merely confined to the offline space; with the rise of digital platforms, music and audio-sharing sites have become powerful spaces for creativity and communication. These same platforms have also become venues for extremist groups to spread their messages through songs, playlists, and podcasts, making them challenging to regulate. Platforms such as Spotify and SoundCloud, while primarily focused on music and podcasts, have been used for malign purposes by extremist groups globally.”).

85. Podcasting now figures prominently in extremist recruiting efforts and is a key feature in “building the white supremacist movement.” Johnson, *supra* note 80, at 1074–75. According to Professor Johnson:

[Some] white supremacists have attempted to brand themselves as credible alternative influencers by creating podcasts, news, and content on YouTube with the goal of attracting followers and moving them from more mainstream to more extreme content through guest and links. The goal of this community, dubbed the “Alternative Influence Network,” is to radicalize followers by presenting themselves as a relatable and authentic, but alternative, media source. The Assistant Commissioner for Intelligence Analysis at the New York Police Department Intelligence Bureau aptly notes that “whereas for ISIS the Internet is a tool to create and grow the caliphate, for white supremacists the Internet is the caliphate: a headquarters, a virtual training camp, and a staging ground all in one.”

Id.

86. Imageboards are a type of internet forum where the initial post includes an image in addition to associated text. See Sydney Butler, *The History of Imageboards and How They*

micro-targeting of servicemembers and veterans through commercial data collection.⁸⁷

The online recruitment process varies by group and platform; however, the common recruiting sequence—for many extremist groups—starts with recruitment on large, public-facing platforms, then moves recruits to increasingly private platforms where they can communicate more openly.

Figure 1: Recruitment Stages of Some Violent Extremists on Social Media Platforms⁸⁸



Source: U.S. Department of Homeland Security information; Icons-Studio/stock.adobe.com (icons). | GAO-24-106262

The “internet’s promise of decentralized, relatively secure communication” has long appealed to extremist groups.⁸⁹ The use of these digital tools and platforms has significant advantages for extremist groups: (i) allowing formerly geographically dispersed groups to connect and find community, pulling “geographically distant communities into cohesive movements outside of government control”;⁹⁰ (ii) providing a cheap and effective means of amplification of the extremist message and accelerated recruitment;⁹¹ (iii) masking the influence of foreign actors and

Still Influence the Web, HOW-TO GEEK (Aug. 25, 2024), <https://www.howtogeek.com/the-history-of-imageboards-and-how-they-still-influence-the-web/> [https://perma.cc/8L4V-CKEJ]; see also KNOW YOUR MEME, *Imageboard*, <https://knowyourmeme.com/memes/subcultures/imageboard> [https://perma.cc/25EL-LW8V]. Much of internet culture stems from imageboard posts, with memes originating on such forums later finding their way to other platforms such as X (formerly Twitter) and Facebook. *Id.* According to Professor Johnson, imageboards “play an outsized role in the white supremacist community.” Johnson, *supra* note 80, at 1073–74.

87. Jessica Dawson, *Microtargeting as Information Warfare*, 6 CYBER DEF. REV. 63, 71 (2021) (urging Pentagon to identify servicemembers’ digital privacy as a national security threat and describing adverse impact on national defense of algorithmic targeting of servicemembers with misinformation).

88. *Id.*

89. Fishman, *supra* note 70.

90. *Id.*; Armstrong, *supra* note 25, at 72–73 (explaining how extremist groups use social media to recruit servicemembers and veterans).

91. See, e.g., Gia Kokotakis, “Fed Front”: Conspiracy Theories About Federal Government Involvement in Far-Right Extremism Resurface, LAWFARE (Mar. 15, 2024, 1:00 PM), <https://www.lawfaremedia.org/article/fed-front-conspiracy-theories-about-federal->

organizations;⁹² and (iv) concealing activities in the dispersed digital domain, and allowing extremist groups to avoid government detection and oversight.⁹³ These tools have proven particularly effective in creating channels for infiltrating military and veteran communities, distributing propaganda, and recruiting.⁹⁴ The

government-involvement-in-far-right-extremism-resurface [https://perma.cc/5992-G9WS] (describing Fed Front conspiracy theory from 2024 and explaining that “the ease with which this conspiracy has gained traction across the right-wing social media ecosystem represents a growing phenomenon that undermines the authority of federal agencies and has the potential to inspire acts of violence”); ANTI-DEFAMATION LEAGUE, HATE BEYOND BORDERS: THE INTERNATIONALIZATION OF WHITE SUPREMACY 7 (2019), https://www.adl.org/sites/default/files/pdfs/2022-05/international_influences_on_americas_far_right_vminibooklet_v13_sp.pdf [https://perma.cc/P9ZH-2XRH] (explaining how white supremacists capitalize on “digitalization of information,” which accelerates the international exchange of ideas and tactics, and provides opportunities to recruit new followers). According to the ADL’s 2019 report:

Blogs, online publications, Internet radio and podcasts allow white supremacists to influence both the ideas and actions of others across the globe more directly and more quickly. This networking online and in person emboldens them and gives them the impression that the white supremacist movement is thriving. This, in turn, encourages white supremacists to believe they have widespread credibility and support, while creating an international marketplace for their hateful ideas.

ANTI-DEFAMATION LEAGUE, *supra*, at 7.

92. Fishman, *supra* note 70 (describing how white supremacist Louis Beam used early digital bulletin boards to make his movement transnational, “specifically by giving Canadian white supremacists, who faced stronger prohibitions on racist material, a way to access propaganda from the United States, where such material was protected by the First Amendment”); Johnson, *supra* note 80, at 1071 (“Much like global Al Qaeda- and ISIS-associated terror networks, the global white supremacist terror movement has obtained adherents around the world through its outreach on digital media platforms. Digital media magnifies the voices of formerly isolated extremists and allows them to reach millions.”).

93. See Fishman, *supra* note 70 (explaining how online platforms allow DVE actors and groups to insulate themselves from government crackdowns); GAO-24-106262, COUNTERING VIOLENT EXTREMISM (2024), *supra* note 8, at 15 (describing how “violent extremists have increasingly started their recruitment efforts on secure communication platforms, such as encrypted messaging platforms, to evade law enforcement detection”). According to Fishman, the “shift in digital geography meant that if anyone was going to take action against these malicious actors, it would have to be the platforms themselves. Traditional national security agencies could not attack Facebook servers the way they might a bespoke vBulletin site hosted overseas. Even messaging strategies and creating undercover accounts would be more difficult for federal agencies, who were more likely to incidentally come into contact with American citizens on major platforms.” *Id.*

94. See Armstrong, *supra* note 25, at 66–67; R. Kim Cragin, *Virtual and Physical Realities: Violent Extremists’ Recruitment of Individuals Associated with the US Military*, STUD. IN CONFLICT & TERRORISM 1 (2022); Colin P. Clarke, *In-Depth Briefing #43: Tech-Savvy Terrorism*, CHACR (Jan. 13, 2023), <https://chacr.org.uk/2023/01/13/in-depth-briefing-43-tech-savvy-terrorism/> [https://perma.cc/T2PJ-W6L9]; Donnelly, *supra* note 8 (describing U.S. servicemembers engaged in white supremacist chats in the extremist “Iron March” online

“recruitment is situationally specific, multi-platformed, and focuses on vulnerable veterans’ grievances” while using “rhetoric, aesthetics, issues, and formats standard in specific communities to disguise their recruitment efforts and mask their content.”⁹⁵

To best illustrate how these digital tools work and the consequences of their effects, provided below are examples of recent convictions for violent extremist acts by individuals with military backgrounds. These examples reveal the scope and shifting contours of the extremism threat in the U.S. military and illuminate how digital platforms are impacting the threat. In 2020, Christopher Hasson, a former Coast Guard lieutenant, was sentenced to more than thirteen years for various firearm and other charges. Hasson self-identified as a “White Nationalist” and advocated for “focused violence” in order to establish a white homeland.⁹⁶ Hasson was radicalized online—he visited various white supremacist websites over a period of two years and registered for an online sniper and sharpshooter forum.⁹⁷ He allegedly found inspiration in the manifestos of mass murderer Anders Breivik and Unabomber Ted Kaczynski.⁹⁸

In March 2023, Ethan Phelan Melzer, a former U.S. Army private, was sentenced to forty-five years in prison after pleading guilty to attempting to murder U.S. servicemembers, providing and attempting to provide material support to terrorists, and illegally transmitting national defense information to violent extremist groups.⁹⁹

forum in 2016).

95. HUM. RTS. FIRST, *supra* note 26.

96. Press Release, U.S. Dep’t of Just., Christopher Hasson Sentenced to More Than 13 Years in Federal Prison on Federal Charges of Illegal Possession of Silencers, Possession of Firearms by an Addict to and Unlawful User of a Controlled Substance, and Possession of a Controlled Substance (Jan. 31, 2020) [hereinafter Jan. 31, 2020, DOJ Press Release], <https://www.justice.gov/usao-md/pr/christopher-hasson-sentenced-more-13-years-federal-prison-federal-charges-illegal> [<https://perma.cc/G9GJ-RB9H>]; *see also* Johnson, *supra* note 80, at 1096; Schrama, *supra* note 26; CTR. FOR DEV. OF SEC. EXCELLENCE, *Case Study: Targeted Violence*, <https://www.cdse.edu/Portals/124/Documents/casestudies/case-study-paul-hasson.pdf> [<https://perma.cc/XA9S-YTEX>]. According to the DOJ press release, a “[r]eview of Hasson’s e-mail accounts, saved documents, text messages, and Internet searches show that he was inspired by racist murderers, stockpiled assault weapons, studied violence, and intended to exact retribution on minorities and those he considered traitors.” Jan. 31, 2020, DOJ Press Release, *supra*.

97. *See* Johnson, *supra* note 80, at 1096.

98. Jan. 31, 2020, DOJ Press Release, *supra* note 96; *see also* Charles Homans, *The Strange, Post-Partisan Popularity of the Unabomber*, N.Y. TIMES (March 22, 2025), <https://www.nytimes.com/2025/03/22/magazine/unabomber-ted-kaczynski-luigi-mangione.html> [<https://perma.cc/EVA2-8SSE>] (describing appeal of Ted Kaczynski’s to extremists, and describing experience of “Tedpillling”); Maxim Loshutoff, Opinion, *The Unabomber’s Influence Is Deeper and More Dangerous Than We Know*, N.Y. TIMES (Dec. 14, 2024), <https://www.nytimes.com/2024/12/14/opinion/united-health-ceo-killing-unabomber.html> [<https://perma.cc/3PQ7-VEC3>] (describing influence of Ted Kaczynski on Luigi Mangione, the suspect charged in the killing of UnitedHealthcare’s chief executive, Brian Thompson).

99. Press Release, U.S. Dep’t of Just., Former U.S. Army Soldier Sentenced to 45 Years in Prison for Attempting for Murder Fellow Service Members in Deadly Ambush (Mar. 3, 2023) [hereinafter Mar. 3, 2023, DOJ Press Release], <https://www.justice.gov/opa/pr/former->

According to the indictment, the former servicemember “planned a jihadist attack on his U.S. Army unit in the days leading up to a deployment to Turkey and sent sensitive details about the unit—including information about its location, movements, and security—to members of the extremist organization Order of the Nine Angles (O9A), a white supremacist, neo-Nazi, and pro-jihadist group.”¹⁰⁰ While stationed abroad, Melzer consumed propaganda from a number of extremist groups and subscribed to encrypted online forums which espoused jihadist, far-right, neo-Nazi, and other white supremacist propaganda and used encrypted messaging applications to communicate with members and associates of O9A.¹⁰¹

In October 2024, the final defendant in a self-described “modern day SS” group that planned to attack a U.S. energy facility was sentenced.¹⁰² The group included five members, two of whom were active-duty U.S. Marines at the time of the plot.¹⁰³ Two were members of and posted on the “Iron March” online forum, a now-closed gathering spot for young neo-Nazis to organize and recruit.¹⁰⁴ They recruited additional members and then transitioned to encrypted messaging apps to engage in more detailed planning and communication outside of the forum (following the sequence described above). “Driven by a white supremacist ideology, these defendants set out to terrorize the nation by targeting America’s power grid, aiming to create chaos, instill fear, and put countless innocent lives at risk.”¹⁰⁵

In November 2024, Jack Teixeira, a former member of the U.S. Air National Guard, received a fifteen-year sentence for leaking classified national defense information on Discord, a group-chat platform where he also espoused racist and white-nationalist ideologies.¹⁰⁶ Growing up, Teixeira played “Call of Duty” and

us-army-soldier-sentenced-45-years-prison-attempting-murder-fellow-service-members [https://perma.cc/43LU-L4BB]; see also Michael Levenson, *Former Army Private Sentenced to 45 Years in Neo-Nazi Plot to Kill Soldiers*, N.Y. TIMES (Mar. 9, 2023), https://www.nytimes.com/2023/03/03/us/ethan-melzer-army-neo-nazi-sentenced.html [https://perma.cc/S63G-L4XL].

100. Mar. 3, 2023, DOJ Press Release, *supra* note 99 (“O9A espouses neo-Nazi, antisemitic and Satanic beliefs and promotes extreme violence to accelerate and cause the demise of Western civilization,” expressing admiration for Nazis and Islamic jihadists).

101. *Id.*

102. Press Release, U.S. Dep’t of Just., Defendants with Ties to White Supremacy Sentenced in Connection with Plot to Destroy Energy Facilities (Oct. 28, 2024) [hereinafter Oct. 28, 2024, DOJ Press Release], https://www.justice.gov/opa/pr/defendants-ties-white-supremacy-sentenced-connection-plot-destroy-energy-facilities-0 [https://perma.cc/7MEW-92Z2]; Press Release, U.S. Dep’t of Just., Defendants with Ties to White Supremacy Sentenced in Connection with Plot to Destroy Energy Facilities (July 25, 2024), https://www.justice.gov/opa/pr/defendants-ties-white-supremacy-sentenced-connection-plot-destroy-energy-facilities [https://perma.cc/97FJ-8MC9].

103. Oct. 28, 2024, DOJ Press Release, *supra* note 102.

104. *Id.*

105. *Id.* (quoting Director Steven Dettelbach of the Bureau of Alcohol, Tobacco, Firearms and Explosives).

106. Press Release, U.S. Dep’t of Just., Former Air National Guardsman Sentenced to 15 Years in Prison for Unlawfully Disclosing Classified National Defense Information (Nov. 12, 2024), https://www.justice.gov/opa/pr/former-air-national-guardsman-sentenced-15-years-

“Grand Theft Auto V” with his friends via voice chat technology that allowed them to play together and communicate with one other from their respective homes.¹⁰⁷ His use of gaming platforms continued into adulthood and after he joined the Air National Guard. Teixeira had a reputation for making unsavory comments—on social media platforms and in person—about weapons, mass shooting events, and harming animals as well as making racially charged threats of violence, in particular against the Black community.¹⁰⁸ Despite these expressions of support for violent extremist and white supremacist ideologies pre-service, Teixeira gained admission to the military and acquired a security clearance.¹⁰⁹

The quantitative and anecdotal information provided in the Sections above lead to four summary observations on the current extremism threat within the U.S. military. First, the problem of extremism in the military is not new. It is long-standing and persistent; however, there appears to be an uptick in the acceptance of extremist ideologies and participation in extremist behavior in recent years.¹¹⁰ Second, while there are a variety of animating ideologies for extremist groups in the United States, one of the most dominant in the U.S. military and veteran communities is based on white supremacist and white nationalist ideologies.¹¹¹ Third, engagement with

prison-unlawfully-disclosing-classified [<https://perma.cc/D7JK-2YXM>]; see also Gareth Evans, *Jack Teixeira: Suspected Leaker Made Threats and Researched Shootings, US Says*, BBC (Apr. 27, 2023), <https://www.bbc.com/news/world-us-canada-65406559> [<https://perma.cc/M79Y-KBK6>]; Shane Harris, Samuel Oakford & Chris Dehghanpoor, *Alleged Leaker Fixated on Guns and Envisioned ‘Race War’*, WASH. POST (May 14, 2023), <https://www.washingtonpost.com/national-security/2023/05/13/jack-teixeira-discord-leaked-documents/> [<https://perma.cc/UU2A-R56Z>]; Juliana Kim & Jenna McLaughlin, *What We Know About Jack Teixeira, the Suspected Leaker of Pentagon Documents*, NPR (Apr. 14, 2023, 12:30 PM), <https://www.npr.org/2023/04/14/1169952771/jack-teixeira-background-pentagon-document-leak> [<https://perma.cc/VF4H-LNUW>].

107. Shane Harris & Samuel Oakford, *Jack Teixeira Got Security Clearance Despite History of Violent Threats*, WASH. POST (Dec. 11, 2023), <https://www.washingtonpost.com/national-security/2023/12/11/jack-teixeira-discord-leaks/> [<https://perma.cc/XLV4-HGAE>].

108. *Id.*

109. *Id.*

110. JENSEN, KANE & AKERS (START), EXTREMISM IN THE RANKS AND AFTER, *supra* note 33, at 1 (describing “upward trend in recent cases of criminal extremists with military backgrounds, suggesting that extremism in the ranks may be a growing concern”).

111. *Extremism in the Armed Forces: Hearing Before the H. Comm. on Armed Services*, 117th Cong. 7–8, 85–88 (2021) (statement of Lecia Brooks, Chief of Staff, Southern Poverty Law Center (SPLC)) (“This is not a new problem. SPLC has been documenting white supremacists’ infiltration of the military and urging officials to take action since 1986. That year, we wrote Defense Secretary Weinberger and exposed the fact that Active Duty Marines at Camp Lejeune were participating in paramilitary Ku Klux Klan activities and stealing military weaponry.”); JENSEN, KANE & AKERS (START), EXTREMISM IN THE RANKS AND AFTER, *supra* note 33, at 4 (“Over 30% of the subjects in PIRUS with military backgrounds espoused views of white supremacy, white nationalism, and/or xenophobia,” and “were affiliated with no fewer than 50 extremist groups.”).

Specifically, of the 145 individuals with military backgrounds who were members of known skinhead, white supremacist, or white nationalist groups, 35 were members of the Proud Boys, 16 were members of the Ku Klux Klan, and 11 were members of the Aryan Nations. *Id.* The START report describes the ideological affiliations of U.S. extremists with

violent extremist ideologies by servicemembers and veterans appears to track a rise in acceptance of extremism and political violence in the U.S. civilian population, and tends to follow large-scale armed conflicts and military deployments.¹¹² Fourth, an evolving digital component to the extremism threat brings new potency and amplification, creating a stickier problem for those seeking to counter the pernicious effects of extremism in the military.¹¹³

II. EMBEDDED OBSTACLES: WHY COUNTERING EXTREMISM IN THE U.S. MILITARY IS SO HARD

This Part considers why efforts to counter extremism in the U.S. military continue to fail. It starts by describing the general trend of avoidance, inattention, and inaction

military backgrounds from 1990 to April 2024, noting that “[o]verall, 57% of the offenders in PIRUS [the study’s dataset] with military backgrounds were affiliated with more than 125 unique extremist groups or named movements. The remaining 43% of individuals in the data espoused ideological views but were not members of organized extremist groups or named movements.” *Id.*

The following results from the study are illustrative:

- Over half of the subjects in PIRUS with military backgrounds adhered to anti-government views or were members of organized militias, including the Sovereign Citizen and Patriot movements, Oath Keepers, the Three Percenters, and other local militia groups. *Id.*
- Just under 7% of the offenders in PIRUS with military backgrounds were connected to, or inspired by, Sala Jihadist groups abroad, including the Islamic State of Iraq and Syria (ISIS) [19 offenders], and al-Qaeda and its affiliated movements (e.g., al-Qaeda in the Arabian Peninsula, al-Shabaab, the Taliban, etc.) [22 offenders]. *Id.*

112. See BELEW, *supra* note 45, at 4, 76 (describing the post-Vietnam rise in white supremacist violent extremism in U.S. veterans); Brooks Testimony, *supra* note 45, at 85–86 (describing impact of Vietnam War on white power movement of the 1970s and 1980s); see also Anti-Defamation League Center on Extremism, *White Supremacists Propaganda Soars to All-Time High in 2022*, ADL (Mar. 8, 2023), <https://www.adl.org/resources/report/white-supremacist-propaganda-soars-all-time-high-2022> [<https://perma.cc/5JFV-R9UA>] (exploring the connection between states with high rates of white supremacist propaganda and states with the highest level of military servicemembers); Kehrt, *supra* note 27 (showing possible connection between bad military experience and embrace of extremist ideologies and possibly behavior).

113. U.S. DEP’T OF HOMELAND SEC. COUNTERING VIOLENT EXTREMISM TASK FORCE, *supra* note 13 (“While typically constitutionally protected speech, there has been an exponential growth online over the past few years in [white supremacist extremist] themes and messages. Many WSEs use social media, as well as websites promoting WSE narratives, to share their views and connect with like-minded individuals.”). Although the digital dimension of the threat has grown in recent years, it is not new: “[A]buse of the internet by terrorists and hate organizations is persistent and longstanding.” Fishman, *supra* note 70 (providing history of extremism online); see also THE WEB OF HATE: EXTREMIST EXPLOIT THE INTERNET, ANTI-DEFAMATION LEAGUE 7–30 (1996), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/web-hate-extremists-exploit-internet> [<https://perma.cc/GUU6-MQ24>] (describing how extremist groups from the Ku Klux Klan to Stormfront have utilized the internet).

from congressional and Pentagon leadership when addressing extremism in the ranks, and then considers a brief departure from this trend, a blip of focused activity from 2017–2022. This Part catalogs the counter-extremism measures adopted during this blip, highlighting the circumstances and motivations that led to their enactment. It assesses their sustainability and staying power when the commitment from leadership fades, morphing into critique and denial. This Part then identifies the persistent structural weakness and legally flawed responses that make countering extremism in the military such a daunting task.

A. A History of Inattention

The extremism challenge—and particularly the variant based on white supremacist ideologies—is not new to military leaders or the congressional committees tasked with oversight of the services. Warnings have been around for years and generally have been met with denial and inattention punctuated by occasional bouts of acknowledgement and activity in response to particularly egregious acts of violent extremism by servicemembers.¹¹⁴ In a February 2020 hearing on “Alarming Incidents of White Supremacy in the Military – How to Stop It,” Representative Jackie Speier offered the following critique of the Pentagon’s counter-extremism efforts:

I am concerned that the military doesn’t take this threat seriously enough, have the tools it needs, or dedicates sufficient resources to the threat. Our accessions and vetting enterprise lumps White supremacist activity in with gang affiliation rather than treat it as a national security issue on par with foreign terror. That lack of urgency and focus trickles down to commanders and enlisted leaders, who don’t appear to be sufficiently apprised of this threat or taught how to deal with it.¹¹⁵

Observers have described the Pentagon’s approach to extremism as “inconsistent” and explain that it has been driven by the dual aims of “maintaining troop quotas and not raising alarms that would increase congressional scrutiny.”¹¹⁶ Thus, the failure of policymakers to take the extremism threat seriously stems from a slew of causes and motivations, including structural obstacles, critiques based on ineffectiveness and constitutional concerns, as well as willful ignorance and political motivation. These causes will be explored more fully in the Sections that follow.

While the warnings have been persistent, so have the calls for reform. Recommendations for countering extremism in the military and veteran communities

114. See Bennett Clifford & Seamus Hughes, *The History of Countering Violent Extremism Tends to Repeat. It Shouldn’t*, LAWFARE (July 17, 2022, 10:01 AM), <https://www.lawfaremedia.org/article/history-countering-violent-extremism-tends-repeat-it-shouldnt> [<https://perma.cc/QE5M-V3J5>] (describing “vicious circle” of counter-extremism efforts that restarts after every major terrorist attack).

115. *Alarming Incidents of White Supremacy in the Military – How to Stop It?: Hearing Before the Subcomm. on Mil. Pers. of the H. Comm. on Armed Services*, 116th Cong. 2 (2020) (Opening Statement of Representative Jackie Speier, Chairwoman, Subcommittee on Military Personnel).

116. Valasik & Reid, *supra* note 28, at 12.

are wide-ranging, representing an interdisciplinary jumble of legal measures, screening technologies, data collection systems, educational theory, training design, and social science. For organizational ease, the recommendations often are categorized by the stage of service: recruiting and pre-service; during service (including pre- and post-deployment); separation from service; and post-separation and retirement.¹¹⁷ The list below includes some of the most prevalent recommendations for countering extremism in the military:

- enhance screening and vetting standards and processes at recruitment and pre-service to identify extremist views, including through social media screening;
- enhance training and education programs at basic training on civics, digital literacy, and susceptibility to recruitment and targeting by extremist groups;
- enhance training and education programs for active-duty servicemembers at reasonable intervals on civics, digital literacy, and susceptibility to recruitment and targeting by extremist groups;
- add measures to screen social media use by servicemembers;
- increase insider threat information sharing across services and military departments;
- increase information sharing between the Department of Defense (DoD), military departments, and civilian law enforcement entities;
- add a new article to the Uniform Code of Military Justice that specifically prohibits extremist or supremacist conduct;
- establish a database of extremist propaganda, tattoos, and organizations;
- develop uniform definitions and standards of extremism;
- improve data collection on extremism;
- develop a discharge code specific to extremism (with sub-codes for ideologies and conduct);
- replace the current decentralized, multiple system approach with a centralized tracking mechanism for extremism;
- enhance education and training programs during transition and separation on civics, digital literacy, and susceptibility to recruitment and targeting by extremist groups;
- develop post-separation education and training for veterans on civics, digital literacy, and susceptibility to recruitment and targeting by extremist groups; and
- establish an oversight entity dedicated to countering extremism in the U.S. military.¹¹⁸

117. *Id.* at 14 (suggesting that counter-extremism efforts focus on “shifts” in a servicemember’s life, such as recruitment, basic training, deployment, and end of active service).

118. These recommendations reflect the work of academic, governmental, and civil society groups. *See, e.g.*, DoD CEAWG REPORT 2021, *supra* note 23; STAFF OF H. COMM. ON VETERAN’S AFFS., *supra* note 54, at 20–21; *Helping Veterans Thrive: The Importance of Peer Support in Preventing Domestic Violent Extremism: Hearing Before H. Comm. on Veterans’ Affs.*, 117th Cong. 6–8 (2022) (written testimony of Dr. John Horgan, Distinguished

Some of the proposed recommendations may be ineffective, some are likely unworkable, and others may be legally suspect if not outright unconstitutional. The list is helpful because it exposes the structural obstacles, legal hurdles, and information gaps that make extremism in the military such a knotty challenge. The list is not provided as an endorsement of any particular recommendation, but to make the point that the extremism problem in the military does not lack for solutions: What is missing is an institutional actor able to navigate the structural obstacles, anticipate the legal distinctions between extremist views and violent extremist conduct, and fill the data gap so that policymakers have a better sense of the scope and scale of the extremism threat.

Despite these persistent calls for reform, the general trend from congressional and Defense Department leadership has been one of avoidance, neglect, and inattention. In 2006, the Southern Poverty Law Center published a series of articles examining the problem of extremism in the U.S. military and describing the growth of “[r]acist [e]xtremists.”¹¹⁹ In 2008, the Federal Bureau of Investigation (FBI) published an intelligence assessment on “White Supremacist Recruitment of Military Personnel Since 9/11.”¹²⁰ In 2009, only a year after the FBI assessment and only a few months after Barack Obama became the nation’s first Black President, the DHS issued a

University Professor, Department of Psychology, Georgia State University, Atlanta, and GA Director, Violent Extremism Research Group); *Helping Veterans Thrive: The Importance of Peer Support in Preventing Domestic Violent Extremism: Hearing Before the H. Comm. on Veterans’ Affs.*, 117th Cong. 7–8 (2022) (written testimony of William Braniff, Board Member and Co-Founder of We the Veterans, Director and Professor of the Practice, START, University of Maryland); Brooks Testimony, *supra* note 45, at 7–8, 92–96; Cronin Testimony, *supra* note 74, at 6, 61–69; Beirich Testimony, *supra* note 24, at 66, 73; Pitcavage Testimony, *supra* note 49, at 99–100; ANNENBERG PUB. POL’Y CTR., *APPC Aims Adult Civics Education Programs at Higher Ed, the Military, and Business* (Oct. 6, 2022), <https://www.annenbergpublicpolicycenter.org/appc-aims-adult-civics-education-programs-at-higher-ed-military-and-business/> [<https://perma.cc/75QU-XAPE>]; CORDERO, KUZMINSKI, BAIGAL & CAMPBELL, *PROTECTING THE PROTECTORS*, *supra* note 8, at 12–15; Eaton, Taguba & Anderson, *supra* note 31; Gibel, *supra* note 38; TODD C. HELMUS, HANNAH JANE BYRNE & KING MALLORY, *COUNTERING VIOLENT EXTREMISM IN THE U.S. MILITARY*, RAND (2021), https://www.rand.org/pubs/research_reports/RRA1226-1.html [<https://perma.cc/BQ5V-SSBT>]; Anthony J. Iozza & Nell E. Robinson, “*Thus Always to Tyrants!*”: *Extremism in the Military—An Application of the New Extremism Framework, and the Way Ahead*, 2021 ARMY L. 26 (2021); Sara Samora, *Early Intervention and Better Mental Health Care Are Keys in Preventing Veterans From Joining Extremist Groups, Advocates Say*, STARS & STRIPES (Apr. 1, 2022), <https://www.stripes.com/veterans/2022-04-01/veterans-affairs-extremist-groups-prevention-mental-health-5552681.html> [<https://perma.cc/3QBM-WNJL>]; Watts, *supra* note 39.

119. See, e.g., S. POVERTY L. CTR, *supra* note 49; *Extremism and the Military*, S. POVERTY L. CTR. (Aug. 11, 2006), <https://www.splcenter.org/fighting-hate/intelligence-report/2006/extremism-and-military> [<https://perma.cc/H9N5-BSRL>].

120. FED. BUREAU OF INVESTIGATION, *WHITE SUPREMACIST RECRUITMENT OF MILITARY PERSONNEL SINCE 9/11* (2008). This assessment echoed a 2006 FBI internal intelligence assessment which raised the alarm over white supremacist groups’ “historical[]” interest in “infiltrating law enforcement communities or recruiting law enforcement personnel.” FED. BUREAU OF INVESTIGATION, *WHITE SUPREMACIST INFILTRATION OF LAW ENFORCEMENT* 4 (2006).

report on “Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment.”¹²¹ The report’s objective was to facilitate greater understanding of the causes and drivers of violent radicalization within the United States, and the report was provided to federal, state, local, and tribal counterterrorism and law enforcement officials to aid their counter-terrorism efforts.¹²² A key finding from the report expressed concern that right-wing extremist groups would attempt to recruit and radicalize veterans returning from war in order to “boost their violent capabilities.”¹²³ The report was met with a firestorm of criticism from Congress, commentators, and veterans’ groups, leading DHS Secretary Janet Napolitano to rescind the report only a few weeks later.¹²⁴

The response to the 2009 report is illustrative of the general trend: Persistent warnings about the extremism threat, from both within and outside the military, are met with lack of interest, doubt, and often hostility by Pentagon and congressional leadership. There was, however, a brief blip of governmental attention and action in response to the Unite the Right rally in Charlottesville in 2017 and the breach of the U.S. Capitol on January 6, 2021. This Section describes this fleeting period of governmental promise and examines the counter-extremism measures adopted in its wake. It then profiles the fast fade of commitment from congressional and Pentagon leadership.

121. U.S. DEP’T OF HOMELAND SEC., RIGHTWING EXTREMISM: CURRENT ECONOMIC AND POLITICAL CLIMATE FUELING RESURGENCE IN RADICALIZATION AND RECRUITMENT (2009). The report was prepared by the Department’s Extremism and Radicalization Branch within the Homeland Environment Threat Analysis Division and coordinated with the FBI. *Id.* at 1.

122. *Id.*

123. *Id.* at 3. The report expressed concern about “disgruntled military veterans” joining extremist groups, noting the government’s assessment that “rightwing extremists will attempt to recruit and radicalize returning veterans in order to exploit their skills and knowledge derived from military training and combat.” *Id.* at 7 (“The willingness of a small percentage of military personnel to join extremist groups during the 1990s because they were disgruntled, disillusioned, or suffering from the psychological effects of war is being replicated today.”).

124. See Beirich Testimony, *supra* note 24, at 63 (describing responses to the report and the decision to rescind it); see also Press Release, U.S. Dep’t of Def., Statement by U.S. Department of Homeland Security Janet Napolitano on the Threat of Right-Wing Extremism (Apr. 15, 2009), <https://www.dhs.gov/archive/news/2009/04/15/secretary-napolitanos-statement-right-wing-extremism-threat> [<https://perma.cc/K79G-7S54>]; *Napolitano Defends Report on Right-Wing Extremist Groups*, CNN (Apr. 15, 2009), <https://www.cnn.com/2009/POLITICS/04/15/extremism.report/> [<https://perma.cc/2VWY-3Y9K>]; Teddy Davis & Ferdous Al-Faruque, *Napolitano Facing Republican Calls for Her Ouster*, ABC NEWS (Apr. 23, 2009), <https://abcnews.go.com/Politics/story?id=7412992&page=1> [<https://perma.cc/LJK5-EE68>]; Jackie Kucinich, *Napolitano Atones for DHS Report*, ROLL CALL (May 6, 2009), <https://rollcall.com/2009/05/06/napolitano-atoness-for-dhs-report/> [<https://perma.cc/2QLD-4EM6>]; Spencer Ackerman, *DHS Crushed This Analyst for Warning about Far-Right Terror*, WIRED (Aug. 7, 2012), <https://www.wired.com/2012/08/dhs/> [<https://perma.cc/TB56-93UL>].

1. The Promise of Governmental Action

A new urgency took hold in 2017, following reports of active-duty servicemembers and veterans participating in the Unite the Right rally in Charlottesville, Virginia,¹²⁵ and then crystalized in 2021, following similar reporting on the number of individuals with military backgrounds involved in the U.S. Capitol breach on January 6.¹²⁶ This recognition from the White House, the Pentagon, and the Capitol led to several significant policy revamps and a break from the usual cycle of inattention and performative gestures.

The U.S. Department of Defense set out to make significant changes, including updates to the policies and regulations governing extremist speech and behavior,

125. Gordon Lubold, *Joint Chiefs Chairman Denounces Racism and Bigotry After Charlottesville Violence*, WALL ST. J. (Aug. 17, 2017, 4:20 AM), <https://www.wsj.com/articles/joint-chiefs-chairman-denounces-racism-and-bigotry-after-charlottesville-violence-1502958047> [<https://perma.cc/4UVT-EWNZ>]; see also Hall, Hassell & Fitch, *supra* note 3, at 226 (“In 2017, for example, James Alex Fields Jr. made headlines at the Unite the Right rally in Charlottesville, Virginia, when he ran his car into a crowd of counterprotestors, killing one woman. A member of the white-supremacist group Vanguard America, Fields had completed a brief stint in the U.S. Army. The event’s organizer, Nathan Damigo, is a marine veteran who completed two tours of duty in Iraq before returning home and founding the white nationalist group Identity Evropa.” (citations omitted)); Shawn Snow, *Marine with Alleged Neo-Nazi Connections Booted from the Marine Corps*, MARINE CORPS TIMES (Aug. 1, 2018), <https://www.marinecorpstimes.com/news/your-marine-corps/2018/08/01/marine-with-alleged-neo-nazi-connections-booted-from-the-marine-corps/> [<https://perma.cc/CHT6-37AZ>] (describing role of Vasillios Pistolis, an active-duty Marine and member of Neo-Nazi group, in the Unite the Right rally in Charlottesville in 2017). The government’s response came in a Strategic Framework for Countering Terrorism and Targeted Violence, the objective of which was to “clearly elucidate[] the nature of today’s domestic challenges, including providing an extended assessment of the dangers posed by domestic terrorists, including racially-and ethnically-motivated violent extremists, particularly white supremacist violent extremists.” U.S. DEP’T OF HOMELAND SEC., *supra* note 33, at 2.

126. See, e.g., Tom Dreisbach & Anderson, *supra* note 5; GAFFNEY & KAMARCK, IF11762, *supra* note 5; Konstantin Toropin & Steve Beynon, *Veterans Make Up Most of Proud Boys Members Indicted on Sedition for Jan. 6 Violence*, MILITARY.COM (June 7, 2022), <https://www.military.com/daily-news/2022/06/07/veterans-make-most-of-proud-boys-members-indicted-sedition-jan-6-violence.html> [<https://perma.cc/45CQ-V96L>]; John M. Donnelly, *House Appropriators Want Pentagon to Get Tough on Extremists in the Ranks*, ROLL CALL (July 13, 2021, 12:25 PM), <https://rollcall.com/2021/07/13/house-appropriators-want-pentagon-to-gettough-on-extremists-in-the-ranks> [<https://perma.cc/X9WZ-XVD6>]; Eric Lutz, *Biden’s Secretary of Defense Is Moving to Purge the Military of White Supremacists*, VANITY FAIR (Feb. 4, 2021), <https://www.vanityfair.com/news/2021/02/biden-secretary-of-defense-movingto-purge-the-military-of-white-supremacists> [<https://perma.cc/UU32-8PDD>]. As with the response to 2017 Unite the Right rally, the government’s response came in a strategy document. NAT’L SEC. COUNCIL, *supra* note 33, <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf> [<https://perma.cc/XZ42-UCUU>] (describing efforts to provide “training for service members separating or retiring from the military on potential targeting of those with military training by violent extremist actors” and develop “a mechanism by which veterans can report recruitment attempts by violent extremist actors”).

changes to recruiting and screening standards, increased training and education requirements, and the establishment of several temporary offices and one permanent office focused on countering extremism in the U.S. military. One of the most significant changes was a revised instruction on how commanders should handle dissident, protest, and extremist activities of servicemembers: DoD Instruction (DoDI) 1325.06.¹²⁷

The initial version of what is now DoDI 1325.06 was issued in 1969 and explicitly acknowledged the potential for racially based violent extremism within the U.S. military.¹²⁸ It was the military's first formal attempt to balance a servicemember's right of expression with the effectiveness of the unit in terms of good order, discipline, and national security.¹²⁹ It prohibited military personnel from participation in supremacist causes, described as attempts "to create illegal discrimination based on race, creed, color, sex, religion, or national origin; advocate the use of force or violence; or otherwise engage in efforts to deprive individuals of their civil rights."¹³⁰ To guide disciplinary and prosecutorial efforts, the directive

127. U.S. DEP'T OF DEF., INSTRUCTION 1325.06, DEPARTMENT OF DEFENSE INSTRUCTION: HANDLING PROTEST, EXTREMIST, AND CRIMINAL GANG ACTIVITIES AMONG MEMBERS OF THE ARMED FORCES 4 (2021) [hereinafter DoDI 1325.06 (2021)].

128. U.S. DEP'T OF DEF., DIRECTIVE 1325.6, GUIDELINES FOR HANDLING DISSIDENT AND PROTEST ACTIVITIES AMONG MEMBERS OF THE ARMED FORCES (1969) [hereinafter DoDD 1325.6 (1969)]. At the time of publication, Jerry Anderson, the Equal Opportunity Manager in the Equal Opportunity Office of the Department of Defense wrote that the directive "intended to deal with military personnel who were attempting to form unions, organize anti-Vietnam war organizations, or publish and distribute underground newspapers." Jerry Anderson, Draft Unpublished Report on Extremism (Dec. 1996) (cited in Walter M. Hudson, *Racial Extremism in the Army*, 159 MIL. L. REV. 1, 14 n.53 (1999)). For comprehensive reviews of the policy's origins and historical evolution, see Hudson, *supra*; Rachel E. VanLandingham, *Counterproductive and Counter-Constitutional Military Speech Restrictions: Prohibiting Social Media "Likes" Won't Reduce Military Extremism (and Criminalizing Sexual Harassment Won't Stop Sexual Harassment)*, 11 KY. L.J. 111, 119–24 (2022) [hereinafter VanLandingham, *Military Speech Restrictions*].

129. VanLandingham, *Military Speech Restrictions*, *supra* note 128, at 122. The directive did a lot of work. It banned servicemembers from writing for "underground newspapers," gave the commander of a military installation authority to prohibit demonstrations on the installation and prohibited servicemembers from participating in off-post demonstrations when on duty, if the activities would breach law and order, or violence was likely to result. Hudson, *supra* note 128, at 2–3.

130. DoDD 1325.6 (1969), *supra* note 128, ¶ III.G. Not surprisingly, the issuance of the directive coincided with broader societal awareness of racial discrimination and civil rights, including the passage of the Civil Rights Act of 1964, the Voting Rights Act of 1965, the assassination of Martin Luther King Jr. in 1968, and a slew of executive orders issued by President Richard Nixon creating equal opportunity employment in the federal government and prohibiting discrimination in federal employment based on race, sex, color, and national origin. See *Statutes, Executive Orders and Federal Regulations and Policies*, U.S. DEP'T LABOR OFF. ASSISTANT SEC'Y FOR ADMIN. & MGMT., <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes> [https://perma.cc/Y4DT-R2RS] (providing links to Civil Rights Act of 1964, Voting Rights Act of 1965, and executive orders focused on equal opportunity employment in the federal government).

referenced specific federal criminal statutes and Uniform Code of Military Justice (UCMJ) provisions.¹³¹

In 2009, DoD Directive (DoDD) 1325.6 was replaced by DoDI 1325.06,¹³² and updated again three years later, following the shooting at Fort Hood, pursuant to a package of recommendations from an internal review team.¹³³ No further changes were made to the Instruction until 2021. The December 2021 changes were driven by the involvement of veterans and servicemembers in the events of January 6, 2021, and reflected the work of the Countering Extremist Activities Working Group (CEAWG)¹³⁴ and other department-wide initiatives. The update to DoDI 1325.06 was designed to clarify for servicemembers and commanders what qualifies as extremist activities, and to identify the authorities available to commanders to prevent and respond to prohibited extremist activity.¹³⁵

The revised Instruction sought to address the digital character of the extremism threat by clarifying the types of online—and other—activities that were prohibited. The Instruction explained that the 2021 change was designed “to better define extremist activities and ensure that DoD extremist activities policy is easily understood by both Service members and commanders.”¹³⁶ It included the same basic prohibition as the earlier version: Military personnel are prohibited from active participation in extremist activities. The revision, however, clarified the definitions of “extremist activities” and “active participation.”¹³⁷ The definition of “extremist activities” was expanded to include advocating, supporting, or engaging in terrorism; advocating or engaging in “unlawful force” to “deprive individuals of their rights” or to achieve goals that are “political, religious, discriminatory, or ideological”; supporting the overthrow of the U.S. government; and advocating “widespread unlawful discrimination based on race, color, national origin, religion, sex (including pregnancy), gender identity, or sexual orientation.”¹³⁸ The new definition of “active participation” included “unlawful force,” “unlawful use of force,” “a breach of law and order,” and “violation of . . . lawful order.”¹³⁹

131. DoDD 1325.6 (1969), *supra* note 128. The specific UCMJ charging articles are discussed more fully *infra* Section II.B.

132. DoDI 1325.06 (2021), *supra* note 127. The language closely tracked the earlier directive, although it expanded the scope and included definitions of various prohibited actions in order to provide additional guidance for commanders. *Id.*; see also VanLandingham, *Military Speech Restrictions*, *supra* note 128, at 119–128 (describing the evolution of the military’s policy guidance on extremism from the 1969 directive through the revised instruction in 2021).

133. DEP’T ARMY, ADA531694, FORT HOOD ARMY INTERNAL REVIEW TEAM: FINAL REPORT 3 (2010), <https://apps.dtic.mil/sti/pdfs/ADA531694.pdf> [<https://perma.cc/8DPQ-SKRL>].

134. DoD CEAWG REPORT 2021, *supra* note 23, at 3. The CEAWG was appointed by the Secretary of Defense in April 2021 and directed to review and update DoDI 1325.06 as well as develop other recommendations aimed at countering extremism. *Id.*

135. *Id.* at 9–11.

136. DoDI 1325.06 (2021), *supra* note 127, at 3 (¶ 7).

137. *Id.* at 9 (enclosure 3, ¶ 8(c)(1)&(2)).

138. *Id.* at 9 (enclosure 3, ¶ 8(c)(1)).

139. *Id.* at 10 (enclosure 3, ¶ 8(c)(2)).

The Instruction also placed new reporting, notification, and training requirements on commanders. It placed general notice expectations on commanders, including that they “remain attentive for signs of extremism involving Servicemembers in their command” and that they investigate and address allegations when “notified of suspected extremist activities.”¹⁴⁰ The Instruction also included more specific notification requirements, including notification to the appropriate authorities (military criminal investigative organization, counterintelligence organization, command security manager, legal office, insider threat hub) in instances of a credible report or suspicion of extremist activities, and the recording of “substantiated allegations of active participation in extremist activities” in personnel systems.¹⁴¹ In addition, the Instruction required each military department to establish mechanisms for the reporting of extremist activities and for tracking all reported extremist activities.¹⁴² Finally, the Instruction expressly required the military departments to ensure training on the prohibited activities during “initial active duty training, precommissioning training, professional military education, commander training, and other appropriate Service training programs.”¹⁴³ The military departments responded to these mandates in a variety of ways, including by issuing and revising service specific directives and updating trainings.¹⁴⁴

While the revisions to DoDI 1325.06 garnered the bulk of media and congressional attention, a number of other initiatives in the Department of Defense sought to counter the extremism threat. These included changes to recruiting and screening standards,¹⁴⁵ publication of DoDI 5400.17 on the “Official Use of Social Media for Public Affairs Purposes” in August 2022,¹⁴⁶ and revisions to

140. *Id.* at 12 (enclosure 3, ¶ 9(d)).

141. *Id.* at 13 (enclosure 3, ¶¶ 9(d)(1)–(2)).

142. *Id.* at 13 (enclosure 3, ¶ 9(d)(3)) (requiring that the reporting mechanisms must conform to the requirements of Section 554 of NDAA FY2021).

143. *Id.* at 13 (enclosure 3, ¶ 9(d)(4)).

144. *See, e.g.*, SEC’Y AIR FORCE, DAF51-508, POLITICAL ACTIVITIES, FREE SPEECH AND FREEDOM OF ASSEMBLY (March 24, 2023); SEC’Y ARMY, ARMY DIRECTIVE 2024-07: HANDLING PROTEST, EXTREMIST, AND CRIMINAL GANG ACTIVITIES (Jun. 14, 2024); SEC’Y ARMY, ARMY DIRECTIVE 2024-08: REPORTING PROHIBITED ACTIVITIES (RPA) (Jun. 14, 2024) (rescinded by SEC’Y ARMY, ARMY DIRECTIVE 2025-03: REPORTING PROHIBITED ACTIVITIES (RPA) (Feb. 15, 2025)); U.S. MARINE CORPS, MARADMINS 385/24, GUIDANCE ON REPORTING EXTREMIST AND CRIMINAL GANG ACTIVITIES (Aug. 23, 2024); U.S. NAVY, MCO 5354.1G, MARINE CORPS PROHIBITED ACTIVITIES AND CONDUCT (PAC) PREVENTION AND RESPONSE POLICY (May 31, 2024); U.S. NAVY, SECNAVINST 1610.4, POLICY ON HANDLING PROTEST, EXTREMIST, AND CRIMINAL GANG ACTIVITIES (Jan. 25, 2024) (cited in DODIG-2025-048, SECTION 554 REPORT (Nov. 27, 2024), *infra* note 192, at 16); MY NAVY HR, COUNTERING EXTREMIST ACTIVITY, https://www.mynavyhr.navy.mil/Portals/55/Support/Culture%20Resilience/Equal_Opportunity/Navy%20Extremism%20Training.pdf?v=er=OLjif6Izf-BAFwaqIapCoA%3D%3D [<https://perma.cc/WGF5-H9FB>] (training slides).

145. U.S. DEP’T OF DEF. OFF. INSPECTOR GEN., DODIG-2023-103, AUDIT OF THE MILITARY SERVICE RECRUITING ORGANIZATIONS’ EFFORTS TO SCREEN APPLICANTS FOR EXTREMIST AND CRIMINAL GANG BEHAVIOR (2023) [hereinafter DODIG-2023-103] (describing each military department’s updates to their “standards for enlistment”).

146. U.S. DEP’T OF DEF., DoDI 5400.17, OFFICIAL USE OF SOCIAL MEDIA FOR PUBLIC AFFAIRS PURPOSES (2022) [hereinafter DoDI 5400.17]. Pursuant to the Instruction, DoD

servicemember separation/transition checklists to include training on potential targeting of servicemembers by extremist groups (via online platforms).¹⁴⁷ In addition, the Department of Veterans Affairs adopted several new policies and put in place additional training and education programs specifically targeting the potential for recruitment by extremist groups through social media and gaming platforms.¹⁴⁸

Other executive branch entities took concrete steps toward recognizing and addressing the general threat of extremism to national security as well as the specific threat posed by extremist groups' efforts to recruit and engage members of the military. These included the release of the first-ever National Strategy for Countering Domestic Terrorism by the White House in June 2021;¹⁴⁹ the designation for the first time in 2021 of domestic violent extremism as a "National Priority Area" within DHS's Homeland Security Grant Program (HSGP);¹⁵⁰ inclusion of white

personnel may establish accounts for personal, non-official use but may not engage in "political activity" using either an official DoD social media account or a personal social media account while in the federal workplace or on duty, even while teleworking. *Id.* The Instruction also confirmed that DoDI 1325.06 covers activities occurring on social media and requires DoD personnel to follow the terms of service outlined by the social media platform as well as applicable DoD discrimination, harassment, and extremism policies. *Id.*

147. Press Release, Dep't of Defense, Secretary of Defense Austin Announces Immediate Actions to Counter Extremism in the Military and the Establishment of the Countering Extremism Working Group (Apr. 9, 2021), <https://www.defense.gov/News/Releases/Release/Article/2567545/secretary-of-defense-austin-announces-immediate-actions-to-counter-extremism-in/> [<https://perma.cc/QR66-6UP3>] (announcing updates to Service Member Transition Checklist, and specifying that the "military departments will add provisions to their service member transition checklists that include training on potential targeting of service members by extremist groups and work with other federal departments agencies to create a mechanism by which veterans have the opportunity to report any potential contact with an extremist group should they chose to do so"); DEF. COUNTER-INTEL. & SEC. AGENCY & CTR. FOR DEV. OF SEC. EXCELLENCE, SLIDES: INSIDER THREAT AND EXTREMIST ACTIVITY WITHIN THE DoD (Feb. 19, 2025), <https://www.cdse.edu/Portals/124/Documents/jobaids/insider/Insider-Threat-and-Extremist-Activity-DOD.pdf> [<https://perma.cc/N8JY-ME2V>].

148. CORDERO, KUZMINSKI, BAIGAL & CAMPBELL, PROTECTING THE PROTECTORS, *supra* note 8, at 10–11 (describing existing VA programs and changes to the Transition Assistance Program (TAP) aimed at better educating soon-to-be veterans about DVE organizations' targeted recruitment of transitioning servicemembers); *see also Violent Domestic Extremist Groups and the Recruitment of Veterans: Hearing Before the H. Comm. on Veterans' Affs.*, 117th Cong. (2021); STAFF OF H. COMM. ON VETERANS' AFFS., 117TH CONG., REP. ON DOMESTIC VIOLENT EXTREMIST GROUPS AND THE RECRUITMENT OF VETERANS (2021) <https://democrats-veterans.house.gov/imo/media/doc/Extremism%20Report.pdf> [<https://perma.cc/DPT7-NCFF>].

149. *See* NAT'L SEC. COUNCIL, *supra* note 33.

150. *Summary of Terrorism Threat in the United States*, U.S. DEP'T OF HOMELAND SEC., (Nov. 30, 2022, 2:00 PM), https://www.dhs.gov/sites/default/files/ntas/alerts/22_1130_S1_NTAS-Bulletin-508.pdf [<https://perma.cc/WJ95-A4EZ>] ("In 2021 and 2022, DHS designated domestic violent extremism as a 'National Priority Area' within its Homeland Security Grant Program (HSGP), enabling our partners to access critical funds that help prevent, prepare for, protect against, and respond to related threats.").

supremacist violent extremism as a top threat in the DHS strategy in 2019;¹⁵¹ inclusion of domestic terrorism as a topic in the annual Homeland Threat Assessment reports published by DHS;¹⁵² the establishment of a Domestic Terrorism Unit within the National Security Division of the Department of Justice; the revision of DVE-related provisions of the Justice Manual;¹⁵³ and changes to Security Executive Agent Directive 5 on “Collection, Use, and Retention of Publicly Available Social Media Information in Personnel Security Background Investigations and Adjudications.”¹⁵⁴

The increase in attention from the executive branch was matched by the legislative branch. For a short period, starting in 2017 and running through 2022, Congress appeared interested in gaining a better understanding of the threat posed by extremism in the U.S. military and national security. Using its constitutionally granted powers of oversight and legislation, Congress held hearings on the matters, introduced legislation, and, most significantly, appropriated funding for such efforts through the annual national defense authorization acts. Committees in both chambers held a number of hearings on the topic, creating a rich library of testimony and reference materials, including most notably: “Hate Crimes and the Rise of White Nationalism,”¹⁵⁵ “Alarming Incidents of White Supremacy in the Military – How to Stop It,”¹⁵⁶ “Domestic Violent Extremist Groups and the Recruitment of Veterans,”¹⁵⁷ and “Extremism in the Armed Forces.”¹⁵⁸ During this period, Congress considered several pieces of legislation aimed specifically at countering extremism in the military and veteran communities, including a bill directing the Secretary of Defense to include questions regarding supremacism, extremism, and racism in the

151. U.S. DEP’T OF HOMELAND SEC., *supra* note 33, at 10 (“[W]hite supremacist violent extremism, one type of racially- and ethnically-motivated violent extremism, is one of the most potent forces driving domestic terrorism.”).

152. See reports available at *Department of Homeland Security Homeland Threat Assessment*, U.S. DEP’T OF HOMELAND SEC. (Oct. 9, 2024), <https://www.dhs.gov/publication/homeland-threat-assessment> [https://perma.cc/F8RL-Y9VN].

153. U.S. DEP’T OF JUST. OFF. INSPECTOR GEN., AUDIT OF THE DEPARTMENT OF JUSTICE’S STRATEGY TO ADDRESS THE DOMESTIC VIOLENT EXTREMISM THREAT 15–16, 21–27 (2023), <https://oig.justice.gov/sites/default/files/reports/23-078.pdf> [https://perma.cc/HX4L-WBLQ].

154. U.S. DEP’T OF DEF., SECURITY EXECUTIVE AGENT DIRECTIVE 5: COLLECTION, USE, AND RETENTION OF PUBLICLY AVAILABLE INFORMATION IN PERSONNEL SECURITY BACKGROUND INVESTIGATIONS AND ADJUDICATIONS (2016). This directive allows security clearance investigators to collect and use publicly available social media information in their assessments of whether to issue an initial security clearance or grant continued eligibility for security clearance. *Id.*

155. *Hate Crimes and the Rise of White Nationalism: Hearing Before the Subcomm. on Crime, Terrorism, & Homeland Sec. of the H. Comm. on the Judiciary*, 116th Cong. (2019).

156. *Alarming Incidents of White Supremacy in the Military – How to Stop It?: Hearing Before the Subcomm. on Mil. Pers. of the H. Comm. on Armed Services*, 116th Cong. (2020).

157. *Violent Domestic Extremist Groups and the Recruitment of Veterans: Hearing Before the H. Comm. on Veterans’ Affs.*, 117th Cong. (2021).

158. *Extremism in the Armed Forces: Hearing Before the H. Comm. on Armed Services*, 117th Cong. (2021).

department's workplace surveys,¹⁵⁹ the Veterans Cyber Risk Awareness Act,¹⁶⁰ and the Domestic Terrorism Prevention Act of 2022.¹⁶¹

Congress also introduced legislation aimed at studying and countering the growth of violent extremist groups ascribing to white nationalist and white supremacist ideologies. For example, members introduced the Transnational White Supremacist Extremism Review Act,¹⁶² a bill to “counter White identity terrorism globally,”¹⁶³ a bill to “direct the Director of National Intelligence to submit to Congress an intelligence assessment on threats to the United States associated with foreign violent White supremacist extremist organizations,”¹⁶⁴ the Leading Against White Supremacy Act of 2022,¹⁶⁵ and the White Supremacy in Law Enforcement Information Act of 2021.¹⁶⁶ In addition, on September 14, 2017—less than one month after the Unite the Right rally in Charlottesville, Virginia—Congress passed a joint resolution rejecting “White nationalists, White supremacists, the Ku Klux Klan, neo-Nazis, and other hate groups,”¹⁶⁷ and the House passed a resolution on January 15, 2019, rejecting “White nationalism and White supremacy as hateful expressions of intolerance that are contradictory to the values that define the people

159. H.R. 3174, 116th Cong. (2019) (requiring the Secretary of Defense to include questions in surveys administered by the Office of People Analytics of the Department of Defense regarding whether the respondents had ever experienced or witnessed supremacist activity, extremist activity, or racism within the department and if they had reported it).

160. H.R. 2326, 117th Cong. (2021) (requiring study of the cyber risks facing veterans from fraud, disinformation campaigns, and violent extremists).

161. Domestic Terrorism Prevention Act of 2022, H.R. 350, 117th Cong. (2022) (requiring “an assessment of the domestic terrorism threat posed by White supremacists and neo-Nazis, including White supremacist and neo-Nazi infiltration of Federal, State, and local law enforcement agencies and the uniformed services”). Similarly named bills had been introduced in prior sessions. *See, e.g.*, Domestic Terrorism Prevention Act of 2020, H.R. 5602, 116th Cong. (2020) (“To authorize dedicated domestic terrorism offices within the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation to analyze and monitor domestic terrorist activity and require the Federal Government to take steps to prevent domestic terrorism.”); Domestic Terrorism Prevention Act of 2019, H.R. 1931, 116th Cong. (2019).

162. Transnational White Supremacist Extremism Review Act, H.R. 5736, 116th Congress 1 (2020) (directing “the Under Secretary for Intelligence and Analysis of the Department of Homeland Security to develop and disseminate a threat assessment regarding threats to the United States associated with foreign violent white supremacist extremist organizations, and for other purposes”).

163. H.R. 7345, 116th Cong. (2020).

164. H.R. 4038, 117th Cong. (2022).

165. Leading Against White Supremacy Act of 2022, H.R. 7955, 117th Cong. (2022) (seeking to “prevent and prosecute white supremacy inspired hate crime and conspiracy to commit white supremacy inspired hate crime”).

166. White Supremacy in Law Enforcement Information Act of 2021, H.R. 1031, 117th Cong. (2022) (proposed requiring “the Attorney General to prepare and release an intelligence assessment on White supremacy in law enforcement”).

167. Act of Sept. 14, 2017, Pub. L. No. 115–58, 131 Stat. 1149, 1149.

of the United States.”¹⁶⁸ One member even proposed establishing a Select Committee on White Supremacy and Domestic Terror Movements.¹⁶⁹

Finally, congressional action in this period was reflected in the annual defense bills. The National Defense Authorization Act for Fiscal Year 2021 (NDAA FY2021), passed in December 2020, included several provisions aimed at countering extremism in the U.S. military: It created the position of the Deputy Inspector General for Diversity and Inclusion and Extremism in the Military, required each military department to report on the status of diversity and inclusion in their respective departments,¹⁷⁰ and placed the onus on the Secretary of Defense to define both conscious and unconscious bias and to provide guidance on how such bias is to be eliminated.¹⁷¹ The following year, the NDAA FY2022—passed in December 2021, when the events of January 6, 2021, were still fresh in the minds of congressional members—showed continued attention to and support for efforts to study and counter the extremism threat in the military. It included a recommendation that the Secretary of Defense study whether to add a separate punitive article on violent extremism to the UCMJ¹⁷² and a section that required the Secretary of Defense to prepare a report identifying current training and education courses for servicemembers regarding extremism, diversity, equity, and inclusion, among other topics.¹⁷³ These efforts, however, would soon fade and be replaced by congressional skepticism and hostility.

2. The Fast Fade of Commitment

The brief blip of governmental attention and commitment soon faded, from both the executive and legislative branches. And in the last two years, the trend of

168. H.R. Res. 41, 116th Cong. ¶ 13 (2019).

169. H.R. Res. 515, 115th Cong. (2017).

170. William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116–283, 134 Stat. 3388, §§ 551(a)(2), 554(a)(2) (Jan. 1, 2021) [hereinafter NDAA FY2021].

171. *Id.* at § 551(a)(1). The act also required a study on cyberexploitation and online deception of servicemembers and their families, including an “assessment of ethnic or racial violent extremism messages targeting members and their families.” *Id.* at § 589F(a)(3).

172. The National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117–81, 135 Stat. 1733, § 549M (Dec. 27, 2021) (“Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing such recommendations as the Secretary considers appropriate with respect to the establishment of a separate punitive article in chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), on violent extremism.”).

173. *Id.* § 559E (requiring Secretary of Defense, in consultation with military department secretaries, to submit by June 2022 to each chamber’s committee on armed services a report identifying current “training and courses of education offered to covered members regarding— (1) sexual assault; (2) sexual harassment; (3) extremism; (4) domestic violence; (5) diversity, equity, and inclusion; (6) military equal opportunity; (7) suicide prevention; and (8) substance abuse”). Congressional efforts to impact education and training can usually be found in Subtitle F—Member Education, Training, and Transition and Subtitle H—Diversity and Inclusion.

inattention has morphed into outright opposition to counter-extremism efforts. Since 2022, Congress has either cut funding for counter-extremism programs in the Pentagon or expressly prohibited funding for certain activities deemed to be too “woke.”¹⁷⁴

The NDAA FY2023 included no provisions expressly supporting counter-extremism efforts. Nor has Congress responded to requests for additional funding or staffing to cover the extremism-related reporting and other requirements it placed on the Pentagon in Section 554 of the NDAA FY2021.¹⁷⁵ The NDAA FY2024, enacted in December 2023, contained several provisions that expressly prohibited funds for diversity-related and counter-extremism initiatives. Section 576 prohibited the use of funds authorized in the act from being used “to endorse critical race theory—(1) at an academic institution operated by the Department of Defense; (2) in training provided to a member of the Armed Forces; or (3) in professional military education.”¹⁷⁶ Section 579 prohibited the use of any appropriations authorized “to fund the Department of Defense Countering Extremism Working Group established

174. See *supra* note 35 and sources cited therein.

175. U.S. DEP’T OF DEF. OFF. INSPECTOR GEN., THE DEPARTMENT OF DEFENSE OFFICE OF INSPECTOR GENERAL’S REPORT TO CONGRESS PURSUANT TO SECTION 554 OF THE FISCAL YEAR 2021 NATIONAL DEFENSE AUTHORIZATION ACT 6–8 (Jun. 10, 2021) (describing funding requests and resource requirements to support the congressional mandates in Section 554 of the NDAA FY2021).

176. The National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, 137 Stat. 278, § 576 [hereinafter NDAA FY2024]. The Act defined the term “critical race theory” to mean “the theory that individuals, by virtue of race, ethnicity, color, or national origin, bear collective guilt and are inherently responsible for actions committed in the past by other individuals of such race, ethnicity, color, or national origin.” *Id.* § 573(c).

This definition misunderstands critical race theory. It is not about collective guilt or placing blame or responsibility for past actions. Rather, it provides a framework for considering how race has historically shaped and continues to shape our institutions and systems. Dean Danielle Conway offers a helpful primer and summary:

Critical Race Theory—though widespread and used in many disciplines for over four decades—originated in the legal academy. Beginning in the 1970s, a racially and ethnically diverse group of legal scholars, called Critical Race Theorists, created frameworks for understanding how race and racial subordination have shaped and continue to shape law and society. Scholars, using the CRT framework, have sought to explain and illustrate how structural racism produces racial inequity and inequality within our social, economic, political, legal, and educational systems. They have detailed how this can occur even absent individual racist intent.

Danielle M. Conway, *The Assault on Critical Race Theory as Pretext for Populist Backlash on Higher Education*, 66 ST. LOUIS U. L.J. 707, 713-714 (2022) (citations omitted); see also Jacey Fortin, *Critical Race Theory: A Brief History*, N.Y. TIMES (Nov. 8, 2021), <https://www.nytimes.com/article/what-is-critical-race-theory.html> [https://perma.cc/DX79-276A] (providing brief history on development of critical race theory and explaining its role as a “framework as a way to help the United States live up to its own ideals, or as a model for thinking about the big, daunting problems that affect everyone on this planet”).

by the Secretary of Defense memorandum on April 9, 2021.”¹⁷⁷ Section 529B prohibited the Secretary of Defense from establishing any new positions within the Department of Defense “with responsibility for matters relating to diversity, equity, and inclusion” and from filling any vacancies in existing positions with such responsibilities until the Comptroller General submitted its review of the Department’s DEI workforce.¹⁷⁸ Finally, Section 1101 placed an annual pay cap on DoD civilian employees with duties relating to diversity, equity, or inclusion, and mandated reassignment of such current employees receiving pay above that cap.¹⁷⁹ The NDAA FY2025, enacted on December 23, 2024, continued the congressional shift away from support for counter-extremism initiatives.¹⁸⁰

It has been only four years since the Capitol breach on January 6, 2021, which brought renewed focus to the problem of extremism in the U.S. military. While the initial commitment from military and congressional leadership was promising, it evaporated quickly. By late 2022, support for counter-extremism efforts in the military had lapsed, the funding for such initiatives and programs had been gutted, and the Pentagon seemed to have “largely abandoned the effort to combat extremism in its ranks.”¹⁸¹

B. Inadequate Data, Flawed Standards, and Blind Spots

The lack of congressional support and oversight is paired with the persistent structural obstacles and legally flawed responses that have made countering extremism in the military so daunting and ineffective to date. These existing weaknesses are further exacerbated by the failure of government officials and the

177. NDAA FY2024, *supra* note 176, § 579.

178. *Id.* § 529B. The House version contained a provision (§ 570F) that would have eliminated every office within the Department of Defense established to promote diversity, equity, and inclusion. H.R. REP. NO. 118–301, at 1049–50. The Senate amendment contained a provision (§ 928) that was similar but less sweeping. *Id.* The House receded, and the Senate version was enacted. NDAA FY2024, *supra* note 176, § 529B.

179. *Id.* § 1100.

180. *See* The Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118-159, § 547 (Dec. 23, 2024) [hereinafter NDAA FY2025] (including, in Section 547, a prohibition on the use of any funds appropriated in the act for the Department of Defense’s Countering Extremism Working Group). A review of recently proposed legislation, outside the annual defense appropriations process, further illustrates this shift. *See* Military Education and Values Act, H.R. 3754, 117th Cong. (2021) (directing Secretary of Defense “to issue guidance prohibiting race-based education and training in the Armed Forces”); The Working to Address Recruiting and Retention to Improve Our Readiness Act (WARRIOR Act), H.R. 3278, 118th Cong. (2023) (“No Federal funds may be used to (1) take into consideration race, ethnicity, color, national origin, or gender of an individual when making a determination regarding a military accession, assignment, selection, or promotion; (2) promote critical race theory at a Service Academy, in military training, or in professional military education; or (3) investigate extremism in the Armed Forces or Department of Defense.”). While these bills were not enacted, much of their substance has been accomplished through a series of executive actions in the early months of 2025. *See infra* Section III.C.

181. Cohen, Liebermann & Britzky, *supra* note 35.

private sector to understand the scope and scale of the digital dimension of the extremism threat in the U.S. military. This Section describes the ways in which that misunderstanding manifests in: (1) a lack of data on the scope and scale of the problem, and inability or unwillingness of government officials to track extremism in the military; (2) ineffective and legally flawed conduct standards, charging articles, and disciplinary systems that fail to grapple with the structural defects at the core of the military's extremism challenge; and (3) the limited and constitutionally suspect use of federal surveillance authorities and criminal charges for extremism-related conduct.

1. The Data Collection and Tracking Challenge

One of the most significant challenges is a lack of data that would provide insight on the size and scope of the extremism threat within the active-duty and veteran communities. A news headline from February 11, 2021, captures the frustration: “The Navy Has No Idea How Many Sailors It has Booted for Extremist Activity.”¹⁸² Scholars and others have long complained about the lack of tracking and lack of data:

The most immediate problem is an absence of good data. The 2021 Capitol insurrection leaves the impression that the number of extremists in the military is increasing. Yet, [Department of Defense] officials repeatedly claim that the number is small. No one truly knows. No serious plan can be built without defining the scope of the problem.¹⁸³

182. Geoff Ziezulewicz, *The Navy Has No Idea How Many Sailors It Has Booted for Extremist Activity*, NAVY TIMES (Feb. 11, 2021), [https://www.navytimes.com/news/your-navy/2021/02/11/the-navy-has-no-idea-how-many-sailors-it-has-booted-for-extremist-activity/#:~:text=The%20U.S.%20Navy%20has%20a,doesn't%20track%20such%20violations \[https://perma.cc/R84L-RZD2\]](https://www.navytimes.com/news/your-navy/2021/02/11/the-navy-has-no-idea-how-many-sailors-it-has-booted-for-extremist-activity/#:~:text=The%20U.S.%20Navy%20has%20a,doesn't%20track%20such%20violations [https://perma.cc/R84L-RZD2]) (describing how in response to a Freedom of Information Act request seeking records for sailors separated under the Navy's supremacist and extremist regulation, Navy Personnel Command “officials admitted that they don’t track how many sailors are separated under that or any MILPERSMAN section”).

183. Cronin Testimony, *supra* note 74; see also Carrie Cordero, Katherine L. Kuzminski & Arona Baigal, *Getting to Ground Truth on the Reach of Domestic Violent Extremist Groups into the Military, Veteran, and Law Enforcement Communities*, LAWFARE (Feb. 13, 2023, 8:16 AM), [https://www.lawfaremedia.org/article/getting-to-ground-truth-on-the-reach-of-domestic-violent-extremist-groups-into-the-military-veteran-and-law-enforcement-communities \[https://perma.cc/DKN4-5P2R\]](https://www.lawfaremedia.org/article/getting-to-ground-truth-on-the-reach-of-domestic-violent-extremist-groups-into-the-military-veteran-and-law-enforcement-communities [https://perma.cc/DKN4-5P2R]) (finding a “a significant lack of data, hampering policymakers’ ability to even understand how deeply rooted the problem may be” and noting “limited information regarding the reach of DVE groups within the military and law enforcement communities—or even data indicating whether personnel within organizations would know how to handle the presence of DVE if they were to observe it”); Cordero, *supra* note 8 (“Questions remain in the public discourse, within senior leadership, and among members of Congress: is domestic violent extremism within the military, veteran, and law enforcement communities even a problem? Is the attention being paid to identifying, preventing, and punishing offenders proportional to their representation within these communities?”).

The data collection and tracking challenge reflects several limitations. First, extremism is incredibly difficult to define, and efforts to do so are hazardous. As noted in the Introduction above, extremism is context-dependent and includes belief, expression, and conduct, inviting tricky First Amendment line-drawing exercises. These definitional obstacles help to explain why the federal government “lacks a public definition of ‘extremism’” and why the Department has struggled to achieve a department-wide understanding of extremism-related activity.¹⁸⁴ Each department—Navy, Army, and Air Force—uses different terminology to fulfill its data collection requirements, making comparisons difficult to assess and trends difficult to spot.¹⁸⁵ The lack of agreed upon or common categories for what constitutes extremism further contributes to the data collection challenge, leading to flawed and incomplete understandings of the “ideological underpinnings of domestic violent extremism.”¹⁸⁶

Second, individuals in military and veteran communities often are reluctant to respond to surveys or to report on extremism. Scholars attribute the data gap and reluctance to cultural norms of “insularity . . . intended to protect members from engaging with outsiders, particularly with respect to sensitive issues” and “cultural stigma surrounding efforts to even talk about the influence of DVE organizations within the military, veteran, and law enforcement communities.”¹⁸⁷ Thus, we should bring a healthy dose of skepticism to the data collection task, avoid overreliance on surveys, and be mindful of the pitfalls of exaggerating the threat.¹⁸⁸

Third, there has been a historical lack of commitment or interest on the part of Pentagon and congressional leadership in requiring reporting on extremism.¹⁸⁹

184. Foster & Wiggins, *supra* note 9. The two-headed tracking and consistency problem exists more broadly in the U.S. government, as the Departments of Justice and Homeland Security continue to struggle in their efforts to develop and implement consistent terminology. U.S. DEP’T OF JUST. OFF. INSPECTOR GEN., AUDIT OF DEPARTMENT OF JUSTICE’S STRATEGY TO ADDRESS THE DOMESTIC VIOLENT EXTREMISM THREAT 15–16, 21–27 (2023).

185. DoDI 1325.06 (2021), *supra* note 127, at 2 (§ 4(b)) (requiring that each Military Department establish policies and procedures to implement the Instruction’s requirements but not requiring coordination or uniformity); *see, e.g.*, U.S. DEP’T OF DEF. OFF. INSPECTOR GEN., DODIG-2023-034, ANNUAL REPORT TO CONGRESS REGARDING DoD’S PROGRESS ON IMPLEMENTING FISCAL YEAR 2021 NATIONAL DEFENSE AUTHORIZATION ACT SECTION 554 REQUIREMENTS, at 14 (Dec. 1, 2022) [hereinafter DODIG-2023-034, SECTION 554 REPORT (Dec. 1, 2022)] (“[W]hile the DoD established policies and processes, the terminology for allegation categories is inconsistent across the Services.”).

186. Carmichael & Buxton, *supra* note 12.

187. Cordero, Kuzminski & Baigal, *supra* note 183; *see also* RAND, *supra* note 51, at 15 (cautioning readers that the results of the surveys were limited by whether veteran respondents were willing to be honest about their extremist stances, explaining that “it is unclear whether veteran respondents were more or less likely than the general population to confirm support for extremist causes (i.e., to report ‘honestly’)”).

188. Dunlap, *supra* note 8 (“Exaggerating the problem beyond what the data show, however, dangerously erodes public confidence in the armed forces, diminishes the propensity of minorities to join, and gives succor to America’s enemies around the world.”)

189. A.C. Thompson & Ken Schwencke, *More Than 100 Federal Agencies Fail to Report Hate Crimes to the FBI’s National Database*, PROPUBLICA (June 22, 2017, 1:39 PM) <https://www.propublica.org/article/more-100-federal-agencies-fail-report-hate-crimes-fbi->

Limited to no reporting was required within the military departments until the NDAA FY2021, which mandated—for the first time—reporting on allegations that a servicemember in the Army, Navy, Marines, or Air Force engaged in prohibited activity, including extremist activities.¹⁹⁰ While a reporting requirement is now in place, the data collection processes and mechanisms continue to face structural challenges that inhibit consistent and comprehensive collection.¹⁹¹ Until 2022, there was no “centralized database for allegation reporting and tracking,” which has led to inconsistent tracking of prohibited activities allegations, difficulty identifying and collecting data due to the multiple, decentralized (unconnected) systems, and an inability to independently verify or validate the accuracy of the reported data.¹⁹²

A final limitation on current data collection and tracking efforts is the lack of a dedicated discharge code relating to extremism.¹⁹³ The data collection may be limited (or nonexistent) dependent on the type of disciplinary action taken after the allegation of extremist behavior. While a formal court martial proceeding may produce an opinion, an adverse administrative action or discipline at the command level may result in no record of the reason for the disciplinary action.¹⁹⁴ Even when extremism is part of the rationale for a discharge or separation, the reason for the separation is often left vague or unaddressed. “[A]dministrative discharges have been used to remove known white supremacists from the military, but no records consistently track the number of such incidents.”¹⁹⁵ The data collection and tracking

national-database [<https://perma.cc/44L9-X6YC>] (finding that the Pentagon was not providing data on hate crimes within the military to the FBI as required by law).

190. NDAA FY2021, *supra* note 170, § 554(b)(2). The act defined “covered Armed Force” as those under the jurisdiction of the Secretary of a military department, including the Department of the Army, Department of the Air Force, and Department of the Navy (which includes the Marines). *Id.* § 554(b)(3)(B). The act defined the term “prohibited activity” to mean those prohibited under Department of Defense Instruction 1325.06 “or any successor instruction.” *Id.* § 554(b)(3)(C).

191. *See, e.g.*, DODIG-2023-034, SECTION 554 REPORT (Dec. 1, 2022), *supra* note 185; *see also infra* Section III.B.2 (describing promise—and currently limited nature—of these reporting efforts).

192. U.S. DEP’T OF DEF. OFF. INSPECTOR GEN., DODIG-2022-095, EVALUATION OF DEPARTMENT OF DEFENSE EFFORTS TO ADDRESS IDEOLOGICAL EXTREMISM WITHIN THE ARMED FORCES, (May 10, 2022) [hereinafter DODIG-2022-095] (recommending that the Secretary of Defense develop and publish tracking mechanisms for extremism-related activity). In 2022, the Secretary of Defense mandated that all reporting occur through the DCATS-e system, which seems to have improved—although not entirely resolved—the decentralized system challenge. DODIG-2023-034, SECTION 554 REPORT (Dec. 1, 2022), *supra* note 185, at 14; U.S. DEP’T OF DEF. OFF. INSPECTOR GEN., DODIG-2025-048, ANNUAL REPORT TO CONGRESS PURSUANT TO FY 2021 NDAA, SECTION 554, at 11–12 (Nov. 27, 2024) [hereinafter DODIG-2025-048, SECTION 554 REPORT (Nov. 27, 2024)].

193. Meghann Myers, *Why the Pentagon Would Rather Not Create a Specific Military Law against Extremism*, MIL. TIMES (Jul. 26, 2022), <https://www.militarytimes.com/news/pentagon-congress/2022/07/26/why-the-pentagon-would-rather-not-create-a-specific-military-law-against-extremism/> [<https://perma.cc/3VJD-N7P2>].

194. IDA REPORT (2023), *supra* note 7, at 23 (summarizing limitations of DoD data collection efforts).

195. Doxsee & Macander, *supra* note 8; *The U.S. Military’s Pattern of Failing to Confront White Supremacy Within Its Ranks*, *supra* note 34.

challenge feeds into the following two challenges, “hamper[ing] the ability of law enforcement, prosecutors, academics, and other practitioners to collect and analyze accurate data. Without this, the true scope of the threat posed by these ideologies flies under the radar, escaping the full legal response it warrants.”¹⁹⁶

2. Ineffective Military Conduct Standards and Disciplinary Systems

The military’s conduct standards are contained in a mix of instructions and directives, at both the department and service level, while the UCMJ contains the substantive and procedural laws governing the military justice system. Military commanders generally have discretion in determining whether an offense should be charged and the means of punishment; the options available to commanders for resolution of disciplinary problems include no action, administrative action (corrective and rehabilitative), nonjudicial punishment under Article 15, and ultimately, courts martial.¹⁹⁷ The standards and systems suffer from three flaws which make them poorly suited to the counter-extremism task: (i) the Department’s instructions governing extremist activities and social media use create troubling inconsistencies, provide standards that are violative of servicemembers expressive and associative rights, are unduly deferential to military and national security concerns, and give commanders too much discretion; (ii) the military justice charging articles incorporate the constitutional flaws of the governing instructions, resulting in uneven use and inconsistent application often with disparate impacts on servicemembers of color; and (iii) existing structural defects may lead to overuse of courts martials for Black servicemembers and overuse of administrative discharges for white servicemembers, resulting in a further masking of the scope and scale of the extremism threat in the military.

The first flaw centers on the instruction aimed at countering extremist activity in the military, DoDI 1325.06.¹⁹⁸ While servicemembers are generally afforded the same First Amendment rights as civilians, they surrender on a temporary basis certain expressive and associative rights that impinge on military discipline and

196. Carmichael & Buxton, *supra* note 12.

197. For descriptions of the military’s justice system and disciplinary processes, see U.S. DEP’T OF DEFENSE, *Military Justice Overview*, DoD VICTIM & WITNESS ASSISTANCE, <https://vwac.defense.gov/military.aspx> [<https://perma.cc/YZZ2-FM55>]; U.S. DEP’T OF DEF., *MANUAL FOR COURTS-MARTIAL* (2024), [https://jsc.defense.gov/Portals/99/2024%20MCM%20files/MCM%20\(2024%20ed\)%20-%20TOC%20no%20index.pdf?ver=b7JVpxV5rbIHg0ENICRVKQ%3D%3D](https://jsc.defense.gov/Portals/99/2024%20MCM%20files/MCM%20(2024%20ed)%20-%20TOC%20no%20index.pdf?ver=b7JVpxV5rbIHg0ENICRVKQ%3D%3D) [<https://perma.cc/4PQM-JLLE>]; Dan Maurer, *Sovereign, Employer, Community: A Theory of Military Justice Beyond Discipline, Obedience, and Efficiency*, 107 MARQ. L. REV. 399 (2023); Dan Maurer, *A Logic of Military Justice?*, 53 TEX. TECH L. REV. 669 (2021); LAWRENCE J. MORRIS, *MILITARY JUSTICE: A GUIDE TO THE ISSUES* 158–65 (2010); Rachel E. VanLandingham, *Discipline, Justice, and Command in the U.S. Military: Maximizing Strengths and Minimizing Weaknesses in a Special Society*, 50 NEW ENG. L. REV. 21 (2015).

198. DoDI 1325.6 (2021). The February 14, 2025, update to the Instruction added change 2, which is a reference to Executive Order 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*. 90 Fed. Reg. 8615 (Jan. 20, 2025).

successful completion of military objectives.¹⁹⁹ The Instruction's attempt to balance the competing collective and individual interests led to development of what Professor Rachel VanLandingham calls the "military speech doctrine," a lower level of First Amendment protections available to servicemembers.²⁰⁰ Updates to the Instruction became the focus of reform efforts in the aftermath of January 6, 2021, and a common recommendation was the need to clarify the definition of prohibited extremist activity.²⁰¹ The 2021 update sought to address that gap, however, its attempt at clarification quickly came in for further critique. The revised Instruction allows "passive participation in extremist organizations while prohibiting active participation in a certain set of expressly delineated extremist activities," leading to a "perverse" inconsistency that permits a servicemember to be a member of the Ku Klux Klan but simultaneously prohibits them from "liking" a Ku Klux social media post.²⁰² The revised Instruction also has been criticized for failing to treat servicemembers' First Amendment expression and association rights coherently.²⁰³ Others have asserted that it gives too much discretion to commanders, which may lead to extremist activities going unpunished and unreported.

Because commanders are the first line in deciding what "extremist activities" means, their biases and opinions—political, ideological, or otherwise—may come into play when judging a servicemember's actions. This discretion may lead to a failure in rooting out extremism in the military, as lower-level commanders turn a blind eye to certain behaviors.²⁰⁴

199. DoDI 1325.6 (2021) ("A Service member's right of expression should be preserved to the maximum extent possible in accordance with the First Amendment of the Constitution and statutory provisions . . . and consistent with good order and discipline and the national security."); VanLandingham, *Military Speech Restrictions*, *supra* note 128, at 122–24.

200. Rachel E. VanLandingham, *The First Amendment in Camouflage: Rethinking Why We Criminalize Military Speech*, 80 OHIO ST. L.J. 73, 78 (2019) [hereinafter VanLandingham, *First Amendment in Camouflage*]. Under this lower level of protection, a servicemember's speech is unprotected if it falls into either of two buckets: traditionally unprotected speech categories, such as defamation or obscenity, or if it "interferes with or prevents the orderly accomplishment of the mission or presents a clear danger to loyalty, discipline, mission, or morale of the troops." *Id.* at 96.

201. DoD CEAWG REPORT 2021, *supra* note 23, at 9 (recommending that DoDI 1325.06 be revised to more clearly define the terms "extremist activities" and "active participation").

202. VanLandingham, *Military Speech Restrictions*, *supra* note 128, at 113, 130.

203. *Id.* at 149 ("If freedom of association is essentially part of—in the penumbra of—freedom of expression, why would the Pentagon believe that it must adhere to the same freedom of association protections afforded to civilians, when it obviously does not adhere to the same standard regarding service members' freedom of expression?").

204. Armstrong, *supra* note 25, at 91. The policy section of the Instruction provides that the "proper balancing of these interests"—a servicemember's right of expression and the military's interest in good order, discipline and national security—"depends largely upon the calm and prudent judgment of the responsible commander." DoDI 1325.06 (2021), *supra* note 127, at 2 (¶ 3(d)). The operative part of DoDI 1325.06 provides that "Commanders may, as appropriate, pursue adverse administrative action in addition to or in lieu of punitive action in response to a Service member's active participation in extremist activities, pursuant to military

Relatedly, the Instruction has been criticized for failing to clarify the appropriate disciplinary path for particular types of prohibited extremist activity; it is unclear which prohibited actions should be subject to administrative action, punitive action, or criminal sanction, contributing further to concerns about commander discretion.²⁰⁵ Finally, it has been planned for adopting a “narrowed aperture of what is considered extremist by eliminating all mention of ‘supremacist ideology.’”²⁰⁶

The second flaw with the military’s disciplinary systems stems from the first. Because the instructions and governing regulations are flawed, the enforcement of them through the military’s justice system is similarly problematic. A variety of provisions of the UCMJ have been used to punish prohibited extremist activities by servicemembers,²⁰⁷ including most often Article 88 (regarding contempt toward officials);²⁰⁸ Article 92 (governing the failure to obey an order or regulation);²⁰⁹ Article 117 (regarding provoking speech or gestures);²¹⁰ Article 133 (regarding conduct unbecoming of an officer and a gentleman);²¹¹ and Article 134 (known as the “General Article”).²¹² The problem of commander discretion noted above also creates faulty incentives in the military justice setting, although they run the other way. Rather than leading to underenforcement, they might lead to weaponization of the Instruction. For example, a superior officer “could hypothetically order a subordinate to not engage in whatever speech that superior finds offensive, with

service regulations and other existing authorities.” *Id.* at 12 (enclosure 3, ¶ 9(b)). Thus, a commanding officer can decide “to give no punishment at all” or to “opt for simply advising servicemembers that extremist activities will ‘be taken into consideration when evaluating duty performance.’” Armstrong, *supra* note 25, at 85–86.

205. *Id.* at 150.

206. VanLandingham, *Military Speech Restrictions*, *supra* note 128, at 129–30.

207. See VanLandingham, *First Amendment in Camouflage*, *supra* note 200, at 82–92 (describing military speech-integral crimes and catch-all speech crimes); see also Armstrong, *supra* note 25, at 84 (describing prosecutions under Articles 92 and 134 for extremist actions).

208. 10 U.S.C. § 888 (“Any commissioned officer who uses contemptuous words against the President, Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of any State, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.”).

209. 10 U.S.C. § 892 (“Any person who—(1) violates or fails to obey any lawful general order or regulation; (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or (3) is derelict in the performance of his duties, shall be punished as a court-martial may direct.”).

210. 10 U.S.C. § 917 (“Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.”).

211. 10 U.S.C. § 933 (“Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer shall be punished as a court-martial may direct.”).

212. 10 U.S.C. § 934 (“Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court”).

disobedience of said order automatically made criminal through these articles.”²¹³ In addition, the First Amendment problems described above become more complicated because the revised Instruction now applies to a servicemember’s online activity. One of the expressly listed examples of “Active Participation” is:

Engaging in electronic and cyber activities regarding extremist activities, or groups that support extremist activities – including posting, liking, sharing, re-tweeting, or otherwise distributing content – when such action is taken with the intent to promote or otherwise endorse extremist activities. Military personnel are responsible for the content they publish on all personal and public Internet domains, including social media sites, blogs, websites, and applications.²¹⁴

A third flaw reveals what Professor VanLandingham labels “structural personnel inequities within the ranks.”²¹⁵ These “extant structural promotion, retention, and disciplinary defects”²¹⁶ counsel against relying on the military’s justice and

213. See Armstrong, *supra* note 25, at 83–90 (examining relevant cases in courts-martial system for actions in violation of DoDI 1325.06 using various charging articles).

214. DoDI 1325.06 (2021), *supra* note 127, at 10 (enclosure 3, ¶ 8(c)(2)(m)), 15–16. The Instruction also includes definitions of “liking” (“The use of the ‘like’ function on social media platforms, generally to signal endorsement or support of the ‘liked’ content. Liking includes the use of emojis or reactions that signal endorsement or support, or platform specific actions such as ‘favoriting,’ when also implying endorsement. Liking, in the context of the communication concerned, must imply or state endorsement, agreement or promoting of the content.”) and “sharing” (“In the social media, electronic, or cyber context, an action taken to replicate content from one online location to another (with or without additional comment), typically for viewing by other members of an individual’s social media network. Sharing also includes, but is not limited to, platform-specific terms such as ‘re-tweeting.’”). *Id.* at 15 (glossary).

For analysis of how the Instruction will navigate the First Amendment terrain in light of its application to online activity, see Armstrong, *supra* note 25, at 64–66 (profiling 2021 investigation of sailor James C. Hart for social media posts advocating the use of violence against local and federal law enforcement); Haley Britzky, *Army Investigation Blames General for ‘Negative Publicity’ After Defending Servicewomen Online*, TASK & PURPOSE (Oct. 5, 2022, 10:30 AM), <https://taskandpurpose.com/news/army-investigation-pat-donahoe-social-media/> [<https://perma.cc/YV8R-2YYU>] (describing Army investigation of U.S. Army Major General Patrick Donahoe for improper use of social media, toxic and counterproductive leadership, and failing to treat a subordinate with dignity and respect, based on tweets he sent defending servicewomen in response to commentary from Fox News host Tucker Carlson and engaging with Twitter trolls who argued against the vaccination of soldiers for the novel coronavirus (COVID-19)); Ryan B. Greer, *Post-January 6th, the Military is Addressing Extremism in Its Ranks. Sort of.*, JUST SEC. (Jan. 27, 2022), <https://www.justsecurity.org/79980/post-january-6th-the-military-is-addressing-extremism-in-its-ranks-sort-of/> [<https://perma.cc/B3PT-7FXD>] (describing “a lack of clarity around where the line will be drawn” for social media use); VanLandingham, *Military Speech Restrictions*, *supra* note 128, at 134 (describing “perverse inconsistency” that comes from allowing Ku Klux Klan membership but prohibiting a servicemember from “liking” a Ku Klux Klan Facebook or Twitter post).

215. VanLandingham, *Military Speech Restrictions*, *supra* note 128, at 113.

216. *Id.*

administrative disciplinary systems to counter the extremism threat. Racial disparities in the military justice system have been well-documented, including research showing that “Black servicemembers were about twice as likely as White servicemembers to be tried in general and special courts-martial”²¹⁷ and examining how the chain of command creates or exacerbates existing biases.²¹⁸ When the existing structural defects are paired with high levels of commander discretion, as they are with DoDI 1325.06, the potential for disparate application increases. Indeed, the incentive for commanders to use administrative discharges as the response to violations of DoDI 1356 will be strong, understandable, and arguably appropriate in some instances. However, overuse of the administrative disciplinary system will provide cover for commander bias and mask the scope and tenor of the extremism threat further contributing to the tracking and categorization challenges. In November 2024, Michael Jensen, a lead researcher for START described the military’s use of “administrative discharges to quietly remove extremists from the ranks,” and further observed that the failure to release information about the reasons for administrative discharges leads to an undercounting of violent extremism rates in the U.S. military.²¹⁹ In addition, the use of administrative discharges shifts the extremism problem to civil society without addressing the underlying causes.²²⁰

Compounding the three flaws above is the federal judiciary’s tendency to be overly deferential to military justifications of discipline and good order, precluding the usual close examination and careful balancing of the governmental and individual interests at stake.²²¹ In *Parker v. Levy*, the U.S. Supreme Court noted its “long recogni[tion] that the military is, by necessity, a specialized society separate from civilian society,” and that the “military has, again by necessity, developed laws and traditions of its own during its long history.”²²² Thus, the military deference doctrine continues the flawed approach to First Amendment protections already present in the military’s disciplinary systems, thus removing an oversight entity from the ecosystem.²²³ In sum, the military’s well-intentioned efforts to clean up its own

217. U.S. GOV’T ACCOUNTABILITY OFF., GAO-20-648T, *MILITARY JUSTICE: DoD AND THE COAST GUARD NEED TO IMPROVE THEIR CAPABILITIES TO ASSESS RACIAL DISPARITIES* (i) (2020).

218. VanLandingham, *Military Speech Restrictions*, *supra* note 128, at 113–14 (“[T]he military command chain permits a military environment rife with sexual harassment and racial bias.”).

219. Smith & Dearen, *supra* note 6 (explaining that, because administrative discharges based on extremist ideology or extremist acts are not reported, they “do not show up in START’s data”).

220. *Id.* This author plans to undertake future research projects examining how the Department of Veterans’ Affairs and civil society groups are addressing the extremism problem in the veteran population.

221. See VanLandingham, *Military Speech Restrictions*, *supra* note 128, at 152 (describing U.S. Supreme Court’s “hands off” approach to the military’s regulation of servicemember free exercise and speech claims as well as the Court’s “extreme deference to claims of military necessity,” giving the military broad power to deal with its own personnel (citing Earl Warren, *The Bill of Rights and the Military*, 37 N.Y.U. L. REV. 181, 187–88 (1962))).

222. 417 U.S. 733, 753 (1974).

223. John F. O’Connor, *The Origins and Application of the Military Deference Doctrine*, 35 GA. L. REV. 161, 161–65 (2000) (discussing history and application of the military

house—through instructions regulating prohibited extremist activity and social media use, the administrative disciplinary system, and military justice system—have proved at best ineffective, and at worst violative of constitutional rights.

3. Federal Law Enforcement Blind Spots

The use of federal²²⁴ law enforcement tools, authorities, and the civilian criminal justice system has also proved ineffective in countering violent extremism in the U.S. military, an ineffectiveness worsened by the threat's evolving digital dimension. Servicemembers come into contact with the civilian criminal justice system in a variety of ways, including referral from military investigative units or inspectors general as well as being subject to surveillance or investigation by federal law enforcement authorities for their activities.²²⁵ The civilian law enforcement tools suffer from some of the same constitutional flaws as the military discipline system, as well as several additional more pronounced structural problems, creating a number of blind spots as to the scope and scale of the extremism threat.²²⁶ These include (i) the potential for disparate application of surveillance technologies based on group ideology and identity and uneven enforcement of terrorism-related statutes; (ii) an inability to grasp the international scope of the extremism threat due to a binary legal framework; and (iii) a hodgepodge of charging options that mask the ideological nature of the threat while exacerbating the data collection and tracking challenge.

The first of these blind spots is the potential for—and past practice of—discriminatory and disparate use of federal surveillance and criminal authorities based on ideology and identity.²²⁷ The history of disparate use and application of anti-terrorism authorities following the September 11, 2001, attack is well documented, and illustrates the harms that befall suspects when the threat is framed as emanating from non-white, non-Christian extremist groups.²²⁸ Even prior to 9/11,

deference doctrine, critiquing how lower federal courts misapply or fail to apply the doctrine, and concluding that the doctrine continues to present a formidable barrier to proving that a military practice runs afoul of the Constitution).

224. While this Article focuses on the role of federal law enforcement entities and the federal criminal justice system to counter violent extremism in the military, state law enforcement entities also investigate and prosecute servicemembers who engage in acts of violent extremism. *See, e.g.,* Nick Robinson, *The Growing Threat of State Domestic Terrorism Laws to the First Amendment*, JUST SEC. (Sept. 5, 2024), <https://www.justsecurity.org/99787/state-domestic-terrorism-laws/> [<https://perma.cc/L769-VDC8>].

225. *See, e.g.,* DODIG-2023-034, SECTION 554 REPORT (Dec. 1, 2022), *supra* note 185, at 1 (summarizing referrals to federal law enforcement agencies).

226. Carmichael & Buxton, *supra* note 12 (“The unfortunate truth is that across the U.S., DVE groups inspired by violent ideologies—such as QAnon conspiracies and the misogynistic incel movement—are prosecuted under a patchwork of non-terrorism-related charges, leading to a potential blind spot that fails to capture the gravity of the threat posed by these violent ideologies.”).

227. Shirin Sinnar, *Separate and Unequal: The Law of “Domestic” and “International” Terrorism*, 117 MICH. L. REV. 1333, 1335 (2019) (“[P]olicing and prosecution of terrorism differs across ideologies and communities.”).

228. *See* Johnson, *supra* note 80, at 1086–90; *see also* Khaled A. Beydoun & Justin Hansford, Opinion, *The F.B.I.’s Dangerous Crackdown on ‘Black Identity Extremists’*, N.Y.

the U.S. government “intensively surveil[led] and police[d] U.S. Muslim communities to root out potential terrorist threats” while adopting a vastly “different approach to non-Muslim terrorist threats.”²²⁹ The investigative tools used by the FBI and the charges brought differ significantly dependent on the ideology and identity of the suspects.²³⁰ Anti-terrorism authorities tend to be either underused or overused depending on the identity of the group, with non-white, Islam-based groups receiving much more scrutiny than groups with white, Christian members.²³¹ Historical

TIMES (Nov. 17, 2107), <https://www.nytimes.com/2017/11/15/opinion/black-identity-extremism-fbi-trump.html> [<https://perma.cc/TL2Q-4KEG>]; Sinnar, *supra* note 227, at 1335–37, 1347–48; Caroline Mala Corbin, *Essay: Terrorists Are Always Muslim but Never White: At the Intersection of Critical Race Theory and Propaganda*, 86 *FORDHAM L. REV.* 455, 459–60 (2017); Amna Akbar, *National Security's Broken Windows*, 62 *UCLA L. REV.* 834, 879–81 (2015); Leti Volpp, *The Citizen and the Terrorist*, 49 *UCLA L. REV.* 1575, 1577–78, 1580–81 (2002). For example, “terrorism is instantly presumed when the lone wolf killer is Muslim, and the prospect of terrorism is typically dismissed when the actor is white (and non-Muslim).” Khaled A. Beydoun, *Lone Wolf Terrorism: Types, Stripes, and Double Standards*, 112 *Nw. U.L. REV.* 1213, 1217 (2018) (“More often than not, race and religion are the most salient factors in determining whether law enforcement will conduct a terrorism investigation and prosecution.”).

229. Sinnar, *supra* note 227, at 1335–36.

230. *Id.* (citations omitted).

The federal government takes a different approach to non-Muslim terrorist threats. White supremacists, anti-government militias, sovereign citizens, and other groups present a significant terrorist threat. The FBI investigates these individuals and groups using conventional warrants rather than secret foreign intelligence surveillance orders or other national security tools. While prosecutors pervasively use material support charges to “preemptively” target Islamic extremists, they rarely charge white nationalists or anti-government extremists with material support. Studies suggest that the FBI does not use informants and undercover operations against right-wing threats as extensively or aggressively as it does with Muslims. And local law enforcement officials prosecute many cases under state law, thereby precluding the application of a federal terrorism sentencing enhancement and other potential consequences of federal prosecution.

Id. (citations omitted).

231. Johnson, *supra* note 80, at 1095 (describing how a “racialized national security paradigm results in underenforcement of available antiterror authorities against white supremacists”). Professor Johnson explains that law enforcement’s tendency to view “terrorism as Muslim has obscured the public conception of violent white supremacists as terrorists even when they engage in actions that meet the legal definition of terrorism. This phenomenon has led national security authorities to label the violent activities of white supremacists as hate crimes rather than terrorism.” *Id.* at 1086–87.

Since 2021, the Justice Department has turned its anti-terrorism tools more directly toward white supremacist extremist groups, with a number of notable indictments and convictions beyond the January 6 trials. *See, e.g.*, Press Release, U.S. Dep’t of Just., White Supremacist Leader Found Guilty of Conspiring to Destroy Regional Power Grid (Feb. 4, 2025), <https://www.justice.gov/opa/pr/white-supremacist-leader-found-guilty-conspiring-destroy-regional-power-grid> [<https://perma.cc/L3TH-CJPC>]; Press Release, U.S. Dep’t of

patterns show underenforcement against suspects in white supremacist and nationalist groups, and overuse against non-white populations.²³² Clint Watts, a former FBI agent, has researched the costs of federal law enforcement's singular focus on one type of terrorist group to the exclusion of others, explaining how racial bias in our national security structures often led officials to misunderstand or underestimate the source of the threat:

When you think of a terrorist, what do you see? For more than a generation, the image lurking in Americans' nightmares has resembled the perpetrators of the 9/11 attacks: an Islamic jihadist. Not a 21-year-old white supremacist from a prosperous Dallas suburb.

. . . .
 . . . "I remember being like, 'Wow, we have a problem,'" recalls former FBI agent Clint Watts, a fellow at the Foreign Policy Research Institute. "The belief was always that this would be al-Qaeda, not a former soldier who is a white supremacist."²³³

A second blind spot masks the international character of extremist movements. The rigid, binary legal frameworks currently governing counter-terrorism efforts make the usual tools ineffective. Surveillance tools and charging options are divided based on the potential source of the threat—whether there is a foreign element to the extremist group.²³⁴ This binary is also reflected in the way the U.S. government defines extremist groups,²³⁵ and becomes all the more pronounced with white supremacist extremist groups.²³⁶ Federal law enforcement and intelligence

Just., U.S. Army Soldier Sentenced to 14 Years in Prison For Attempting to Assist ISIS to Conduct Deadly Ambush on U.S. Troops (Oct. 11, 2024), <https://www.justice.gov/opa/pr/us-army-soldier-sentenced-14-years-prison-attempting-assist-isis-conduct-deadly-ambush-us> [<https://perma.cc/4AZX-M9AE>]; Press Release, U.S. Dep't of Just., Former Marine Sentenced to 9 Years in Federal Prison for Molotov Cocktail Attack Against Planned Parenthood Clinic in Orange County (Apr. 15, 2024) (describing how former Marine was motivated by "extremist neo-Nazi ideology"). Challenges, however, persist, often due to the lack of consistent coding or tracking mechanisms. See U.S. DEP'T JUST., OFF. OF INSPECTOR GENERAL, *supra* note 153, at ii, 21–27. See generally GAO-23-104720, DOMESTIC TERRORISM (2023), *supra* note 33; GAO-24-106262, COUNTERING VIOLENT EXTREMISM (2024), *supra* note 8.

232. Johnson, *supra* note 80, at 1086–90.

233. Vera Bergengruen & W.J. Hennigan, 'We Are Being Eaten from Within.' *Why America Is Losing the Battle Against White Nationalist Terrorism*, TIME (Aug. 8, 2019, 6:02 AM), <https://time.com/5647304/white-nationalist-terrorism-united-states/> [<https://perma.cc/E43D-NLHA>]. For a comprehensive assessment of the racial blind spots in national security decision-making and legal frameworks, see RACE AND NATIONAL SECURITY LAW (ed. Matiangai V.S. Sirleaf, 2023).

234. See Sinnar, *supra* note 227, at 1335–36; Johnson, *supra* note 80, at 1091–95.

235. See *supra* Part II (describing problems of imprecision and variety in definitions of extremist groups); see also Beydoun & Hansford, *supra* note 228 (describing FBI's introduction of new extremist group—Black Identity Extremists—during a time of "mounting white supremacy and white nationalism").

236. Art Jipson & Paul J. Becker, *White Nationalism, Born in the USA, Is Now a Global Terror Threat*, CONVERSATION (Mar. 19, 2019, 3:14 PM), <https://theconversation.com/white->

authorities have failed to understand white supremacist terrorism in the United States as a part of a global terror movement, instead viewing such acts as isolated and homegrown, and this is “despite the fact that white supremacist terrorism now surpasses Al-Qaeda and ISIS-associated terrorism in the scope and impact of its destructiveness in the United States.”²³⁷

Professor Darin Johnson and others have catalogued the reasons for this conceptual failure, including a preoccupation with responding to the perpetrators of the September 11, 2001, attacks and “the ability of white supremacists to build a global terror network on digital platforms under the public radar.”²³⁸ As described in Section I.C, digital platforms have facilitated the rise and reach of these groups: “[W]hite supremacist terrorism is now homegrown and global: uniquely nativist in its domestic manifestations and globally linked by ideology and technology.”²³⁹ Indeed, the failure to understand the role of online recruiting and digital community-building in extremist groups intensifies the potential for ineffective use, misuse, and abuse of existing surveillance and criminal authorities. In essence, this binary creates a blind spot for law enforcement and for policymakers as to the threat’s international character and the influence of foreign entities. The result of this divide is that law enforcement fails “to prosecute white nationalists as terrorists, national security institutions fail to treat white supremacists as terror suspects, which means they are not subjected to the same level of surveillance or punitive prosecutorial consequences as those suspected of Al-Qaeda- and ISIS-associated terrorism.”²⁴⁰

A third blind spot, related to the second and also to the categorization problems described above,²⁴¹ is created by the hodgepodge of charging options utilized in criminal prosecutions of extremist acts. This hodgepodge masks the ideological nature of the threat and exacerbates the tracking challenge. Law enforcement agencies are unsure of which tools are permissible to use when investigating threats

nationalism-born-in-the-usa-is-now-a-global-terror-threat-113825 [https://perma.cc/L47E-6GHY] (describing “violent transnationalism” which studies the internationalization of hate crimes) (“[H]ate crimes have risen alongside the global spread of white nationalism.”).

237. Johnson, *supra* note 80, at 1095–96; *see also* ANTI-DEFAMATION LEAGUE, *supra* note 91, at 7–8 (“The globalization of violent white supremacy has been accelerated by social networking sites like Twitter, Gab, Minds, Telegram and message boards like 8chan, 4chan and Reddit, which have created an echo chamber where racist and anti-Semitic ideologies are seen, repeated and reinforced by like-minded people.”); *see also* Trevor Aaronson, *Terrorism’s Double Standard*, INTERCEPT (Mar. 23, 2019, 8:34 AM), <https://theintercept.com/2019/03/23/domestic-terrorism-fbi-prosecutions> [https://perma.cc/U5JT-7L45] (finding that DOJ applied anti-terrorism laws against only 34 of 268 right-wing extremists prosecuted in federal court after 9/11, compared to more than 500 international alleged terrorists).

238. Johnson, *supra* note 80, at 1059.

239. *Id.* at 1096.

240. *Id.* at 1095–97; *see, e.g.*, U.S. DEP’T JUST. OFF. INSPECTOR GEN., A REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION’S HANDLING OF ITS CONFIDENTIAL HUMAN SOURCES AND INTELLIGENCE COLLECTION EFFORTS IN THE LEAD UP TO THE JANUARY 6, 2021 ELECTORAL CERTIFICATION (2024) (examining FBI’s failure to take seriously reports from FBI field offices of the potential for extremist group activity and violence during the presidential transition).

241. *See infra* Section I.A (describing lack of common definitions or categories for extremism).

of domestic violent extremism and which charges to bring when prosecuting such conduct, leading prosecutors to bring a bevy of property-, firearm-, and obstruction-related charges, and in some instances, seditious conspiracy.²⁴² “This unclear categorization means that prosecutors often struggle to bring charges that adequately reflect the ideological underpinnings of these violent acts, leading to inconsistent sentencing and a diminished deterrent effect.”²⁴³ In sum, the charging instruments used often hide the extremist nature of the criminal activity and mask the role played by white supremacist ideology. Thus, extremist actors are able to “exploit these gaps and are emboldened by the lack of adequate sentences,” resulting in “an ecosystem of extremism [that] is given the room to thrive, ultimately eroding trust in the justice system and inspiring further violence.”²⁴⁴

A counterpoint of this concern is the concern about overreach: As scholars and policymakers consider the optimal counter-extremism tools and how to remedy the structural flaws described in this Part, due regard should be given to potential overreach. Any effort to combat domestic violent extremism should be wary of serving as a foil for authoritarian regimes and the concentration of power.²⁴⁵ Laws intended to prevent online radicalization and recruitment can easily turn to tools of oppression.²⁴⁶ Relatedly, one should review with a healthy degree of skepticism

242. Carmichael & Buxton, *supra* note 12 (providing examples of federal charges against QAnon adherents and other individuals with links to DVE groups).

Two related law enforcement issues deserve note here. First, the need for—and desirability of—a dedicated domestic terrorism statute has been the subject of significant debate. Compare Mary B. McCord, *It’s Time for Congress to Make Domestic Terrorism a Federal Crime*, LAWFARE (Dec. 5, 2018, 9:13 AM), <https://www.lawfaremedia.org/article/its-time-congress-make-domestic-terrorism-federal-crime> [https://perma.cc/MPJ2-R57B], and Amy C. Collins, *The Need for a Specific Law Against Domestic Terrorism*, PROGRAM ON EXTREMISM, GEORGE WASHINGTON UNIVERSITY 23–26 (2020), with Robert Chesney, *Should We Create a Federal Crime of ‘Domestic Terrorism’?*, LAWFARE (Aug. 8, 2019, 11:31 AM), <https://www.lawfaremedia.org/article/should-we-create-federal-crime-domestic-terrorism> [https://perma.cc/C9EX-YZSU], and Michael German, *Why New Laws Aren’t Needed to Take Domestic Terrorism More Seriously*, BRENNAN CTR. FOR JUST. (Dec. 14, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/why-new-laws-arent-needed-take-domestic-terrorism-more-seriously> [https://perma.cc/QYP2-4SWB]. This Article does not seek to resolve that debate, but only to note that the lack of a dedicated domestic terrorism statute likely contributes to the charging challenges facing federal law enforcement agencies and also to the tracking challenge.

Second, the U.S. Supreme Court’s 2024 decision in *Fischer v. United States* may limit future charging options in the federal system for prosecuting violent extremist conduct. 603 U.S. 480, 491–94 (2024); see also Kyle Cheney & Josh Gerstein, *Justice Department Signals Plan to Salvage Obstruction Charges in Some Jan. 6 Cases*, POLITICO (Aug. 21, 2024, 3:06 PM), <https://www.politico.com/news/2024/08/21/justice-department-jan-6-obstruction-00175412> [https://perma.cc/XPM6-NCC6].

243. Carmichael & Buxton, *supra* note 12.

244. *Id.*

245. U.N. Special Rapporteur on Counter-Terrorism & Human Rights, *Global Study on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space*, UNITED NATIONS (Oct. 2023), https://defendcivicspace.com/wp-content/uploads/2024/01/SRCT_GlobalStudy-1.pdf [https://perma.cc/DR2V-ZUV9].

246. E. Tendayi Achiume (Special Rapporteur on Contemporary Forms of Racism, Racial

reforms that seek to create new crimes or early identification mechanisms—for example, by creating tattoo databases and watchlist-based algorithms designed to surveil the social media and online activities of servicemembers. These efforts tend to be merely performative and often wholly ineffective.²⁴⁷ Finally, overuse of such authorities may actually make the problem worse—the counter-terrorism research community is exploring research showing that the post 9/11 approach was misplaced, and some entities in the U.S. Government are moving away from the older “community-focused” countering violent extremism (CVE) approach toward a whole-of-society public health approach.²⁴⁸

Is the U.S. military too “woke” or is it overrun by extremists? Neither characterization is accurate or constructive: one reflects unjustified denial and the other unhelpful exaggeration. Unfortunately, the structural obstacles and flawed responses described above have made it popular to offer such reductive assertions. While extremist ideologies, particularly those sounding in white supremacy and white nationalism, are certainly present in military and veteran populations, and a rise in instances of extremist-inspired conduct by individuals with military backgrounds is well-documented, the scope and scale of the threat remains uncertain. This uncertainty can be attributed to apathetic tracking efforts and a failure to understand the digital dimensions of the threat on the part of policymakers. This combination makes the tools ordinarily used to counter acts of violent extremism—such as the military’s disciplinary systems and civilian law enforcement and criminal justice systems—ineffective, particularly when paired with a history of disparate application, legally flawed premises, and overly deferential federal courts. In sum, the usual checking mechanisms—Congress, the military’s disciplinary systems, the federal criminal justice system—have backed away from their oversight roles or have proven ill-suited to the task, compromised in some instances and legally flawed in

Discrimination, Xenophobia and Related Intolerance), *Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, U.N. Doc. A/73/312, at ¶¶ 20–24 (Aug. 7, 2018).

247. *Domestic Terrorism Versus Constitutional Speech*, CATO INST., (June 7, 2023) <https://www.cato.org/events/domestic-terrorism-versus-constitutional-speech> [<https://perma.cc/ZL7D-L2TF>] (explaining that extremist groups often change their names and rebrand their symbols and logos to avoid early identification measures); VanLandingham, *Military Speech Restrictions*, *supra* note 128, at 113 (“[Countering racism and sexism in the U.S. military] require[s] much greater attention than tattoos and tweets, yet the military emphasis has remained on prohibiting the latter as the remedy for extremism in the ranks. No wonder racism and extremism in the military is seemingly worsening. The military speech restrictions do absolutely nothing to remedy the extant racial disparities in everything from military justice actions to promotions . . . they simply give the DoD a convenient talking point.”).

248. *Moving Past the CVE Era: The New National Strategy for Countering Domestic Terrorism*, U.S. DEP’T OF HOMELAND SEC. (Oct. 2021), <https://www.dhs.gov/medialibrary/assets/video/36420> [<https://perma.cc/F5TN-WNG6>]; *see also* 2024 *National First Amendment Summit*, NAT’L CONST. CTR. (Oct. 22, 2024), <https://constitutioncenter.org/news-debate/americas-town-hall-programs/2024-national-first-amendment-summit> [<https://perma.cc/UH3J-QBEW>] (noting that prohibitions on certain activities and types of speech tend to make the extremist view more appealing); CATO INST., *supra* note 247.

others. There is a need to identify an entity able to buffer the political winds and to independently navigate and accurately assess the contours of the extremism threat within the U.S. military.

III. IS THE PENTAGON'S INSPECTOR GENERAL UP TO THE COUNTER-EXTREMISM TASK?

This Part proposes an alternative entity able to take on the counter-extremism task, and engage in the “unglamorous but essential work of oversight.”²⁴⁹ Oversight is vital to the functioning of a liberal democracy founded on a republican form of government, ensuring the consent of the governed by providing accountability and transparency into government operations.²⁵⁰ As described by James Madison in Federalist No. 51 (and many others since), the evil to be prevented is the concentration of power (with its potential for abuse) in any one branch of government, or in any one entity.²⁵¹ The potential for concentration and abuse is heightened when the entity is the U.S. military, due to the coercive authorities and capabilities granted to the military to use force. Exercising a check on military power—particularly when that power could be directed to political violence in the name of extremist ideologies—is essential. The oversight tool or mechanism, however, must be appropriately calibrated to the oversight need—it must reflect and be matched to the potential for abuse. When the threat is the presence—and prevalence—of extremism in the U.S. military, careful consideration is warranted to identify how best to counter the threat, and determine which tools and institutions are best suited to the task.

This Part considers an internal oversight entity often overlooked or dismissed by scholars and generally invisible to the public. It considers the Office of Inspector General for the Department of Defense (DoD OIG), and the role of the recently established Deputy Inspector General for Diversity and Inclusion and Extremism in the Military (DIG DIEM).²⁵² This Part starts with an examination of the impetus for the DIG DIEM position, and describes the constitutional role that inspectors general play in the federal government's oversight ecosystem. It then sets out the specific authorities and responsibilities of the DoD OIG relating to the investigation of, evaluation of, and reporting on extremism, and the tools and attributes that make this

249. 9/11 COMM'N, THE 9/11 COMMISSION REPORT 105 (2004).

250. See DANIELS, SHREVE & SPECTOR, *supra* note 63, at 10–17 (describing inherent tension in liberal democracies where liberalism, grounded in the idea of individual human freedom, sits in an uneasy alignment with democracy, a commitment to political equality and popular sovereignty); JACK GOLDSMITH, POWER AND CONSTRAINT: THE ACCOUNTABLE PRESIDENCY AFTER 9/11, at 206–07 (2012) (describing critical role of oversight—or “watching”—mechanisms in the executive branch, “[a]cting alone and in mutually reinforcing networks” to extract and reveal information about the executive's conduct, which in turn forces the executive to account for its actions while also providing a “disciplining effect” on government operations).

251. THE FEDERALIST NO. 51 (Madison).

252. See NDAA FY2021, *supra* note 170, § 554(a) (establishing the DIG DIEM position); see *infra* Section III.C (describing recent executive branch actions which may jeopardize the DIG DIEM's role in counter-extremism efforts).

office an important component in the military's counter-extremism task. Finally, this Part considers limits and obstacles to the DoD OIG's ability to engage in counter-extremism work.

A. New Requirements and Responsibilities

As described above, Congress established the DIG DIEM position in the NDAA FY2021.²⁵³ Congresswoman Jackie Speier was a driving force behind its establishment, which she proposed as a way to counter decades of inattention to the problem of white supremacist and extremist behavior in the military, inaction on the gathering of data, and the lack of centralized mechanisms for tracking or reporting on extremist acts by servicemembers.²⁵⁴ “The department has been talking about these problems for decades, nibbling around the edges, while too little progress has been made too slowly,” said Representative Speier in July 2020.²⁵⁵ The NDAA FY2021 became law—over the veto of President Trump—on January 1, 2021, only five days before the breach of the U.S. Capitol.²⁵⁶

The position is described in Section 554(a), which provides that the DIG DIEM is appointed by the Secretary of Defense, and “shall be a member of the Senior Executive Service of the Department” and “shall report directly to and serve under the authority, direction, and control of the Inspector General.”²⁵⁷ In addition to the general responsibilities placed on all inspectors general,²⁵⁸ the DIG DIEM is expressly charged with “[c]onducting and supervising audits, investigations, and evaluations of policies, programs, systems, and processes of the Department . . . (i) to determine the effect of such policies, programs, systems, and processes regarding personnel on diversity and inclusion in the Department; and (ii) to prevent and respond to supremacist, extremist, and criminal gang activity of a member of the Armed Forces.”²⁵⁹ In addition, the DIG DIEM coordinates with the inspectors general of the Air Force, Army, and Navy, as well as with the other Deputy Inspectors General of the Department.²⁶⁰ The DIG DIEM is tasked with a variety of reporting and tracking responsibilities, which are discussed in greater detail below.²⁶¹

253. NDAA FY2021, *supra* note 170, at § 554 (codified at 10 U.S.C. § 141 in accompanying notes).

254. State News Service, *Chair Speier Statement on NDAA Conference Agreement*, STATE NEWS SERV. (Dec. 8, 2020).

255. Jeff Schogol, *Lawmaker Wants Investigator to Look into White Extremism and Racial Bias in the Military*, TASK & PURPOSE (July 6, 2020), <https://taskandpurpose.com/news/special-inspector-general-racism-extremism-military/> [https://perma.cc/S3R5-S3R5]

256. NDAA FY2021, *supra* note 170, at § 554.

257. *Id.* § 554(a)(1)(A)–(B); DODIG-2025-048, SECTION 554 REPORT (Nov. 27, 2024), *supra* note 192, at 1 n.4.

258. See Amy C. Gaudion, *Answering the Cyber Oversight Call*, 54 LOY. U. CHI. L.J. 139, 170–80 (2023).

259. NDAA FY2021, *supra* note 170, at § 554(a)(2)(A)(i)–(ii). The position may also be prescribed additional duties by the Secretary of Defense or the DoD Inspector General. *Id.* at § 554(a)(2)(B).

260. *Id.* § 554(a)(3)(A)–(D).

261. *Id.* § 554(a)(4); see *infra* Section III.B.2.

In March 2021, an interim DIG DIEM, Stephanie Wright, was appointed,²⁶² and later that same year, Theresa S. Hull was confirmed as the inaugural holder of the position.²⁶³

B. Attributes and Tools

As described in Part II, counter-extremism efforts in the military have faced significant institutional hurdles, including historical inattention to the extremism threat, lack of useful data and tracking mechanisms, lack of common or standardized definitions or categories of extremism, and a failure to understand the accelerating effects of technology on that threat. This Section explains how the new authorities and requirements create a path over and around the obstacles that have dogged prior efforts to counter extremism in the U.S. military. The attributes and tools of the DoD OIG include: (1) independence which allows insulation from changes in leadership (whether at the Pentagon or Congress) and shifting commitments to counter-extremism efforts; (2) a bevy of auditing tools well suited to the tasks of consistent data collection, centralized tracking, and problem scoping, providing a better grasp of the role played by social media and gaming platforms in the extremism threat; (3) assessments of the effectiveness of counter-extremism efforts and their impact on recruiting and military culture, including the ability to issue spot legal pitfalls and challenges; and (4) statutorily mandated reporting requirements that answer the calls for transparency and accountability (important substitutes when the other oversight players are absent or abdicating their roles) and that provide a road map for congressional and department action (effectively illuminating the areas in need of executive and legislative oversight and correction).

1. Providing Accountability: An Independent Institutional Check

Inspectors general serve as “the principal watchdogs of the nation’s major federal agencies.”²⁶⁴ The Inspector General Act of 1978 (IGA) formalized the position

262. Jeff Seldin, *New Pentagon Watchdog Facing ‘Significant Challenges’ in Internal Anti-Extremism Effort*, VOA (June 14, 2021, 3:48 PM), https://www.voanews.com/a/usa_new-pentagon-watchdog-facing-significant-challenges-internal-anti-extremism-effort/6207016.html [<https://perma.cc/ZYB3-UHJV>].

263. Nikki Wentling, *Republican Effort to Cut DoD Watchdog Alarms Anti-Extremism Advocates*, MIL. TIMES (July 12, 2023), <https://www.militarytimes.com/flashpoints/extremism-disinformation/2023/07/12/republican-effort-to-cut-dod-watchdog-alarms-anti-extremism-advocates/> [<https://perma.cc/8WHE-R6BD>].

264. HENRY A. WAXMAN, IMPROVING GOVERNMENT ACCOUNTABILITY ACT, H.R. REP. NO. 110–354, at 8 (2007) (Conf. Rep.); *see also* GOLDSMITH, *supra* note 250, at 99 (describing inspectors general as “watchdogs that have been sprinkled around the executive branch since George Washington named Baron Frederick von Steuben to be inspector general for the Continental Army”). Although “finding the roots of the IG Act is like making a geological dig, stripping one layer of explanation off another until the underlying stratum is uncovered,” PAUL C. LIGHT, MONITORING GOVERNMENT: INSPECTORS GENERAL AND THE SEARCH FOR ACCOUNTABILITY 39 (1993), the following sources provide able guides to tracing the history of inspector general-like positions in the federal government since the country’s founding through the passage of the 1978 IGA: GLENN A. FINE, WATCHDOGS: INSPECTORS

across executive branch departments, setting forth its responsibilities and providing the necessary authorities and tools.²⁶⁵ The IGA fit into a group of legislative efforts which were enacted in response to executive branch abuses and which Paul Light called a “busy season in the search for government accountability.”²⁶⁶ The statutes enacted during this period—including the War Powers Resolution of 1973, the Ethics in Government Act of 1978, the Civil Service Reform Act of 1978, and the Foreign Intelligence Surveillance Act of 1978—shared common goals: to ensure robust and

GENERAL AND THE BATTLE FOR HONEST AND ACCOUNTABLE GOVERNMENT (Guian A. McKee & Marc J. Selverstone, eds., 2024); MICHAEL HENDRICKS, MICHAEL F. MANGANO, WILLIAM C. MORAN, INSPECTORS GENERAL: A NEW FORCE IN EVALUATION (1990); CHARLES A. JOHNSON & KATHRYN E. NEWCOMER, U.S. INSPECTORS GENERAL: TRUTH TELLERS IN TURBULENT TIMES (2020); LIGHT, *supra*; MARK H. MOORE & MARGARET JANE GATES, INSPECTORS-GENERAL: JUNKYARD DOGS OR MAN’S BEST FRIEND (Russell Sage Found., Soc. Rsch. Persp. 13, 1986); BEN WILHELM, CONG. RSCH. SERV., R45450, STATUTORY INSPECTORS GENERAL IN THE FEDERAL GOVERNMENT: A PRIMER (2023); John J. Adair & Rex Simmons, *From Voucher Auditing to Junkyard Dogs: The Evolution of Federal Inspectors General*, PUB. BUDGETING & FIN. (Summer 1988); Margaret J. Gates & Marjorie Fine Knowles, *The Inspector General Act in the Federal Government: A New Approach to Accountability*, 36 ALA. L. REV. 473 (1985); Kathryn E. Newcomer, *The Changing Nature of Accountability: The Role of the Inspector General in Federal Agencies*, 58 PUB. ADMIN. REV. 129 (1998). For detailed accounts on the role of inspectors general in national security and intelligence entities within the federal government, see CARMEN R. APAZA, INTEGRITY AND ACCOUNTABILITY IN GOVERNMENT: HOMELAND SECURITY AND THE INSPECTOR GENERAL (2011); FINE, *supra*; Ryan M. Check & Afsheen John Radsan, *One Lantern in the Darkest Night: The CIA’s Inspector General*, 4 J. NAT’L SEC. L. & POL’Y 247 (2010); Shirin Sinnar, *Protecting Rights from Within? Inspectors General and National Security Oversight*, 65 STAN. L. REV. 1027 (2013); Margo Schlanger, *Offices of Goodness: Influence Without Authority in Federal Agencies*, 36 CARDOZO L. REV. 53, 60–62 (2014) (describing need for and characteristics of “[o]ffices of [g]oodness”—which share common traits but are distinct from inspectors general—to check executive branch conduct, as well as limits on such officers).

265. Inspector General Act of 1978, Pub. L. No. 95-452, 92 Stat. 1101 (initially codified at 5 U.S.C. app. §§ 1–13, amended, and moved to a new chapter in 2022, and now codified at 5 U.S.C. §§ 401–424).

266. LIGHT, *supra* note 264, at 11; see S. REP. NO. 95-1071, at 4 (1978) (listing examples of “epidemic” levels of fraud, abuse, and waste motivating enactment of the IGA). See generally CHURCH COMMITTEE, SENATE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES (1976), <https://www.senate.gov/about/powers-procedures/investigations/church-committee.htm> [<https://perma.cc/77BZ-83NC>]; HOUSE SELECT COMMITTEE ON INTELLIGENCE, PIKE COMMITTEE REPORT (1976), <https://archive.org/details/PikeCommitteeReportFull> [<https://perma.cc/MK6B-T5AP>]; REPORT TO THE PRESIDENT BY THE COMM’N ON CIA ACTIVITIES WITHIN THE UNITED STATES (1975), <https://www.fordlibrarymuseum.gov/library/document/0005/1561495.pdf> [<https://perma.cc/27L4-U9EA>]. Scholars have also taken note of the “common motivations” underlying passage of the IGA and other legislative efforts designed to reassert the oversight control that Congress had lost in the wake of Watergate, the Vietnam War, and other executive branch abuses. JOHNSON & NEWCOMER, *supra* note 264, at 253; LIGHT, *supra* note 264, at 48 (describing how “post-Watergate struggle over access to executive branch information” impacted passage of IGA); MOORE & GATES, *supra* note 264, at 12 (describing importance of IGA’s focus on ensuring information reached Congress).

accountable executive branch decision-making, to increase transparency of executive branch decision-making, and to bolster Congress's access to information in the hands of executive agencies.²⁶⁷ To accomplish these objectives, Congress made independence a defining feature of the inspector general position.

Independence is integral to the statute's objective of increasing transparency and visibility. The strong emphasis on independence explains why inspectors general are grouped with other mechanisms and entities in what Jack Goldsmith calls the "presidential synopticon," a group of watchers designed to check potential abuses of executive power and hold executive branch actors accountable.²⁶⁸ Former inspector general of the Department of Justice and former acting inspector of the Department of Defense Inspector General Glenn Fine described the position in similar terms:

IGs are not the most popular people in government—in any administration. When they do their jobs right, they are bound to make powerful government officials, up to and including the president, unhappy. However, inspectors general are crucial in the battle to keep government officials honest and accountable and to improve government operations. An IG is like an internal affairs office within an agency. On television shows, when an agent from internal affairs shows up, the room normally gets quiet and people begin looking at their shoes. The same dynamic applies to IGs and their staff—they are sometimes likened to a skunk at a picnic.²⁶⁹

The attribute of independence is reflected in the inspector general's discretion and authority to select activities and to act without interference (in most instances), the IGA's appointment and removal provisions, and its reporting obligations, not only to the agency head and to Congress, but to make reports available to the general public.

Inspectors general have the discretion and authority to organize their office's operations, identify topics of inquiry, and conduct their activities without interference. Statutory inspectors general report directly to the head of the agency or the officer next in rank below the head.²⁷⁰ In addition, inspectors general have authority to structure their office, selecting heads of the various departments and hiring and firing staff.²⁷¹ As part of this broad discretion to structure their operations,

267. See War Powers Resolution, 50 U.S.C. §§ 1541–50 (1973); Ethics in Government Act of 1978, 5 U.S.C. app. 4 § 101; Civil Service Reform Act of 1978, 5 U.S.C. § 1101; Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. § 1801.

268. GOLDSMITH, *supra* note 250, at 264.

269. FINE, *supra* note 264, at 5; see also BEN WILHELM, CONG. RSCH. SERV., IF11546, REMOVAL OF INSPECTORS GENERAL: RULES, PRACTICE, AND CONSIDERATIONS FOR CONGRESS (Jan. 27, 2025) [hereinafter WILHELM, IF11546] (citing to comments of Senator Thomas Eagleton during the floor debate on the Inspector General Act who described independence as the "most important" characteristic of inspectors general (citing Congressional Record, vol. 124, part 29, October 22, 1978, p. 30952)).

270. See 5 U.S.C. § 403(a) (indicating that, in most instances, inspectors general report directly to the agency head or high-level member of the secretary's executive team).

271. See *id.* § 403(d) (providing inspectors general with authority to appoint assistant inspectors general for various activities); *id.* § 406(a)(7) ("[T]o select, appoint, and employ

inspectors general are authorized to obtain and hire experts and consultants from both within and outside the government.²⁷²

Inspectors general also have discretion in how to pursue and initiate projects. While inspectors general can receive work assignments through statutory mandate and congressional or agency head requests, they also can identify work on their own initiative.²⁷³ The DoD OIG “shall . . . initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate.”²⁷⁴ The independence in selecting work is also captured in the provisions describing the DIG DIEM responsibilities, which include “[c]onducting and supervising audits, investigations, and evaluations of policies, programs, systems, and processes of the Department” relating to diversity, inclusion, and extremist activities as well as “[a]dditional duties prescribed by the Secretary or Inspector General.”²⁷⁵ Inspectors general also have the authority to identify and engage in auditing, investigative, and inspection activities without interference from the department head or others. “Neither the head of the establishment nor the officer next in rank below the head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.”²⁷⁶ Paul Light identifies this “full authority to undertake whatever audits and investigations deemed necessary” as one of the devices that protects the inspector general from administrative politics, thus strengthening the inspector general’s powers.²⁷⁷ This protection from interference is a hallmark of the position’s independence and fosters the officer’s ability to ensure accountability for and transparency into government actions and processes, while also providing opportunities to “nudge the Executive toward . . . public law values.”²⁷⁸

such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office.”).

272. *Id.* § 406(a)(8) (authorizing inspectors general “to obtain services as authorized by section [5 U.S.C. §] 3109,” thus giving inspectors general the ability to obtain the temporary (not in excess of 1 year) or intermittent services of experts or consultants as needed); *id.* § 406(a)(9) (authorizing inspectors general “to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons”).

273. *See id.* § 408(c) (“[T]he Inspector General of the Department of Defense shall . . . initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate.”); WILHELM, *supra* note 264, at 7 (“An IG generally conducts reviews in response to statutory mandate, at the request of Congress or other stakeholders (e.g., the President), or upon self-initiation.”); JOHNSON & NEWCOMER, *supra* note 264, at 96–97, 132–35 (describing congressional requests for inspector general action and other interactions between congressional entities and inspector general offices).

274. 5 U.S.C. § 408(c).

275. NDAA FY2021, *supra* note 170, § 554(a)(2)(A)–(B) (codified as amended at 10 U.S.C. § 141).

276. 5 U.S.C. § 403(a).

277. LIGHT, *supra* note 264, at 23–24.

278. Ashley Deeks, *Secrecy Surrogates*, 106 VA. L. REV. 1395, 1453 (2020) (explaining how inspectors general and other surrogates can move executive branch actors toward public

The independence attribute also features prominently in the provisions governing the appointment and eligibility requirements for inspectors general, as well as those governing removal. The IGA provides that inspectors general shall be appointed “without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.”²⁷⁹ Recognizing the critical importances of inspectors general in preventing executive branch abuse and politization of the intelligence and national security entities, the inspector general removal provisions received a boost in 2022.²⁸⁰ The earlier provision required the

law values “by testing whether the Executive appears to be acting in a legal way (or at least not acting in a patently illegal way); whether the Executive appears to be making rational, reasoned decisions based on the secret information it possesses; and whether the Executive is being as transparent as possible, recognizing that some information and acts must necessarily remain secret”). Accountability is a hallmark of democratic systems of government, and in the national-security setting, the “relevant subset of public law values includes (1) legal compliance; (2) competence and rationality; (3) holding government decision makers accountable for the decisions that they have made, including by demanding justifications for those decisions; and (4) seeking transparency about government decisions where possible.” *Id.* at 1452–53.

279. 5 U.S.C. § 403(a). Congress did not include any additional eligibility requirements for the DIG DIEM, instead delegating that task to the OIG and Secretary of Defense. NDAA FY2021, *supra* note 170, § 554(a)(1); *see also* U.S. DEP’T OF DEF. OFF. INSPECTOR GEN., *supra* note 175, at 4–6 (outlining responsibilities of the position). Candidates for inspector general positions with the DoD, CIA, and intelligence community must meet additional requirements or limits specific to their agencies. § 408(a) (“A member of the Armed Forces, active or reserve, shall not be appointed Inspector General of the Department of Defense.”); 50 U.S.C. § 3033(c)(2)(B) (requiring nominations for the Inspector General of the Intelligence Community to be in “compliance with the security standards of the intelligence community, and [have] prior experience in the field of intelligence or national security”); § 3517(b)(1) (requiring nominations for CIA Inspector General to be in “compliance with the security standards of the Agency and [have] prior experience in the field of foreign intelligence”). While inspectors general may be appointed in several ways dependent on the agency or department, the usual route is appointment by the President and confirmation by the Senate. *See* 5 U.S.C. § 403(a); WILHELM, *supra* note 264, at 11–12 (describing different methods for appointments of inspectors general in designated federal entities, in non-IGA authorized positions, and temporary inspectors general).

280. James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, 136 Stat. 3222, § 5201-5202 (“Securing Inspector General Independence Act of 2022”) (codified in notes accompanying 5 U.S.C. § 403(b)) [hereinafter NDAA FY2023]; *see also* WILHELM, IF11546, *supra* note 269 (describing amendments to removal provisions). The 2022 bill was one of many legislative efforts proposed in response to President Trump’s spate of inspector general firings at the end of his first term, most notably from intelligence and national security agencies. Jen Patja, Benjamin Wittes, Michael Bromwich, Jack Goldsmith & Margaret Taylor, *The Lawfare Podcast: Firing Inspectors General*, LAWFARE (May 19, 2020, 12:00 PM), <https://www.lawfaremedia.org/article/lawfare-podcast-firing-inspectors-general> [<https://perma.cc/K2DN-H7P2>]; *see, e.g.*, The Protecting Our Democracy Act of 2021, H.R. 5314, 117th Cong. (2021); Inspectors General Independence Act, S. 3664, 116th Cong. (2020); Inspectors General Independence Act of 2020, H.R. 6668, 116th Cong. (2020); Seeking Inspector General’s Honest Testimony Act (SIGHT Act), S. 3766, 116th Cong. (2020); Securing Inspector General Independence Act of 2020, S. 3994, 116th Cong. (2020);

President, if they were removing or transferring an inspector general to give notice of the reasons for removal or transfer to the relevant committees at least 15 days prior; the amendments reordered the provision and replaced “reasons” with a more robust requirement that the president provide a “substantive rationale, including detailed and case-specific reasons” for the removal or transfer.²⁸¹ The amendments also added requirements to the presidential written communication in instances where there was “an open or completed inquiry into an Inspector General that relates to the removal or transfer of the Inspector General.”²⁸² In sum, the independence feature here is reflected not by limiting the grounds for which a president may remove an inspector general, but in “slow[ing] down the presidential firing process and limit[ing] the president’s options on replacing the vacant inspector general office” while requiring a more robust explanation of the reasons for the removal as part of the advance written notice to Congress.²⁸³

The fourth manifestation of the independence feature is the requirement of reporting—to the agency, to Congress, and to the public. It supports the statute’s objective of providing transparency and accountability for the executive branch’s actions and processes. The statute places inspectors general in a dual reporting relationship, mandating they provide reports internally to the relevant agency head and externally to the relevant congressional committees.²⁸⁴ During passage of the

Inspector General Access Act of 2019, S. 685, 116th Cong. (2019); Inspector General Access Act of 2019, H.R. 202, 116th Cong. (2019); Inspector General Protection Act, H.R. 1847, 116th Cong. (2019).

281. NDAA FY2023, *supra* note 280, § 5202(a)(1)(B) (Inspector General Independence and Empowerment Matters) (codified in notes accompanying 5 U.S.C. § 403(b)). Certain types of inspectors general are subject to more stringent removal requirements. *See, e.g.*, 5 U.S.C. § 415(e)(1)–(2) (requiring written concurrence by two-thirds majority, as well as written notification to both houses of Congress at least thirty days before removal of an inspector general from a designated federal entity for which a board or commission is the head of the designated federal entity); *id.* (limiting removal to “for cause” and requiring written concurrence by seven out of nine presidentially appointed governors for removal of the inspector general of the U.S. Postal Service).

282. NDAA FY2023, *supra* note 280, § 5202 (requiring in such circumstances that the president “(i) identify each entity that is conducting, or that conducted, the inquiry; and (ii) in the case of a completed inquiry, contain the findings made during the inquiry”).

283. *See* Bob Bauer & Jack Goldsmith, *Inspector General Reform in the NDAA*, LAWFARE (Dec. 23, 2022, 2:01 PM), <https://www.lawfaremedia.org/article/inspector-general-reform-ndaa> [<https://perma.cc/S5SJ-ZFE2>] (explaining four baskets of important reforms enacted in the NDAA FY 2023 to “protect inspectors general from opportunistic removal and replacement by the president”).

284. 5 U.S.C. § 404(a)(5) (tasking inspectors general with keeping “the head of the establishments and Congress fully and currently informed, by means of the reports required by section 405 of this title and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the establishment, to recommend corrective action concerning the problems, abuses, and deficiencies, and to report on the progress made in implementing the corrective action”); *see also* 5 U.S.C. § 402(b)(3) (explaining that one of the purposes of the inspector general office is “to create independent and objective units . . . to provide a means for keeping the head of the establishments and Congress fully and currently informed about problems and

IGA, Congress debated how best to ensure the independence of the inspector general and considered making the position independent even of the department secretary.²⁸⁵ Congress eventually abandoned that idea and instead determined that dual reporting was the wisest path. “[I]ndependence could truly be assured only if the IGs were made accountable to someone other than the Secretary—for example, the Congress.”²⁸⁶ Moreover, giving inspectors general the option of going to Congress provided a powerful incentive for agency management to consider the inspector general’s advice and recommendations. “If management is unresponsive, the IGs can always go to Congress or the press. Indeed, this threat is implicit in much of their negotiations with management. Political support and the values they stand for allow IGs to gain a hearing from management that might otherwise be absent.”²⁸⁷ Layered on top of the dual reporting is a statutory mandate to make reports available to the general public.²⁸⁸ While inspectors general may not publicly disclose information that is prohibited from disclosure due to classification level or other security-based reasons, most of the inspector general reports are published both on the agency’s website and the consortium’s page.²⁸⁹ The following Section describes more fully the reporting requirements placed on the DoD OIG relating to extremism.

A final note on the independence of inspectors general is reflected in their advisory role. They are tasked with identifying and describing problems and with recommending changes; however, the inspector general has no authority to take corrective action or to implement the policy changes recommended. Inspectors general “are to look, not act; recommend, not implement.”²⁹⁰ Some have criticized this as a bug in the statutory design, but the better view is that this feature advantages the inspectors general over other oversight players. This prevents inspectors general from pre-framing the problem in a manner that favors politically-desirable

deficiencies relating to the administration of those programs and operations and the necessity for and progress of corrective action”).

285. See MOORE & GATES, *supra* note 264, at 12 (“[F]or the first time however, the Congress began thinking that the OIG should be made independent even of the Secretary, lest the Secretary be tempted to quash investigations or ignore OIG recommendations.”).

286. *Id.*

287. *Id.* at 71.

288. 5 U.S.C. § 404(e). There are exceptions to this mandate for inspectors general located in national security and intelligence agencies. The agency heads in these entities may block inspector general activities if they relate to certain sensitive topics or national security matters. 5 U.S.C. § 408(b)(1); see also Gaudion, *supra* note 258, at 214 (exploring how this limit impacts the work of the Department of Defense Office of Inspector General). It is noteworthy, however, that the norm of allowing inspectors general to work free from interference is so powerful that even the agency heads with a statutorily granted justification for halting or blocking inspector general work rarely invoke this prohibition. The most striking example of this may be CIA Inspector General John Helgerson’s investigation into CIA detention and interrogation activities. GOLDSMITH, *supra* note 250, at 99–108.

289. See generally *Welcome to Oversight.gov*, OVERSIGHT.GOV, <https://www.oversight.gov/> [https://perma.cc/E776-YHGT]; *All DoD OIG Reports*, DEP’T DEF. OFF. INSPECTOR GEN., <https://www.dodig.mil/reports.html/> [https://perma.cc/9CUF-NMNT].

290. LIGHT, *supra* note 264, at 16; see also Gaudion, *supra* note 258, at 211–14.

solutions.²⁹¹ In 1978, Congress's intent was to make the inspector general position one of accountability and structural independence. Scholars Margaret Gates and Marjorie Fine Knowles observed: "The inspector general is the only executive branch Presidential appointee who speaks directly to Congress without clearance from the Office of Management and Budget This ability to speak directly to Congress provides a potential source of substantial clout for an active inspector general."²⁹² In 2020, the drafters of the extremism reporting requirements were cognizant of—and sought to build upon—the office's long-recognized attribute of independence.²⁹³

2. Scoping the Extremism Threat in the Military: Improved Data Collection, Tracking, and Reporting

To ensure inspectors general were able to exercise the independence and authority described above, the IGA provided a bevy of auditing and investigative tools and a special perch inside the entity, making them "ideally situated to detect problems that would otherwise go undetected."²⁹⁴ Inspectors general serve important oversight functions as internal institutional critics tasked with identifying wasteful, wrongful, and illegal activities in their agencies. By design, inspectors general are able to surmount the usual separation of powers objections proffered to block legislative, judicial, or public inquiries of government conduct.²⁹⁵ The inspector general's arsenal of information-gathering tools is designed to keep the agency head and

291. The Senate report accompanying the 1978 IGA acknowledged the challenge of balancing the inspector general's need for independence with the agency's management needs, concluding:

If the Agency Head is committed to running and managing the agency effectively and to rooting out fraud, abuse, and waste at all levels, the Inspector and Auditor General can be his strong right arm in doing so, while maintaining the independence needed to honor his reporting obligations to Congress. The Committee does not doubt that some tension can result from this relationship, but the Committee believes that the potential advantages far outweigh the potential risks.

S. REP. NO. 95-1071, at 9 (1978).

292. Gates & Knowles, *supra* note 264 (emphasis in original).

293. H.R. REP. NO. 116-617, at 1611 (2020) (Conf. Rep.) (describing initial bill to establish an inspector general within the Armed Forces "to provide for *independent and objective* conduct and supervision of audits and investigations relating to racial and ethnic disparities in military personnel and military justice and to make recommendations to the Secretary of Defense and to the Congress on actions necessary to eliminate such racial and ethnic disparities" (emphasis added)).

294. MOORE & GATES, *supra* note 264, at 48.

295. GOLDSMITH, *supra* note 250, at 105 (describing common objections based in claims of classified information, executive privilege, and attorney-client privilege, and obstacles presented by the state secrets and political question doctrines). "Congress in effect delegates its initial oversight function to the IG, who can quickly gather a much more complete understanding of executive branch activity than Congress itself could have." *Id.*

Congress “fully and currently informed about problems and deficiencies relating to the administration of those programs and operations and the necessity for and progress of corrective action.”²⁹⁶ These tools include three principal activities: investigations, audits, and inspections or evaluations.²⁹⁷ These activities involve examining the policies, operations, regulations, or legislative implications of a given program, and the evaluative activities fall into two categories: those that assess compliance with applicable laws, regulations, and internal policies and those that assess “how entire programs might be amended or redirected.”²⁹⁸ In addition to identifying compliance, accountability, or transparency problems, the inspector general also has the ability to recommend corrective action. In the context of the extremism threat within the U.S. military, these tools will address the tracking problem, creating consistent reporting categories and requirements and a centralized reporting system, and start to address the data gap through publicly available annual reports. In turn, this provides accurate and clear scoping of the problem, allowing leaders to gain a clearer understanding of the nature and scale of the extremism threat in the U.S. military.

In a 2021 hearing before the House Armed Services Committee, Professor Cronin called on the Department of Defense to enact a number of recommendations, including to “build common standards and rules across all components”; to adopt “a consistent definition of domestic violent extremism, identifying organizations that are dangerous, and developing a discharge code that can be tracked across all services”; and to put “a structure in place to ensure adequate oversight and follow-through.”²⁹⁹ Researchers at START issued a similar call for “[r]obust data collection and analysis within and outside of the DoD to monitor and understand the problem,” in order to provide “the empirical-foundation for threat detection, risk mitigation, and community-led violence prevention programs.”³⁰⁰ Consistent categorization and

296. 5 U.S.C. § 402(b)(3).

297. 5 U.S.C. §§ 404(a), 404(d), 406(a), 406(e) (summarizing tools at inspector general’s disposal); *see also* Amy C. Gaudion, *Auditing the U.S. Government’s Vulnerability Stockpile*, 27 VA. J.L. & TECH. 40, 97–99 (2024) (citations omitted) (summarizing categories of review and charting each category’s quality control standards, types of analysis, and scope of analysis).

298. APAZA, *supra* note 264, at 13; *see also* LIGHT, *supra* note 264, at 19 (describing how the inspector general’s ability to issue not only findings, but also recommendations based on those findings, allows inspectors general to offer “broad proposals for change”).

299. Cronin Testimony, *supra* note 74, at 6; *see also* Carmichael & Buxton, *supra* note 12 (“[C]lear categorization could allow law enforcement agencies and practitioners to allocate more (or less) resources toward expanding prevention and deradicalization programs, as well as toward public awareness campaigns to address these violent ideologies. With this proposed reform, academics and policy makers can work together to gain a clearer understanding of the trends and goals behind groups that adhere to violent ideologies across the board.”). In addition to the recommendations above, Cronin urged policymakers to make “digital literacy . . . a national security priority” and to provide “regular training to make [veterans and active-duty servicemembers] less susceptible to online manipulation.” Cronin Testimony, *supra* note 74, at 6.

300. JENSEN, KANE & AKERS (START), MASS CASUALTY EXTREMIST OFFENDERS WITH U.S. MILITARY BACKGROUNDS, *supra* note 23, at 5.

tracking mechanisms are essential to understanding the threat and calibrating responses, and the DoD OIG is well equipped to accomplish these tasks.

The section accompanying the establishment of the DIG DIEM tasked the Secretary with developing consistent reporting requirements for supremacist and extremist activity and tasked the DoD OIG with the documentation, tracking, and reporting of such activity, as well as investigation in appropriate instances.³⁰¹ Specifically, the Secretary of Defense must establish common or “standard” policies, processes, and mechanisms across all services relating to prohibited activities.³⁰² In practice, this mandate provides the DoD OIG with several particularly useful tools, well-suited to resolving lingering concerns about inconsistent interpretations across service agencies and the need for coordination. It allows for reviews that cut across departments, components, and services entities to provide comparative analysis on topics of common concern.

Congress also sought to create a centralized tracking mechanism, ensuring that all allegations that a servicemember engaged in a prohibited extremist activity would be referred to a single entity, the DoD OIG.³⁰³ Finally, Congress granted tracking and documentation authority to the DoD OIG for assessing prohibited activity allegations, referrals, and actions.³⁰⁴ To accomplish this centralized approach, the DoD OIG decided to use an existing enterprise case management system, the Defense Case Activity Tracking System Enterprise (D-CATSe), to collect, track, and report on allegations of prohibited activity. The system follows the allegations—whether of fraud, waste, abuse, or prohibited extremist activity—through the complaint’s investigative life cycle.³⁰⁵

Most significantly, Congress mandated annual reporting on prohibited extremist activity within the military and tasked the DoD OIG with compiling these Section 554 reports. The reports are submitted to the committees on the judiciary and armed services in both chambers by December 1, and include findings and recommendations for the preceding fiscal year on: “(i) the effects of policies, programs, systems, and processes of the Department, regarding personnel, on diversity and inclusion in the Department and (ii) the effectiveness of such policies, processes, and tracking mechanisms, along with data regarding actions taken against military members who engaged in prohibited activities.”³⁰⁶ The data for the reports

301. NDAA FY2021, *supra* note 170, § 554(b)(1).

302. *Id.* Relatedly, the new requirements mandate coordination of the extremist investigative and reporting tasks between the DoD OIG and the inspectors general of the Air Force, Army, and Navy, as well as with the other Deputy Inspectors General of the Department. *Id.* § 554(a)(3).

303. NDAA FY2021, *supra* note 170, § 554(b)(1)(A); *see also* DEP. SECRETARY OF DEFENSE MEMO, “REPORTING ALLEGATIONS OF ACTIVE PARTICIPATION IN EXTREMIST AND CRIMINAL GANG ACTIVITIES TO THE DoD OFFICE OF INSPECTOR GENERAL” (July 27, 2022).

304. NDAA FY2021, *supra* note 170, § 554(b)(1)(B)–(F).

305. *See* DODIG-2023-034, SECTION 554 REPORT (Dec. 1, 2022), *supra* note 185, at 10 (describing initial decision to use D-CATSe); DODIG-2025-048, SECTION 554 REPORT (Nov. 27, 2024), *supra* note 192, at 12 (describing use of D-CATSe over past three years).

306. NDAA FY2021, *supra* note 170, § 554(a)(4)(C); *see, e.g.*, DODIG-2025-048, SECTION 554 REPORT (Nov. 27, 2024), *supra* note 192, at 1.

is submitted separately by each service, and the full reports are then compiled by the DIG DIEM or others in the DoD OIG.³⁰⁷

Specifically, the Section 554 reports include the:

- total number of referrals received by the Inspector General of an allegation “that a member of a covered Armed Force has engaged in a prohibited activity”;³⁰⁸
- total number of investigations and inquiries conducted pursuant to a referral by “(i) a military criminal investigative organization; (ii) an inspector general; (iii) a military police or security police organization; (iv) a military commander; (v) another organization or official of the Department; or (vi) a civilian law enforcement organization or official”;³⁰⁹
- total number of members of a covered Armed Force who were subjected to action, including court-martial, other criminal prosecution, non-judicial punishment under Article 15 of the UCMJ, or administrative action (involuntary discharge, denial of reenlistment, or counseling);³¹⁰
- total number of members of a covered Armed Force who were not subject to action described in paragraph (1)(E) (e.g., judicial, disciplinary, adverse, or corrective, administrative action) notwithstanding determinations that such members engaged in prohibited activity;³¹¹ and
- total number of referrals to a civilian law enforcement agency.³¹²

Four Section 554 reports have been issued since the requirement went into effect, and they are beginning to fill the data gap as to the scope and scale of the extremism threat within the U.S. military. The table below summarizes the high-level results for the covered armed forces from these reports. More detailed and department specific information is available in each report.

307. NDAA FY2021, *supra* note 170, § 554(b)(2). The Secretary of Defense delegated responsibility for submitting the Section 554 annual report to the DoD Inspector General. DODIG-2023-034, SECTION 554 REPORT (Dec. 1, 2022), *supra* note 185, at 1. In September 2022, the DoD OIG met with the Military Service Inspectors General to discuss how the MILDEPs would collect and report their prohibited activity data to the DoD OIG. *Id.* at 10. Notably, the DIG DIEM (or acting DIG DIEM) signed the introductory message for the first three reports, submitted on December 1, 2021, December 1, 2022, and November 30, 2023; however, the November 27, 2024, report was signed by the Assistant Inspector General for Evaluation, Programs, Combatant Commands, and Operations.

308. NDAA FY2021, *supra* note 170, § 554(b)(2)(A).

309. *Id.* § 554(b)(2)(B).

310. *Id.* § 554(b)(2)(C) (“The total number of members of a covered Armed Force who, on the basis of determinations described in paragraph (1)(D) that the members engaged in prohibited activity, were subject to action described in paragraph (1)(E), including— (i) court-martial, (ii) other criminal prosecution, (iii) non-judicial punishment under Article 15 of the Uniform Code of Military Justice; or (iv) administrative action, including involuntary discharge from the Armed Forces, a denial of reenlistment, or counseling.”).

311. *Id.* § 554(b)(2)(D).

312. *Id.* § 554(b)(2)(E).

Table 1: Section 554 Reports

	FY 2024 ³¹³	FY 2023 ³¹⁴	FY 2022 ³¹⁵	FY 2021 ³¹⁶
<i>Allegations reported that servicemember engaged in a prohibited activity</i>	182	275	211	294
<i>Referrals of allegation for investigation or inquiry</i>	181	275	183	281
<i>Substantiated allegations where servicemembers were subject to action</i>	91	69	48	92
<i>Substantiated allegations where servicemembers were not subject to action</i>	0	0	46	0
<i>Referrals to other law enforcement agencies</i>	12	56	112	83

These initial reports provide important guidance on how to situate the extremism threat within the U.S. military. While the data is not perfect, it starts to provide the level of granularity and focus needed to assess the scope, scale, and contours of the extremism threat within the U.S. military. Through these reports, the DoD OIG is starting to answer critical questions, including: Is the threat of extremism more pronounced in any particular service? Is there a culture of reporting? What percentage of the allegations of prohibited extremist activities results in referrals for investigation? What percentage results in determinations that the servicemember engaged in prohibited activities? Is there a trend or preference for referrals to certain types of investigative organizations—for example, military criminal investigative organizations over inspectors general? Is there a trend toward certain types of

313. DODIG-2025-048, SECTION 554 REPORT (Nov. 27, 2024), *supra* note 192, at 20–22.

314. U.S. DEP'T OF DEF. OFF. INSPECTOR GEN., DODIG-2024-034, ANNUAL REPORT TO CONGRESS PURSUANT TO FY 2021 NDAA, SECTION 554 (Nov. 30, 2023), at 27–29 [hereinafter DODIG-2024-034, SECTION 554 REPORT (Nov. 30, 2023)].

315. DODIG-2023-034, SECTION 554 REPORT (Dec. 1, 2022), *supra* note 185, at 12–13.

316. U.S. DEP'T OF DEF. OFF. INSPECTOR GEN., DODIG-2022-042, DEPARTMENT OF DEFENSE PROGRESS ON IMPLEMENTING FISCAL YEAR 2021 NDAA SECTION 554 REQUIREMENTS INVOLVING PROHIBITED ACTIVITIES OF COVERED ARMED FORCES (Dec. 1, 2021), at 7–8 [hereinafter DODIG-2022-042, SECTION 554 REPORT (Dec. 1, 2021)].

disciplinary action over others—for example, administrative action over courts-martial? The reports are doing important work and starting to answer these questions.

Despite these important initial efforts, gaps and holes remain. The lack of consistent standards persists; while the first two reports used the DHS/FBI categories for violent extremism,³¹⁷ the latter two reports have shifted to using the DoDI categories,³¹⁸ making it difficult to track the prevalence of specific types of extremism—anarchist, racially motivated, or other. Relatedly, the Army does not categorize certain types of extremist allegations, so the sub-categories provided often do not equate.³¹⁹ Second, the military departments are not using standard terminology or practices in submitting their reports,³²⁰ and centralized systems remain a challenge for some military departments.³²¹ Third, there is a need for greater specificity in the data. For example, the largest referring entity in the FY2023 and FY2024 reports was “[o]ther DoD organization[s] or official[s]”; however, no explanation was provided for what these other organizations might include.³²² Similarly, “[o]ther” is the largest category for administrative corrective action in the FY2023 and FY2024 reports, but no further information is provided as to what this subcategory includes.³²³ Shockingly, the report for FY2023 provides that “[o]ne MILDEP stated there is no current policy directing the MILDEP to record or report allegations of prohibited activity that have not yet proceeded to inquiry or investigation.”³²⁴ This seems to intentionally misunderstand the distinction Congress sought when it authorized the inspector general to receive allegations and then required reporting of referrals.³²⁵ Fifth, the DIG DIEM currently does “not verify the reliability of the data” submitted but instead relies on the information provided by each MILDEP.³²⁶ Sixth, the “covered Armed Services” does not include the National

317. DODIG-2023-034, SECTION 554 REPORT (Dec. 1, 2022), *supra* note 185, at 13 n.2.

318. DODIG-2024-034, SECTION 554 REPORT (Nov. 30, 2023), *supra* note 314, at 29 n.1.

319. *Id.* at 29 n.2.; DODIG-2025-048, SECTION 554 REPORT (Nov. 27, 2024), *supra* note 192, at 22 n.3.

320. DODIG-2023-034, SECTION 554 REPORT (Dec. 1, 2022), *supra* note 185, at 14 (“The Deputy Secretary of Defense’s July 27, 2022, memorandum provided the MILDEPs with implementation guidance that directs data collection for future DoD OIG Section 554 reports, and the MILDEPs have taken action to fulfill Section 554 reporting requirements. However, in compiling this report, we identified that while the DoD established policies and processes, the terminology for allegation categories is inconsistent across the Services. Until the DoD establishes standardized policy pertaining to allegation terminology and uses a centralized database for allegation reporting and tracking, the DoD will have inconsistent tracking of prohibited activities participation; problems identifying and collecting data from multiple, decentralized systems; and difficulty validating the accuracy of reported data.”).

321. *See* DODIG-2023-034, SECTION 554 REPORT (Dec. 1, 2022), *supra* note 185, at 12 (describing Army’s use of several databases causing it to report only allegations with a follow-on status of investigation, and not its total allegations).

322. *See* DODIG-2025-048, SECTION 554 REPORT (Nov. 27, 2024), *supra* note 192, at 21 tbl.8; DODIG-2024-034, SECTION 554 REPORT (Nov. 30, 2023), *supra* note 314, at 27 tbl.5.

323. DODIG-2024-034, SECTION 554 REPORT (Nov. 30, 2023), *supra* note 314, at 28 tbl.5.

324. *Id.* at 29 n.3.

325. NDAA FY2021, *supra* note 170, § 554(b).

326. DODIG-2025-048, SECTION 554 REPORT (Nov. 27, 2024), *supra* note 192, at 2; DODIG-2024-034, SECTION 554 REPORT (Nov. 30, 2023), *supra* note 314, at 1.

Guard units, the Coast Guard, or the service academies, so reporting for these entities is omitted, possibly blurring the full picture of the threat.³²⁷

As noted above, one of the persistent challenges is an inability to grasp the scope, scale, and contours of the extremism threat in the military. “Both Democrats and Republicans believe that extremism has no place in the U.S. military. But they don’t agree whether it’s already present there.”³²⁸ These difficulties stem from a number of institutional challenges, including a lack of adequate tracking and lack of consistent or common standards, and a failure to grasp how social media platforms affect servicemember susceptibility and recruitment into extremist groups. The reports provided by the DoD OIG serve a critical role as they help reveal the scope of the problem and its more precise nature. More comprehensive and accurate tracking will reveal the types and prevalence of various extremist ideologies, which would then allow for more targeted countering efforts. It also will indicate where and how radicalization occurs: Is it before the individual enters service, which would call for improved vetting at the recruiting stage? Does it occur during service, which would call for increased monitoring or education and training? Or does it tend to occur upon separation from service, which may warrant increased engagement and post-separation programs? In sum, “trackable policies” tailored to the digital age are needed to address the violent extremism threat in the U.S. military.³²⁹ These reports offer a robust assessment of issues, some of which are agency- or program-specific, but many cross agencies. As such, these reports provide a roadmap rich with guidance on the problem spots and areas in need of urgent attention. Far from a mere compliance exercise, these reports provide a critical prioritization tool for understanding the scope of the extremism threat and assessing the need for counter-extremism measures.

3. Assessing the Effectiveness of Counter-Extremism Programs and Identifying Legal Pitfalls

Inspectors general also serve as advisors, and this role is reflected in the evaluative work product in the inspector general portfolio. Only a few years after the 1978 passage of the IGA, scholars noted that inspectors general “are no longer simply observing program operations to detect isolated problems. Instead, they are proposing changes in procedures that will alter the character of the product or service being delivered, and therefore the value of the program.”³³⁰ The intended impact of inspector general work covers a spectrum, including controlling costs, holding employees accountable, shaping agency policy, improving processes and policies, and, finally, supporting the achievement of the agency’s mission. Proof of achievement of these impact objectives includes demonstrated cost savings,

327. DODIG-2023-034, SECTION 554 REPORT (Dec. 1, 2022), *supra* note 185, at 11 n.15.

328. Leo Shane, *Lawmakers Spar over Problem of Extremism in the Military*, MIL. TIMES (Mar. 24, 2021), <https://www.militarytimes.com/news/pentagon-congress/2021/03/24/lawmakers-spar-over-problem-of-extremism-in-the-military/> [<https://perma.cc/KG7V-Z66Q>].

329. Cronin Testimony, *supra* note 74.

330. MOORE & GATES, *supra* note 264, at 29.

strengthened internal controls, as well as changes in law, policy, and regulations.³³¹ The evaluative nature of inspector general work is best reflected in inspections that “examine the extent to which individual federal programs or installations are complying with applicable laws, regulations, and policies, while other inspections determine how entire programs might be amended or redirected.”³³² To accomplish this evaluative work, inspectors general are authorized to obtain expert assistance.³³³

In the present example, Congress generally tasked the DoD OIG with evaluating the effects of counter-extremism policies and programs³³⁴ and specifically required reports on the “effectiveness of such policies, programs, systems, and processes in preventing and responding to supremacist, extremist, and criminal gang activity of a member of the Armed Forces.”³³⁵ Put bluntly, the inspector general can assess which initiatives are working and which are problematic, either due to ineffectiveness, misalignment with the threat, or constitutional concerns. In concrete terms, the inspector general is able to assess the impact of revised vetting standards and processes at the recruiting stage, to evaluate the effectiveness of new education and training programs, and to identify optimal intervention points for counter-extremism messaging.³³⁶ In addition, the inspector general has the tools and authority to assess whether counter-extremism measures are contributing to low recruitment levels or affecting morale during service. In sum, the inspector general can bring their independence, evaluative toolkit, and ability to call on experts to parse legitimate concerns about the role of extremism in the U.S. military and about the potential pitfalls of counter-extremism measures, rather than relying on politically motivated congressional statements.

Provided below are examples of the DoD OIG already engaging in this kind of evaluative work relating to extremism:

- Audit of the Army’s Extremism Awareness and Prevention Efforts at the Unit Level (U.S. Army Audit Agency, published June 2023)³³⁷

331. JOHNSON & NEWCOMER, *supra* note 264, at 164–65 fig.6-1.

332. APAZA, *supra* note 264, at 13; *see also* LIGHT, *supra* note 264, at 19 (discussing how inspector general’s ability to issue findings and recommendations for resolution and improvement based on those findings leads to “broad proposals for change that emerge from audits, investigations, and evaluations”).

333. *See, e.g.*, 5 U.S.C. § 406(a)(8) (authorizing inspectors general “to obtain services as authorized by [5 U.S.C.] section 3109,” which provides inspectors general with the ability to obtain the services of experts or consultants as needed on a temporary or intermittent basis); *id.* § 406(a)(9) (authorizing inspectors general “to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons”).

334. *Id.* § 554(a)(2)(A).

335. *Id.* § 554(a)(4)(C)(ii).

336. *See* Carrie Cordero & Katherine L. Kuzminski, *Countering Domestic Violent Extremism in the Ranks: Barriers to Recruitment Screening*, LAWFARE (Dec. 11, 2023, 8:03 AM), <https://www.lawfaremedia.org/article/countering-domestic-violent-extremism-in-the-ranks-barriers-to-recruitment-screening> [<https://perma.cc/D44P-Y2UG>].

337. U.S. ARMY AUDIT AGENCY, *THE ARMY’S EXTREMISM AWARENESS AND PREVENTION EFFORTS AT THE UNIT LEVEL*, REPORT A-2023-0049-IIZ (2023).

- Audit of the Military Service Recruiting Organizations' Efforts to Screen Applicants for Extremist and Criminal Gang Behavior (DoD OIG, published August 2023)³³⁸
- Evaluation of Department of Defense Efforts to Address Ideological Extremism Within the Armed Forces (DoD OIG, published May 2022)³³⁹
- Evaluation of the Military Departments' Implementation of Prohibited Activity Training to Prevent, Identify, and Counter Extremist Activities (DoD OIG, announced July 2024)³⁴⁰
- Evaluation of DoD Policy and Procedures for Responding to Reports of Violent Threats Made by Service Members (DoD OIG, announced February 5, 2024)³⁴¹
- Prohibited Activities Special Report (announced February 12, 2024)³⁴²
- Developing an Evidence-Based Framework to Understand and Address Racial and Ethnic Violent Extremism (Navy Human Resources Program, announced March 31, 2023)³⁴³
- Evaluation of the U.S. Army's Efforts to Mitigate Participation in Prohibited Activities for Soldiers Transitioning to Post-Military Life (announced November 15, 2024)³⁴⁴

4. Providing Transparency and a Public Record

Transparency and accountability are core features of democratic governance and essential to countering authoritarian trends.³⁴⁵ The statutorily mandated publication of inspector general reports answers calls for accountability and transparency, and

338. DODIG-2023-103, *supra* note 145.

339. DODIG-2022-095, *supra* note 192.

340. DODIG-2025-048, SECTION 554 REPORT (Nov. 27, 2024), *supra* note 192, at 7 tbl.3; Memorandum from the Dep't Def. Off. Inspector Gen., Project Announcement: Evaluation of the Military Departments' Implementation of Prohibited Activity Training to Prevent, Identify, and Counter Extremist Activities (July 9, 2024), <https://www.dodig.mil/Reports/Project-Announcement-Memos/Article/3833940/project-announcement-evaluation-of-the-military-departments-implementation-of-pr/> [<https://perma.cc/3CJ4-TJGC>]. This oversight project was terminated on February 25, 2025, because it did not align with President Trump's executive orders on "Ending Radical and Wasteful Government Diversity, Equity, Inclusion (DEI) Programs and Preferencing," "Initial Rescissions of Harmful Executive Orders and Actions," and "Restoring America's Fighting Force." Memorandum from Brett A. Mansfield, Deputy Inspector General for Audit, & Michael J. Roark, Deputy Inspector General for Evaluations on Termination of the Oversight Projects Related to Diversity, Equity, and Inclusion (Feb. 25, 2025) (on file with author).

341. DODIG-2025-048, SECTION 554 REPORT (Nov. 27, 2024), *supra* 192, at 7 tbl.3.

342. *Id.*

343. *Id.* at 8 tbl.3.

344. U.S. DEP'T OF DEF., OFF. INSPECTOR GEN., FISCAL YEAR 2025 OVERSIGHT PLAN 16 (2024).

345. FINE, *supra* note 264, at 173–74; NADIA HILLARD, THE ACCOUNTABILITY STATE: US FEDERAL INSPECTORS GENERAL AND THE PURSUIT OF DEMOCRATIC INTEGRITY 5–7, 12–17 (2017).

these reports provide a transparency substitute when other oversight players are absent, limited, or abdicating their responsibilities. The inspector general must provide reports to the relevant congressional committees and agency and has a statutorily mandated obligation to publish its findings and recommendations for public review.³⁴⁶ The reports cover a variety of topics and take various forms, some general to all inspectors general, some specifically assigned to the DoD OIG, and some tasked to the DIG DIEM.

All statutory inspectors general are required to provide semiannual reports, annual implementation updates, and fast action reports for particularly egregious violations.³⁴⁷ In addition to these reports, the DoD OIG must provide annual top management challenges reports and annual oversight plans.³⁴⁸ The DIG DIEM and DoD OIG work together to prepare additional reports related to the extremism threat; these include semiannual reports from the DIG DIEM to the Secretary of Defense and DoD OIG summarizing its activities, the annual Section 554 report described above (tracking prohibited extremist activities and assessing effectiveness of various counter-extremism policies and programs), and such “occasional reports” as directed.³⁴⁹

One of the critiques of inspectors general is that they have no enforcement power. Thus, their authority is limited to offering recommendations with no formal ability to ensure implementation. While this is surely correct, the implementation challenges have been addressed by recent legislative efforts to shine a light on instances when an agency fails to take corrective action. In early 2019, Congress passed the Good Accounting Obligation in Government Act, with the objective of shining a light on agencies’ failures to act on recommendations from their inspectors general.³⁵⁰ The act requires that affected agencies report on open inspector general recommendations and provide explanations for not implementing each recommendation in their annual

346. 5 U.S.C. §§ 404(e), 405(e); NDAA FY2021, *supra* note 170, § 554(a)(4)(E). The reports are available at *Inspector General Reports*, OVERSIGHT.GOV, <https://www.oversight.gov/> [<https://perma.cc/QZ7F-BBBH>].

347. 5 U.S.C. § 405(b) (semi-annual reports); Good Accounting Obligation in Government Act (GAO-IG Act), Pub. L. No. 115-414, 132 Stat. 5430–32 (2019) (compendium of unimplemented recommendations); 5 U.S.C. § 405(b)(e) (seven-day reports).

348. Pursuant to the Reports Consolidation Act of 2000, the inspector general must prepare an annual statement that summarizes the “most serious management and performance challenges facing the agency” and to assess the agency’s progress in addressing those challenges. These annual reports align with the office’s dual reporting role and provide Congress and the agency head an independent assessment of the management and performance challenges confronting the agency in the year ahead. *See, e.g.*, U.S. DEP’T OF DEF. OFF. INSPECTOR GEN., FISCAL YEAR 2024 TOP DoD MANAGEMENT AND PERFORMANCE CHALLENGES (2023). The annual oversight plan is related to the top management report. It describes the specific oversight projects the DoD OIG intends to conduct during the upcoming fiscal year and explains how those activities relate to the top management challenges facing the DoD. *See, e.g.*, U.S. DEP’T OF DEF. OFF. INSPECTOR GEN., FISCAL YEAR 2025 OVERSIGHT PLAN (2024).

349. NDAA FY2021, *supra* note 170, § 554(a)(4)(B) (semi-annual reports); *id.* at § 554(a)(4)(C) (annual reports); § 554(a)(4)(D) (occasional reports).

350. Good Accounting Obligation in Government Act (GAO-IG Act), Pub. L. No. 115-414, 132 Stat. 5430–32 (2019).

budget justification statements.³⁵¹ These reports must be submitted to Congress and are made available to the public on an annual basis.³⁵² For example, the most recent Compendium of Open Office of Inspector General Recommendations to the Department of Defense, released publicly in August 2023, identified 1354 open recommendations.³⁵³ In addition to the list of open recommendations, the Compendium identifies high-priority open recommendations, summarizes the potential monetary benefits of open recommendations, and lists recommendations that have been open for more than five years. Publication of the Compendium serves an important accountability purpose by highlighting—for Congress, the public, and the media—the areas and instances where agency heads have failed to act.³⁵⁴ Even if there are good reasons for the decision not to implement the recommendation, the publication ensures the agency provides an explanation for that decision. In sum, the reporting requirements placed on inspectors general provide a transparency substitute, offer a road map for congressional and department attention and action, effectively illuminating the areas in need of executive and legislative oversight or correction, and create a public record when the conventional avenues for accountability have closed.

As described above, inspectors general were created to provide a critical internal oversight function by identifying wasteful, wrongful, and illegal activities inside the executive branch. The inspector general is charged with keeping the head of the establishment or agency “fully and currently informed”³⁵⁵ about problems and deficiencies relating to the administration of such programs and operations and the necessity for reforms. To accomplish these tasks, Congress created a special perch for the inspector general to occupy within the agency, allowing them to get deep inside the agency or department while providing unparalleled access and a holistic perspective. In addition to the special perch, Congress provided inspectors general with an array of information-gathering tools and functions. By utilizing the inspector general’s audit and evaluation functions, the Pentagon can gain accurate and consistent reporting across military departments and services on allegations and investigations of extremist activities and gain a more complete sense of the scope of the extremism problem among servicemembers. Through these reports, inspectors

351. *Id.* § 2(b)(3) (describing common procedure when inspector general recommendations are not implemented).

352. *Id.* § 2(b).

353. U.S. DEP’T OF DEF. OFF. INSPECTOR GEN., COMPENDIUM OF OPEN OFFICE OF INSPECTOR GENERAL RECOMMENDATIONS TO THE DEPARTMENT OF DEFENSE 2 (Aug. 10, 2023).

354. S. REP. NO. 115-331, at 2 (2018) (stating that “[b]y disclosing open recommendations and being required to explain the lack of implementation in an agency’s budget request, agencies will be held more accountable for unimplemented recommendations”); *see, e.g., Implementing Solutions: The Importance of Following Through on GAO and OIG Recommendations: Hearing Before the Subcomm. on Regul. Affs. & Fed. Mgmt. of the S. Comm. on Homeland Sec. & Governmental Affs.*, 114th Cong. 2–3 (2015) (statement of Sen. Heidi Heitkamp) (noting importance of ensuring recommendations do not remain unimplemented or delayed); Schlanger, *supra* note 264, at 94–95 (noting power of “advice-giving” or recommendations because it can highlight or spot issues that “might otherwise be insufficiently noticed or valued” while also increasing the political cost of not taking the advice).

355. 5 U.S.C. § 404(a)(5).

general can fill the data collection gap, offer recommendations to key policy makers, including Congress and the Secretary of Defense, as to the effectiveness of various counter-extremism efforts, while also flagging lingering problems in need of attention and action.

C. Limits and Recommendations

In assessing how the DoD OIG can contribute to the counter-extremism task, limits on and obstacles to the position's effectiveness must also be considered. Inspectors general may be constrained in a number of ways. Some are common to all inspectors general regardless of the nature of their agency or their specific task. These general concerns include arguments that the inspector general is limited to an advisory role and unable to take corrective or remedial action, by persistent constitutional separation of powers concerns, and by the contours of the individual inspector general's character and working relationship with the agency secretary.³⁵⁶ In addition, the DoD OIG faces unique headwinds, given the nature of the problem on which it is to provide oversight. These more specific challenges include: potential turf battles within the DoD OIG due to overlapping duties and reporting requirements;³⁵⁷ inadequate funding and staffing;³⁵⁸ recent efforts to eliminate the DIG DIEM position;³⁵⁹ and lingering removal concerns despite the 2022 reforms.³⁶⁰

While further study is needed to fully understand and address these limits, the preliminary recommendations offered here are designed to generate additional considerations and guide future research. They focus on strengthening the inspector general's independence and improving upon the office's current extremist data collection and tracking efforts. First, Congress should consider additional revisions

356. For other critiques relating to effectiveness of the inspector general position, see FINE, *supra* note 264; JOHNSON & NEWCOMER, *supra* note 264, at 195–206; LIGHT, *supra* note 264, at 203–23; MOORE & GATES, *supra* note 264 at 77–80; Gaudion, *supra* note 297, at 211–19; Peter Tyler, *Rating the Watchdogs: Are Our Inspectors General Effective?*, POGO (Aug. 10, 2018), <https://www.pogo.org/analysis/2018/08/rating-watchdogs-are-our-inspectors-general-effective> [<https://perma.cc/P5XH-S4HM>]; *The Forward-Looking Inspector General*, P'SHIP FOR PUB. SERV. 1, 2 (2017), <https://ourpublicservice.org/wp-content/uploads/2017/11/4ed423645dfcc8c0fba0be1b9d25964e-1510540855.pdf> [<https://perma.cc/VKZ5-BAJN>].

357. DODIG-2022-042, SECTION 554 REPORT (Dec. 1, 2021), *supra* note 316, at 6 (describing how initial responsibilities assigned to DIG DIEM would interfere with the independence and reporting requirements statutorily assigned to DoD OIG).

358. *Id.* at 8 (requesting increases in funding and staffing for the office of the DIG DIEM).

359. While the author was unable to find a record of the formal firing of the DIG DIEM or closing of the office of the DIG DIEM, as of March 27, 2025, the DoD OIG website no longer includes the DIG DIEM in the organization chart, *Organization*, DEP'T OF DEF. OFF. OF INSPECTOR GENERAL, <https://www.dodig.mil/About/Organization/> [<https://perma.cc/HN73-TN2Q>], or in the department's list of leaders, *Leaders*, DEP'T OF DEF. OFF. OF INSPECTOR GENERAL, <https://www.dodig.mil/About/Leaders/> [<https://perma.cc/M4QU-95Z9>].

360. See Bauer & Goldsmith, *supra* note 283 (summarizing 2022 reforms). The constitutionality of the current removal protections for inspectors general may be tested in the very near future. *Storch, et al. v. Hegseth, et al.*, No. 1:25-cv-00415 (D.D.C. filed Feb. 12, 2025).

to the removal provisions governing inspectors general, particularly for the Department of Defense, to allow for greater independence and more structured succession paths.³⁶¹ Relatedly, Congress should amend the national security prohibition on the DoD OIG by adding an opportunity for the agency's inspector general to provide formal commentary to Congress when the Secretary of Defense invokes the prohibition power. There is a model for this proposal in the provisions governing inspectors general in other national security and intelligence entities.³⁶² Second, the DoD OIG should, on its own initiative, develop more granular data collection and reporting categories to improve understanding of the scope of the extremism problem and, more precisely, track its ideological underpinnings and origins.³⁶³ To address the gaps described above, future iterations should increase the

361. For recent commentary on the scope of the executive's removal power particularly in light of the U.S. Supreme Court's decision in *Trump v. United States*, 603 U.S. 593 (2024), see Jack Goldsmith, *Trump Fired 17 Inspectors General—Was It Legal?*, LAWFARE (Jan. 27, 2025, 9:25 AM), <https://www.lawfaremedia.org/article/trump-fired-17-inspectors-general-was-it-legal> [<https://perma.cc/N65D-TQ6E>]; Peter Margulies, Structuring the President's Removal Power: An Agency-Specific Approach (forthcoming 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4972083 [<https://perma.cc/8HJA-JH6B>]; compare Aditya Bamzai & Saikrishna Bangalore Prakash, *The Executive Power of Removal*, 136 HARV. L. REV. 1756 (2023), with Andrea Scoseria Katz & Noah A. Rosenblum, *Removal Rehashed*, 136 HARV. L. REV. F. 404 (2024).

361. See, e.g., Exec. Order No. 14,151 (Ending Radical and Wasteful Government Diversity, Equity, Inclusion (DEI) Programs and Preferencing), 90 Fed. Reg. 8339 (Jan. 20, 2025); Exec. Order No. 14,148 (Initial Rescissions of Harmful Executive Orders and Actions) 90 Fed. Reg. 8237 (Jan. 20, 2025); Exec. Order No. 14,173 (Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 Fed. Reg. 8633 (Jan. 21, 2025) (Section 3 of the order covers "Terminating Illegal Discrimination in the Federal Government"); Exec. Order No. 14,185 (Restoring America's Fighting Force), 90 Fed. Reg. 8763 (Jan. 27, 2025). Among the provisions affecting military and veteran communities, a notable action is the revocation of a 2016 Presidential Memorandum on "Promoting Diversity and Inclusion in the National Security Workforce." Exec. Order No. 14,173 (Ending Illegal Discrimination and Restoring Merit-Based Opportunity) 90 Fed. Reg. 8633, at § 3(a)(iv) (Jan. 21, 2025).

362. See, e.g., 5 U.S.C. § 415(d)(2)(A)–(D) (describing exercise of prohibition authority process when Secretary of Defense prohibits activities of the DIA, NGIA, NRO, and NSA inspectors general, stating that they may "submit to such committees of Congress any comments on a notice or statement received by the inspector general under this subparagraph that the inspector general considers appropriate"); *id.* § 417(a)(3) (establishing parallel authority for the Secretary of Homeland Security and notice to the DHS Inspector General if the authority is exercised, and a written statement to Congress "regarding whether the Inspector General agrees or disagrees with such exercise, and the reasons for any disagreement"); 50 U.S.C. § 3033(f)(4) (conveying parallel instruction for the Director of National Intelligence and the IC IG, stating that IC Inspector General "may submit to the congressional intelligence committees any comments on the statement of which the Inspector General has notice under paragraph (3) that the Inspector General considers appropriate").

363. Publicly available datasets from the National Consortium for the Study of Terrorism and Responses to Terrorism (START) and the Chicago Project on Security & Threats (CPOST) may provide helpful foundational categories and comparison frameworks for additional DoD OIG data collection. START's "Profiles of Individual Radicalization in the

granularity of the data collection to consider: (i) for referrals to courts martial, the UCMJ articles or provisions charged; (ii) for referrals to civilian law enforcement agencies, the number that go to state, local, tribal, or federal law enforcement agencies; (iii) for the referrals to federal civilian law enforcement agencies, the charging instruments used; (iv) the length of service at time of allegation (which could provide helpful guidance on where training and education programs will have the most impact); (v) the category of the motivating extremist ideology or extremist activity, if available; and (vi) whether the prohibited extremist activity occurred on a social media, gaming, or other digital platform. Third, inspectors general should fully utilize the coordination mandate by seeking collaborative partners and working across government agencies with other key players in the oversight ecosystem, including, among others, the inspectors general of the military departments, the Inspector General for the Department of Justice, the Inspector General for the Intelligence Community, and the Government Accountability Office.³⁶⁴ Finally, these recommendations should complement: (i) reform efforts underway in the Department of Veterans Affairs to support veterans through separation when they are often the most vulnerable to recruitment efforts by extremist groups; (ii) changes underway at the Department of Homeland Security and Department of Justice to develop consistent categories of data collection and more robust tracking and sharing of extremism information; and (iii) efforts by various agencies in the federal government to partner with the private sector to counter disinformation and to identify potentially unlawful violent extremist conduct.³⁶⁵

While the existing requirements and framework could bear improvement, they are not meaningless or paltry. They are beginning to do the tedious, unglamorous but critical work of accurately framing the scope and scale of the threat and of assessing the optimal timing, format, and substance of reform efforts. The recommendations offered here are designed to encourage those in the DoD OIG to continue the important oversight work in this space. They also are offered to incentivize reflection and inquiry in the Department's leadership team and the relevant congressional

United States (PIRUS)" dataset "contains deidentified individual-level information on the backgrounds, attributes, and radicalization processes of over 3,500 violent and non-violent extremists who adhere to far-right, far-left, Islamist, or single-issue ideologies in the United States covering 1948-2022," is coded using entirely public sources of information, and identifies as "among the first efforts to understand domestic radicalization from an empirical and scientifically rigorous perspective." JENSEN, KANE & AKERS (START), *MASS CASUALTY EXTREMIST OFFENDERS WITH U.S. MILITARY BACKGROUNDS*, *supra* note 23. CPOST provides annual survey data on "American Political Violence." CPOST, *Surveys: Understanding and Tracking Support for Political Violence in America*, <https://cpost.uchicago.edu/research/apv/surveys/> [<https://perma.cc/Y6MT-292G>]. It also maintains a database of individuals charged with offenses related to the January 6, 2021, insurrection, which is available to the public. CPOST, *Jan 6 Database*, https://cpost.uchicago.edu/research/apv/jan_6_database/ [<https://perma.cc/V2KL-5XG7>].

364. See ADAM KLEIN, NATIONAL SECURITY SURVEILLANCE IN THE UNITED STATES: LAWS, INSTITUTIONS, AND SAFEGUARDS 10–14 (2023) (describing executive branch oversight entities).

365. See, e.g., MARIANA OLAIZOLA ROSENBLAT, INGA K. TRAUTHIG & SAMUEL C. WOOLLEY, NYU STERN CTR. BUS. HUM. RTS., COVERT CAMPAIGNS: SAFEGUARDING ENCRYPTED MESSAGING PLATFORMS FROM VOTER MANIPULATION (Oct. 2024).

committees about how to accurately assess the scope and scale of the extremism threat and how to appropriately calibrate an effective counter-extremism response, one that avoids the harm of overreaction as well as the mistake of underestimation.

During the writing of this Article, the commitment of political leaders to countering extremism in the U.S. military, which was already wavering, was forcefully discarded. The current occupants of leadership positions in the White House, the Pentagon, and Congress are skeptical of, if not downright hostile to, the idea that the U.S. military has an extremism problem. They doubt the data and seem to conflate the extremism threat with policy efforts to dismantle diversity, equity and inclusion programs though it is “unclear how scaling back examinations of potential insider national security threats is related to ‘diversity, equity and inclusion.’”³⁶⁶ During the first two months in office, the administration has issued executive orders and taken a number of administrative actions that are likely to have an adverse impact on efforts to counter extremism in the active-duty military and veteran communities.³⁶⁷

366. Steve Beynon, *Pentagon Watchdog Halts Review of Military Efforts to Root Out Extremism*, MILITARY.COM (Mar. 5, 2025, 6:03 PM), <https://www.military.com/daily-news/2025/03/05/pentagon-watchdog-halts-review-of-military-efforts-root-out-extremism.html> [<https://perma.cc/A7XW-Z8KB>].

367. At the time of publication, these actions have included: anticipated firing of approximately 50,000 DoD employees and 83,000 VA employees, including approximately 6,000 of whom are veterans; revoking a 2016 Presidential Memorandum on “Promoting Diversity and Inclusion in the National Security Workforce”; firing or reassigning DoD personnel that worked on DEI initiatives, which likely included the removal or reassignment of the individual in the position of DIG DIEM; canceling DEI-related training and ending DEI-related contracts; firing the Chair of the Joint Chiefs of Staff, the Navy’s first female commanding officer, the Coast Guard’s first female commanding officer, allegedly because they were viewed as “diversity hires” or they supported DEI-related initiatives; requesting that federal workers report to the Office of Personnel Management if they suspect any DEI-related program has been renamed to obfuscate its purpose or face “adverse consequences”; setting up an email account for federal workers to report suspected diversity and inclusion initiatives; removing members from the boards of the military service academies; and removing DEI-related content from government websites, including the websites of the Departments of Defense and Veterans Affairs. *See, e.g.*, Exec. Order No. 14,151, 90 Fed. Reg. 8339 (Jan. 20, 2025) (Ending Radical and Wasteful Government DEI Programs and Preferencing); Exec. Order No. 14,148, 90 Fed. Reg. 8237 (Jan. 20, 2025) (Initial Rescissions of Harmful Executive Orders and Actions); Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 21, 2025) (Ending Illegal Discrimination and Restoring Merit-Based Opportunity; Section 3 of the order covers “Terminating Illegal Discrimination in the Federal Government”); Exec. Order No. 14,185, 90 Fed. Reg. 8763 (Jan. 27, 2025) (Restoring America’s Fighting Force); Donald Trump (@realDonaldTrump), TRUTH SOCIAL, <https://truthsocial.com/@realDonaldTrump/posts/113980013020158273> [<https://perma.cc/42FF-5CQU>] (Feb. 10, 2025); Memorandum from Charles Ezell, Acting Dir., U.S. Off. of Pers. Mgmt., to Heads and Acting Heads of Dep’ts and Agencies, Initial Guidance Regarding DEIA Executive Orders (Jan. 21, 2025), <https://chcoc.gov/sites/default/files/OPM%20Memo%20re%20Initial%20Guidance%20Regarding%20DEIA%20Executive%20Orders%201%2021-2025%20FINAL.pdf> [<https://perma.cc/M5RC-T4KV>]; Memorandum from Steven J. Morani, Off. of the Under Sec’y of Def., to Sec’ys of the Mil. Dep’ts, Chairman of the Joint Chiefs of Staff & Def.

Agency and DoD Field Activity Dirs. (Jan. 28, 2025), <https://www.acq.osd.mil/dpap/policy/policyvault/USA000191-25-DPCAP.pdf> [<https://perma.cc/KZ7K-QUXW>]; Memorandum from Sean Parnell, Assistant to the Sec'y of Def., to Senior Pentagon Leadership, Commanders of the Combatant Commands & Defense Agency and DoD Field Activity Directors, Digital Content Refresh (Feb. 26, 2025), <https://media.defense.gov/2025/Feb/27/2003652943/-1/-1/1/DIGITAL-CONTENT-REFRESH.PDF> [<https://perma.cc/RCU3-XL4E>]; Press Release, U.S. Dep't of Educ., U.S. Department of Education Takes Action to Eliminate DEI (Jan. 23, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-takes-action-eliminate-dei> [<https://perma.cc/M57Y-92JQ>]; Press Release, Dep't of Veterans Affairs, VA Dismisses More than 1,400 Probationary Employees (Feb. 24, 2025, 6:20 PM), <https://news.va.gov/press-room/va-dismisses-more-than-1400-probationary-employees/> [<https://perma.cc/BF59-XVFB>].

Select media coverage of the administration's actions is available from the following sources: *Trump Administration Moves to Begin Cutting All Federal DEI Staff*, PBS News (Jan. 22, 2025, 9:59 AM), <https://www.pbs.org/newshour/politics/trump-administration-moves-to-begin-cutting-all-federal-dei-staff> [<https://perma.cc/Q3JG-QZGS>]; Lolita C. Baldor & Tara Copp, *The Pentagon's Diversity Purge: Officials Describe a Scramble to Remove and Then Restore Online Content*, MILITARY.COM (Mar. 24, 2025, 9:14 AM), https://www.military.com/daily-news/2025/03/24/pentagons-diversity-purge-officials-describe-scramble-remove-and-then-restore-online-content.html?ESRC=eb_250325.nl&utm_medium=email&utm_source=eb&utm_campaign=20250325 [<https://perma.cc/EN32-2SYP>]; Michael Embrich, *Trump and Musk Are Going to War Against Military Veterans*, ROLLING STONE (Feb. 13, 2025), https://www.rollingstone.com/politics/political-commentary/trump-musk-military-veterans-war-doge-1235266086/?mc_cid=426345ff7c&mc_eid=79166d24ed [<https://perma.cc/W55T-NWDH>]; Kayla Epstein & Brajesh Upadhyay, *US Government Workers Told to Report DEI Efforts or Face 'Consequences'*, BBC (Jan. 23, 2025), <https://www.bbc.com/news/articles/c78wn5qg3nyo> [<https://perma.cc/3L8R-Y5TP>]; Rebecca Heilweil & Caroline Nihill, *OPM Creates Email Account to Report Suspected Diversity and Inclusion Initiatives*, FEDSCOOP (Jan. 22, 2025), <https://fedscoop.com/opm-email-report-diversity-and-inclusion-initiatives/> [<https://perma.cc/L5BG-NWCX>]; Rebecca Kheel, *83,000 VA Employees Slated to Be Fired This Year by Musk's DOGE, Memo Says*, MILITARY.COM (Mar. 5, 2025, 6:46 PM), <https://www.military.com/daily-news/2025/03/05/va-plans-fire-83000-employees-musks-help-eliminating-pact-act-staffing-increase.html> [<https://perma.cc/FFU8-5F3E>]; Meg Kinnard, *A Comprehensive Look at DOGE's Firings and Layoffs so Far*, AP NEWS (Feb. 21, 2025, 7:08 PM), <https://apnews.com/article/doge-firings-layoffs-federal-government-workers-musk-d33cdd7872d64d2bdd8fe70c28652654> [<https://perma.cc/K648-7X7R>]; Alexandra Olson & Zeke Miller, *Trump Administration Directs All Federal Diversity, Equity and Inclusion Staff Be Put on Leave*, MILITARY.COM (Jan. 22, 2025, 11:32 AM), <https://www.military.com/daily-news/2025/01/22/trump-administration-directs-all-federal-diversity-equity-and-inclusion-staff-be-put-leave.html> [<https://perma.cc/88U5-7HBH>]; Phil Stewart & Idrees Ali, *Trump Fires Top US General in Unprecedented Pentagon Shakeup*, REUTERS (Feb. 22, 2025, 2:33 PM), <https://www.reuters.com/world/us/trump-pushes-out-top-us-general-nominates-retired-three-star-2025-02-22/> [<https://perma.cc/NVY7-3K4X>]; Phillip Walter Wellman, *Trump Ousts Service Academies' Board Members, Calling out 'Leftist Ideologues'*, STARS & STRIPES (Feb. 11, 2025), <https://www.stripes.com/theaters/us/2025-02-11/trump-fires-service-academy-boards-16795113.html> [<https://perma.cc/4YWV-W6WA>].

While these actions may be disheartening to those who study and work in the fields of diversity, equity and inclusion and in the counter-extremism space, most of these acts reflect lawful policy changes; each presidential administration promotes its own policies and has the discretion and authority—within limits—to continue or demote the policies of its predecessors. There are, however, several actions by the administration that warrant greater scrutiny. On January 20, 2025, on his first day in office, the President pardoned all of the individuals who had been convicted of crimes relating to the breach of the U.S. Capitol on January 6, 2021, which included 231 individuals with military backgrounds.³⁶⁸ Only a few days later, on January 24, 2025, the President fired seventeen inspectors general, including those for the Departments of Defense and Veterans Affairs.³⁶⁹ On February 24, 2025, the President removed the judge advocate generals for the Army, Navy, and Air Force—the military's lawyers.³⁷⁰ On February 25, 2025, the DoD's Deputy Inspector General for Audit and Deputy Inspector General for Evaluations issued a memo titled, "Termination of the Oversight Projects Related to Diversity, Equity, and Inclusion" announcing the termination of four in-progress oversight projects because they did not align with the President's recent executive orders.³⁷¹ Included in the list of terminated projects was the "Evaluation of the Military Departments' Implementation of Prohibited Activity Training to Prevent, Identify, and Counter Extremist Activities." The project had been announced in July 2024 and was

368. See sources cited *supra* note 5.

369. Goldsmith, *supra* note 361; Holly Honderich, *Trump Fires at Least a Dozen Government Watchdogs*, BBC (Jan. 25, 2025), <https://www.bbc.com/news/articles/c5yveml59jlo> [<https://perma.cc/3VLL-HAWB>]; Hope Hodge Seck, *What Do Firings of DoD and VA Inspectors General Mean for Military Whistleblowers?*, THE WAR HORSE (Mar. 4, 2025), https://thewarhorse.org/watchdogs-weary-of-trump-firing-dod-va-inspectors-general/?mc_cid=73b3256222&mc_eid=79166d24ed [<https://perma.cc/2UBU-GLHF>]; Orion Donovan Smith, *Chief VA Watchdog Who Helped Expose Flawed Computer System in Spokane Speaks Out After Being Fired by Trump*, THE SPOKESMAN-REVIEW (Jan. 31, 2025), <https://www.spokesman.com/stories/2025/jan/31/chief-va-watchdog-who-helped-expose-flawed-compute/> [<https://perma.cc/5SH3-RT87>]; Konstantin Toropin & Patricia Kime, *Watchdogs at Pentagon, VA Fired in Purge of Inspectors General Across Federal Government*, MILITARY.COM (Jan. 28, 2025, 10:43 AM), <https://www.military.com/daily-news/2025/01/27/watchdogs-pentagon-va-fired-purge-of-inspectors-general-across-federal-government.html> [<https://perma.cc/SK6K-6ACK>]. The prospect of acting inspectors general cuts into the independence that is a hallmark of the office, creating concern among lawmakers who say "oversight [is] not as strong under acting officials, and lack[s] the independence mandated for the post." Leo Shane III, *VA, DoD Oversight Questioned After Trump Inspector General Firings*, MIL. TIMES (Jan. 27, 2025), <https://www.militarytimes.com/news/pentagon-congress/2025/01/27/va-dod-oversight-questioned-after-trump-inspector-general-firings/> [<https://perma.cc/FZL9-YXEZ>].

370. Paul Rosenzweig, *Firing the 'Conscience' of the Military*, THE ATLANTIC (Mar. 3, 2025), <https://www.theatlantic.com/ideas/archive/2025/03/trump-jag-military-lawyers-fired/681888/> [<https://perma.cc/SG2B-JQ6H>].

371. See Memorandum from Brett A. Mansfield & Michael J. Roark, *supra* note 340 (requiring termination of oversight projects that do align with executive orders on "Ending Radical and Wasteful Government Diversity, Equity, Inclusion (DEI) Programs and Preferencing," "Initial Rescissions of Harmful Executive Orders and Actions," and "Restoring America's Fighting Force").

designed to assess how the branches were implementing “counter-extremism training, particularly efforts targeting radical organizations, white nationalist groups and militias such as the Oath Keepers, Proud Boys and the Ku Klux Klan.”³⁷² The memo also announced a review of “open OIG recommendations to the DoD to determine which recommendations should be closed as a result of the actions to end DEI programs and activities.”³⁷³ These recent actions have led to comments that the current administration will “take the military back to the days when extremism in its entirety was ignored.”³⁷⁴

CONCLUSION

This Article’s aim was to bring attention to the evolving nature of the extremism threat in the U.S. military and the role that digital platforms are playing in amplifying this threat, to highlight the ineffectiveness of current counter-extremism efforts, and to suggest an entity able to address these flaws and fill some of the most problematic data and collection gaps. The extremism threat in the U.S. military has coincided with congressional abandonment of its oversight role and an executive branch uninterested in studying or addressing the potential threat. Given the current political headwinds and a growing public acceptance of extremist ideologies, a reader would not be faulted for asking why this Article focuses on extremism only within the U.S. military. The response is threefold. First, the persistence and prevalence of extremist ideologies in the ranks—and recent indications of an increase in acceptance of extremist ideologies as well as extremist group affiliation among servicemembers—is a threat not just to the military but to U.S. national security.³⁷⁵ The poisoned thinking and other-blaming that characterize extremist ideologies undercut the cohesion needed for successful military operations and effective defense of the nation.³⁷⁶ Relatedly, they provide conduits for foreign adversary influence within the U.S. armed forces.³⁷⁷ Second, reducing the extremism threat within the U.S. military

372. *Id.*; see also Beynon, *supra* note 366 (describing deputy inspector general’s decision to “scrap[] plans to investigate the military’s training for identifying and countering extremism in the ranks” and to “abruptly halt[] an ongoing assessment of how military branches implement counter-extremism training, particularly efforts targeting radical organizations, white nationalist groups and militias such as the Oath Keepers, Proud Boys and the Ku Klux Klan”).

373. See Memorandum from Brett A. Mansfield & Michael J. Roark, *supra* note 340.

374. Nikki Wentling, *Rollback of DoD Anti-Extremism Efforts Coming in 2025, Experts Predict*, MIL. TIMES (Dec. 26, 2024), <https://www.militarytimes.com/flashpoints/extremism-disinformation/2024/12/26/rollback-of-dod-anti-extremism-efforts-coming-in-2025-experts-predict/> [https://perma.cc/8FS3-FL5L].

375. Schrama, *supra* note 26; Gibel, *supra* note 38 (citing former U.S. Secretary of Homeland Security Alejandro Mayorkas’s description of “domestic violent extremism as the ‘greatest threat’ to the United States” and U.N. Secretary-General Antonio Guterres’s call to the U.S. to lead in combating extremism, in all its forms, noting it is an “international threat” to “universal values” and “social cohesion”).

376. VanLandingham, *Military Speech Restrictions*, *supra* note 128, at 150.

377. Johnson, *supra* note 80, at 1076–77 (“Despite the fact that white supremacist extremism may appear as homegrown white nationalist resistance to societal change in specific countries, common ideologies and cohesion facilitated across national borders by

will significantly minimize the potency of that threat to the nation. When those with military backgrounds (even if only in small numbers) participate in extremist violence, the resulting “terrorist attacks [become] more achievable and more deadly.”³⁷⁸ Third, understanding the structural defects that create a military environment where extremism is tolerated, and then working to eliminate those defects, takes courage. Courage is precisely what we expect from those who serve:

The belief in basic inequality of human beings based on race, ethnicity, religion, gender, gender orientation, etc., is incompatible with military service, as is the belief in the overthrow of the U.S. government by force. If service members refuse to believe the opposite—a refusal manifested in many ways, one of which is passive membership in groups that espouse such beliefs—then they pose a risk to the U.S. military and national security and should not remain in uniform.³⁷⁹

While the extremism threat in the United States is by no means limited to the military, its reach, societal acceptance, and potency are increased when its ideologies and actions are endorsed by those with military backgrounds. As such, eliminating the threat in servicemember and veteran communities provides a foundational reform on which others can build. This Article concludes on a sober note, one that is candid about the current legal constraints and political climate, yet remains hopeful about the DoD OIG’s ability to find an antidote to the extremist poison teeming through today’s technology-enabled pipes toward our troops.

digital platforms have now created a global movement.”); *see also* Schrama, *supra* note 26 (“Russian President Vladimir Putin has long sought to target and exploit United States military members for the same reason. Russian operatives target specific subgroups to capitalize ‘on latent grievances or sensitive touch points.’ Russia exploits legitimate grievances that military members might have and uses them to create a foothold to foment discord and promote narratives that ‘the system’ is irrevocably broken.”); Weiyi Cai & Simone Landon, *Attacks by White Extremists Are Growing. So Are Their Connections*, N.Y. TIMES (Apr. 3, 2019), <https://www.nytimes.com/interactive/2019/04/03/world/white-extremist-terrorism-christchurch.html> [<https://perma.cc/6W8S-P7P3>] (describing the global reach of white extremism, and noting that a “challenge for law enforcement will be to buck a sometimes myopic focus on Islamic extremism as the only driver of international terrorism”).

378. Beirich Testimony, *supra* note 24, at 3.

379. VanLandingham, *Military Speech Restrictions*, *supra* note 128, at 150–51.