

Domestic Terrorism and the Attack on the U.S. Capitol

January 13, 2021

On January 6, 2021, a [large group of individuals breached the U.S. Capitol](#) while Congress was in session. Members were voting on whether or not to certify President-Elect Joe Biden's election victory, and many participants in the attack allegedly intended to thwart this effort. According to media coverage, violent participants injured scores of District of Columbia Metropolitan Police and U.S. Capitol Police officers and killed one, while four civilians have died as well. In light of this incident and the violent threat to the operation of the U.S. Congress, policymakers may be interested in whether this incident may be treated as domestic terrorism and if the participants are domestic terrorists, among other issues. This Insight discusses whether or not participants and their actions may be categorized as domestic terrorists and domestic terrorism, respectively, and issues around designating domestic fringe groups, such as [the Boogaloo Bois and Proud Boys who were allegedly involved in the attack](#), as terrorist organizations. It concludes with possible next steps for Congress.

Is this domestic terrorism?

The federal definition of domestic terrorism describes domestic terrorists as Americans who commit ideologically driven crimes in the United States but lack foreign direction or influence. The Federal Bureau of Investigation (FBI) generally relies on two sources to define domestic terrorism. First, the [Code of Federal Regulations](#) characterizes "terrorism" as including "the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives." Second, [18 U.S.C. §2331\(5\)](#) more narrowly defines "domestic terrorism." This definition comes from Section 802 of the USA PATRIOT Act (P.L. 107-56). According to 18 U.S.C. §2331(5), domestic terrorism occurs primarily within U.S. territorial jurisdiction, and involves

- (A) acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
- (B) appear to be intended—
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or

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IN11573

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping...

The participants' actions seem to fit both definitions. Video evidence and [media reports](#) portray participants committing acts dangerous to human life and those actions appeared to be intended both to influence the policy of the U.S. government by intimidation and affect its conduct through possible assassination and/or kidnapping.

Are the participants domestic terrorists?

While the participants' actions on January 6 may be consistent with the definition of domestic terrorism, it is important to note that domestic terrorism is not a chargeable offense on its own. There is no federal criminal statute that establishes criminal penalties solely for "domestic terrorism," although it may be an element of other federal crimes or [provide an enhanced sentence](#). In other words, an individual may commit criminal acts that are widely considered domestic terrorism and be prosecuted for the criminal acts themselves, but an individual cannot be *charged* with committing an act of domestic terrorism under current federal law. For example, Timothy McVeigh, widely considered a domestic terrorist, was convicted of murder, conspiracy, and using a weapon of mass destruction in the [1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City](#) that killed 168 people, but he was not *convicted* of domestic terrorism.

Aside from the statutory definitions regarding the crime of domestic terrorism, the FBI has historically emphasized particular qualities inherent to the *actors* who engage in domestic terrorism. [According to the FBI](#), *domestic terrorists* do not simply operate in the homeland, but they also *lack foreign direction*. In short, the FBI's practical, [shorthand definition](#) of domestic terrorists is "Americans attacking Americans based on U.S.-based extremist ideologies." In [May 2019 Congressional testimony](#), Michael McGarrity, former Assistant Director for the FBI's Counterterrorism Division, stated that "[d]omestic terrorists are individuals who commit violent criminal acts in furtherance of ideological goals stemming from domestic influences, such as racial bias and anti-government sentiment." Again, the participants of the January 6 attack on the Capitol seem to fit this construction.

Are right wing extremist groups that participated in the Capitol attack terrorist organizations?

The FBI does not officially designate domestic terrorist organizations, but they have openly delineated domestic terrorist "threats." They identified domestic terrorism threats to include criminal activity by certain groups, [such as the Proud Boys](#), or by individuals that adhere to a certain ideology, [such as antifa](#).

While the [FBI has confirmed in public hearings](#) that extremists are subjects of ongoing domestic terrorism investigations, it declines to designate any organization a "domestic terrorist organization." Doing so may infringe on First Amendment-protected free speech—belonging to an ideological group in and of itself is not a crime in the United States. In [July 2019 congressional testimony](#), Director Wray said the FBI does not investigate ideology; it investigates violence.

While individuals involved in the attack on the Capitol may belong to extremist groups such the Proud Boys and Boogaloo Bois or adhere to their ideology, the federal government declines to designate these groups as domestic terrorist groups and instead focuses on the violent criminal acts of individuals, whether members of these groups or not.

Next Steps

In light of the attack on the U.S. Capitol and its domestic terrorism nexus, Congress may wish to consider any number of changes to related law and policy. Among other options, it could decide to make domestic terrorism a chargeable federal offense under [Title 18, the main criminal code of the federal government](#). It could devote additional resources to the FBI, the agency with lead responsibility for terrorism investigations at the federal level, to counter the domestic terrorism threat. Further, it could authorize and devote resources to improving data collection and sharing on this issue (currently, the federal government does not maintain a publicly available database with information on incidents of domestic terrorism). Much of what Congress and the public know about the domestic terrorism threat stems from the FBI's congressional testimony.

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