



# ONLINE ACTIVITIES TO COUNTER VIOLENT EXTREMISM<sup>1</sup>

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In August 2011, the White House released a national strategy, entitled *Empowering Local Partners To Prevent Violent Extremism in the United States*, which outlines the Federal Government’s role in empowering American communities and their local partners to prevent violent extremism. The Government encourages independent, local efforts to prevent violent extremists and their supporters from inspiring, financing, or recruiting individuals or groups in the United States to engage in terrorism and other acts of violence. Such efforts can include countering violent extremist propaganda while promoting our national ideals. The Government recognizes that, in many instances, local communities are developing credible, peaceful alternatives to challenge violent extremist narratives. Families, community leaders, and local institutions are the most credible voices in this arena and should be empowered to engage and confront directly those advocating or supporting violent extremism.

With respect to confronting violent extremism online, in particular, some members of the public have asked for guidance on the application of federal statutes criminalizing the provision of material support or resources to terrorists. These individuals have asked whether they could be investigated or prosecuted if they communicate with suspected extremists or terrorists online in an effort to persuade them not to engage in violence or to prevent others from being recruited to their cause. The Government’s position on this issue should be clear: the material support statutes **do not** prohibit legitimate, independent efforts to counter violent extremism. Rather, as the Supreme Court made clear in a 2010 decision addressing the material support statute most relevant here, that statute “covers only a narrow category of speech to, under the direction of, or in coordination with foreign groups that the speaker knows to be terrorist organizations.”<sup>2</sup> For example, the statute’s prohibition would cover providing training designed to impart a specific skill, or communicating advice derived from specialized knowledge, to a known member of a terrorist group. The Department of Justice **has never prosecuted an individual or group for a legitimate effort to persuade others not to engage in violence**, despite having charged individuals with violations of the material support statutes in more than a hundred cases over the

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<sup>1</sup> *The U.S. Government sometimes receives questions about online activities to counter violent extremism. This document addresses certain statutory and constitutional issues raised by such activities. This document is not a legal opinion. It does not guarantee anyone immunity from lawful investigation, prosecution, or other governmental action. And it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities; its officers, employees, or agents; or any other person.*

<sup>2</sup> *The statute addressed by the Supreme Court prohibits knowingly providing material support or resources to a foreign terrorist organization. A separate statute prohibits providing material support or resources knowing or intending that they are to be used in preparation for, or in carrying out, a violation of statutes prohibiting violent terrorist acts. Given the additional requirement that the offender must know or intend that the material support will be used in connection with a criminal terrorist act, that provision would not prohibit legitimate efforts to persuade individuals not to engage in terrorist acts or to join foreign terrorist groups.*

past decade. Furthermore, rigorous internal controls ensure that DOJ's prosecutorial discretion is exercised responsibly and consistently with regard to bringing material support prosecutions.

Additionally, the First Amendment to the U.S. Constitution, which states that "Congress shall make no law . . . abridging the freedom of speech, or of the press," guarantees powerful protections for speech. For example, the First Amendment generally protects an individual's expression of even extreme opinions. These First Amendment protections also apply to speech that is intended to dissuade people from the path of violence and that advocates against unlawful activity and for peaceful alternatives.

Protections for free speech are also included in certain federal statutes and guidelines on the Government's investigative authorities. For example, the Attorney General's Guidelines for Domestic FBI Operations "do not authorize investigating or collecting or maintaining information" about U.S. persons "solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights." FBI policy also prohibits "investigative activity for the sole purpose of 'monitoring' the exercise of First Amendment rights." That policy explains that "[t]he exercise of free speech includes far more than simply speaking on a controversial topic in the town square" and extends to many different ways of conveying an idea. It also reminds FBI employees that "sensitive investigative matters"—including those involving political or religious organizations—are subject to additional protections under the guidelines. Similar protections for speech also appear in the Foreign Intelligence Surveillance Act, or "FISA." *See* 50 U.S.C. § 1861(a)(2) (providing that, for purposes of obtaining access to certain business records for foreign intelligence and international terrorism investigations, "[a]n investigation conducted under this section shall . . . not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States."); 50 U.S.C. § 1805(a)(2)(A) (providing that, for purposes of electronic surveillance under FISA, no U.S. person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the First Amendment).

In light of these parameters defined in federal law and policy, individuals seeking lawfully to confront persons or groups who advocate or support violent extremism should feel confident that such engagement, absent any independent indicia of criminal activity, will not result in the individual being the subject of an authorized FBI criminal or terrorism investigation.