Definition of Domestic Terrorism

[T]he term “domestic terrorism” means activities that—

(A) involve 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
   (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily within the territorial jurisdiction of the United States.

18 U.S.C. § 2331(5)
Domestic Investigations and Operations Guide

Federal Bureau of Investigation
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Assessment

“Assessments authorized under the AGG-Dom do not require a particular factual predication but do require an authorized purpose and clearly defined objective(s). Assessments may be carried out to detect, obtain information about, or prevent or protect against Federal crimes or threats to the national security or to collect foreign intelligence.”

“Although difficult to define, ‘no particular factual predication’ is less than ‘information or allegation’ as required for the initiation of a preliminary investigation. For example, an assessment may be conducted when: (i) there is reason to collect information or facts to determine whether there is a criminal or national security threat; and (ii) there is a rational and articulable relationship between the stated authorized purpose of the Assessment on the one hand and the information sought and the proposed means to obtain that information on the other.”
Assessment

“Prior to opening an assessment, consent searches are not authorized. However, if in the course of processing a complaint or conducting a clarifying interview of the complainant, the complainant volunteers to provide access to his personal or real property, an agency may accept and conduct a search of the item(s) or property voluntarily provided.”

Amongst other investigative methods, an FBI employee is authorized for “CHS use and recruitment” and can conduct “physical surveillance (not requiring a court order)” or “a voluntary clarifying interview of the complainant or the person who initially furnished the information.”

“Even if information obtained during an Assessment does not warrant opening a Predicated Investigation, the FBI may retain personally identifying information for criminal and national security purposes.”
Preliminary Investigation

“A Preliminary Investigation may be opened to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security… The purposes for conducting Preliminary Investigation include matters such as: determining whether a federal crime has occurred or is occurring, or if planning or preparation for such a crime is taking place; identifying, locating, and apprehending the perpetrators; obtaining evidence needed for prosecution; or identifying threats to the national security.”

“A Preliminary Investigation may be opened on the basis of ‘information or an allegation’ indicating the existence of a circumstance described as follows: A) An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur… B) An individual, group, organization… is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security…”
Preliminary Investigation (continued)

Amongst others, **investigative methods** that are authorized include “CHS use and recruitment,” “physical surveillance (not requiring a court order),” “consensual monitoring of communications, including electronic communications,” “FISA Order for business records,” “stored wire and electronic communications and transactional records,” and “undercover operations.”

Examples of when a Preliminary Investigation can be opened:

- “A CHS, with no established history, alleges than an individual is a member of a terrorist group: **this ‘allegation’ is sufficient predication to open a Preliminary Investigation**”
- “If an analyst, while conducting an assessment, **discovers on a blog a threat** to a specific person, this ‘information’ is enough to open a preliminary investigation”
Full Investigation

“The purposes for conducting Full Investigations include such matters as: A) determining **whether a federal crime is being planned, prepared for, occurring or has occurred**, B) identifying, locating, and apprehending the perpetrators, C) obtaining evidence for prosecution, D) identifying threats to the national security, E) investigating an enterprise… or F) collecting positive foreign intelligence.”

“A Full Investigation may be opened if there is an ‘articulable factual basis’ that reasonably indicates one of the following circumstances exists: A) An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur… B) An individual, group, organization… is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security… C) The investigation may obtain foreign intelligence that is responsive to a PFI requirement…”
Amongst others, **investigative methods** that can be used include “CHS use and recruitment,” “physical surveillance (not requiring a court order),” “consensual monitoring of communications, including electronic communications,” “FISA Order for business records,” “stored wire and electronic communications and transactional records,” “undercover operations,” “searches – with a warrant or court order,” “electronic surveillance – Title III,” and “electronic surveillance – FISA and FISA Title VII.”
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| Assessment           | Authorized purpose and clearly defined objectives; no factual predicate is necessary | - Investigations can be conducted without any suspicion whatsoever.  
- FBI can use intrusive investigative techniques including physical surveillance, interviews conducted without any suspicion, and the use of informants. |
| Preliminary Investigation | Information or an allegation                                                  | - FBI has interpreted this authority to permit surveillance based on speculation that a crime may be committed in the future.  
- FBI is permitted to use same intrusive techniques available for full investigations, with the exception of court-ordered electronic surveillance and searches. |
| Full Investigation   | Articulable factual basis                                                    | - FBI is permitted to use court-ordered electronic surveillance and searches in addition to other investigative tools available for assessments and preliminary investigations. |
Guidance on the Use of Race

“In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement officers may not use race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity to any degree, except that officers may rely on the listed characteristics in a specific suspect description. This prohibition applies even where the use of a listed characteristic might otherwise be lawful.

In conducting all activities other than routine or spontaneous law enforcement activities, Federal law enforcement officers may consider race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity only to the extent that there is trustworthy information, relevant to the locality or time frame, that links persons possessing a particular listed characteristic to an identified criminal incident, scheme, or organization, a threat to national or homeland security, a violation of Federal immigration law, or an authorized intelligence activity.”
Guidance on the Use of Race (continued)

“In order to rely on a listed characteristic, law enforcement officers must also reasonably believe that the law enforcement, security, or intelligence activity to be undertaken is merited under the totality of the circumstances, such as any temporal exigency and the nature of any potential harm to be averted. This standard applies even where the use of a listed characteristic might otherwise be lawful.”

“Common sense dictates that when a victim describes the assailant as possessing a certain characteristic, law enforcement officers may properly limit their search for suspects to persons possessing that characteristic. Similarly, in conducting activities directed at a specific criminal organization or terrorist group whose membership has been identified as overwhelmingly possessing a listed characteristic, law enforcement should not be expected to disregard such facts in taking investigative or preventive steps aimed at the organization’s activities.”
Guidance on the Use of Race (continued)

“[L]aw enforcement officers may use a listed characteristic in connection with source recruitment, where such characteristic bears on the potential source’s placement and access to information relevant to an identified criminal incident, scheme, or organization, a threat to national or homeland security, a violation of Federal immigration law, or an authorized intelligence activity.

Example: A terrorist organization that is made up of members of a particular ethnicity sets off a bomb in a foreign country. There is no specific information that the organization is currently a threat to the United States. To gain intelligence on the evolving threat posed by the organization, and to gain insight into its intentions regarding the U.S. homeland and U.S. interests, the FBI may properly consider ethnicity when developing sources with information that could assist the FBI in mitigating any potential threat from the organization.”
Abuses of Authorities—Examples

- The FBI has used domestic terrorism authorities to map and surveil Muslim communities, including by infiltrating their places of worship.\(^1\)

- DHS leads and the FBI participates in a Suspicious Activity Reporting program (SARS), collecting and sharing information about people engaged in activities that are loosely labeled as “suspicious” without even a reasonable suspicion of criminal activity.\(^2\) In addition to encouraging racial and religious profiling, the SARS program targets those engaged in First Amendment-protected activity.

- In August 2017, the FBI issued an “intelligence assessment,” identifying “Black Identity Extremists” for investigation as a domestic terrorism threat.\(^3\) Following criticism, the FBI stated that its made up label is no longer in use, but it appears to simply have renamed it. The Bureau has implemented a program, titled “IRON FIST,” targeting FBI resources on spying, surveilling, and investigating Black activists, including through use of undercover agents.\(^4\)
Abuses of Authorities—Examples

- A government document indicates that the FBI was conducting surveillance of groups engaged in protests at the border in response to the Trump administration’s immigration policies. Documents obtained from DHS indicated that the agency provided information that it received from a private firm regarding family separation demonstrations to Fusion Centers, which are intelligence-gathering hubs in which federal and local law enforcement agencies collaborate and share information.⁵
Endnotes


4 Ken Klippenstein, Leaked FBI Documents Reveal Bureau’s Priorities Under Trump, Young Turks (Aug. 8, 2019), https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/mnzAKMpdтиZ7AcYLд5cRR.