BRENNAN CENTER FOR JUSTICE

EXPERT BRIEF

Trump's Orders Targeting Antifascism Aim to Criminalize Opposition

Purporting to go after "domestic terrorism," the president presents an imagined left-wing conspiracy and authorizes punishments for even tenuous connections to speech the administration doesn't like.

Faiza Patel

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In late September, President Trump signed an **executive order** [link-1] purporting to designate "Antifa" as a "domestic terrorist organization." A few days later, he issued **National Security Presidential Memorandum 7** [link-2] (NSPM-7) on Countering Domestic Terrorism and Organized Political Violence. This analysis evaluates the claims made in these documents and their potential damaging effects, drawing on the Brennan Center's decade of work on the government's framework for responding to terrorism, both foreign and domestic.

Both the order and the memo are ungrounded in fact and law. Acting on them would violate free speech rights, potentially threatening any person or group holding any one of a broad array of disfavored views with investigation and prosecution.

No Evidence of a Widespread Left-Wing Conspiracy to Carry Out Acts of Political Violence

NSPM-7 starts by listing a mishmash of incidents, some of which are criminal and some of which constitute activity protected by the First Amendment. These include violence directed at public figures such as conservative activist Charlie Kirk, President Trump, and Justice Brett Kavanaugh; the killing of United HealthCare CEO Brian Thompson; a purported 1,000 percent increase in attacks on U.S. Immigration and Customs Enforcement officers; a shooting at an ICE facility; and anti-police and criminal justice protests.

The events listed, according to NSPM-7, are "not a series of isolated incidents" and have not "emerged organically." Rather they are the culmination of "organized campaigns" of intimidation and violence designed to "silence opposing speech, limit political activity, change or direct policy outcomes, and prevent the functioning of a democratic society."

As a basic factual matter, this claim is not credible. For one thing, the list is obviously cherry-picked to highlight what the administration believes to be "left-wing" violence and excludes other high-profile examples of political violence that do not comport with its storyline. These include the January 6, 2020, attack on the Capitol, a 2022 mass shooting at a Buffalo, New York, grocery store **motivated** [link-3] by white supremacist beliefs and the deadly 2025 shootings of two Democratic Minnesota state lawmakers and their spouses. Painting this fuller picture, however, would puncture the narrative that political violence is the result of a left-wing conspiracy.

Nor is there any support for the claim that those involved in the incidents listed were acting in concert. The connection between the range of actors involved in the acts identified as political violence in NSPM-7 is simply that they are all seen as opposing the administration's policies in one way or another (the killing of the United Healthcare CEO seems to be an outlier since no motive has yet been established). And there is no evidence to suggest that the broad universe of activism and criminal acts the memo cites is either organized or funded top-down. A loose ideological affinity does not add up to a concerted scheme to carry out violent acts to meet political ends.

No Authority to Designate Either "Antifa" or Any Domestic Group as a Terrorist Organization

The administration has also sought to elevate the perceived threat level from left-wing political violence by designating antifa to be a "domestic terrorist organization" and instructing the attorney general to make recommendations for other groups to be designated. The designation makes no sense. As both former FBI Director **Chris Wray** [link-4] and the **Congressional Research Service** [link-5] have explained, antifa is not a group or an organization, but a decentralized movement. Moreover, the administration has no authority to designate groups as domestic terrorist organizations, as is obvious from the failure to cite any statute or constitutional provision in support of the president's action. There is none, and the purported designation has no legal effect.

This stands in sharp contrast to the president's authority (delegated to the secretary of state) to designate "foreign terrorist organizations." As explained **here** [link-6], there is good reason not to extend the current foreign terrorism regime, which criminalizes the knowing provision of material support or resources to designated foreign terrorist organizations, to the domestic context. The political aspect of such a designation (already **fraught** [link-7] in the international context) would carry enormous First Amendment risks.

Because terrorism is inherently a political crime, extending the foreign material support for terrorism regime would allow the government to formally assign the label to domestic groups with unpopular beliefs and prosecute anyone who supports them. The risk of abuse is particularly acute because under the material support statute any aid — even if not meant to support violence — is enough to incur a hefty prison term. The implications of applying this construct in the context of antifa or antifascism are enormous: Buying a sandwich for an activist, allowing a protester to crash on your couch, or briefly lending a computer to print pamphlets critical of government policy could all potentially be considered material support.

Indeed, in the decision upholding the foreign terrorist material support law, the Supreme Court recognized that the material support logic could violate the First Amendment in other circumstances. The Court was **careful to say** [link-8] that it was not suggesting that Congress could extend the same prohibition to domestic organizations (much less that the president could do so acting unilaterally).

Multiple Disfavored Viewpoints Targeted

Building on the antifa executive order, which already targets a broad range of political speech, NSPM-7 directs federal agencies to prioritize investigations of a swath of identities and ideologies that it depicts as falling under "the umbrella of self-described 'anti-fascism.'" These include "anti-Americanism, anti-capitalism, and anti-Christianity; support for the overthrow of the United States Government; extremism on migration, race, and gender; and hostility towards those who hold traditional American views on family, religion, and morality."

This breathtakingly broad list easily encompasses everyone from labor organizers, socialists, many libertarians, those who criticize Christianity, pro-immigration groups, anti-ICE protestors, and racial justice and transgender activists, to anyone who holds views that the administration considers to be "anti-American." Under NSPM-7, the antifascist label can be attached to any of these types of people and groups and many more besides, giving the government maximum flexibility to pick and choose its targets.

For all its references to violence and intimidation, much of NSPM-7 is squarely directed at speech and nonviolent action by organizations and individuals protected by the First Amendment. One of the targets of the memo is "campaigns of . . . radicalization" — that is, speech aimed at promoting ideas that the administration considers to be "radical."

Over the last decade, various law enforcement agencies have **built** [link-9] social media monitoring programs that have regularly been used against protest movements. In 2020, for example, the Department of Homeland Security's Office of Intelligence and Analysis monitored people participating in racial justice demonstrations in **Portland** [link-10], Oregon, as well as **journalists** [link-11] covering the government response to the protests. Since then, it has kept tabs on online discussions of **abortion** [link-12] and pro-Trump **truckers** [link-13]. These efforts

can easily be turned — or even **expanded** [link-14] — to focus on disfavored ideologies.

The directives may also lead social media companies to expand the universe of posts they remove or suppress. The major platforms' content moderation **rules** [link-15] generally either ban or severely restrict the online speech of anyone perceived to be supporting terrorists. Extending this framework to all the types of speech that the directives have associated with domestic terrorism would quash an enormous range of viewpoints. And the administration's record of pressuring companies to muffle voices that question its policies — from the **suspension** [link-16] of Jimmy Kimmel's show to the **removal** [link-17] of the ICEBlock app from the Apple app store — suggests that it may well pressure social media platforms to take this course of action.

Full Force of the Federal Government's Authority Unleashed

Building on its framing of the threat from anti-fascism as a wide-ranging conspiracy and domestic terrorism, NSPM-7 directs government agencies to go after "all participants in these criminal and terroristic conspiracies—including the organized structures, networks, entities, organizations, funding sources, and predicate actions behind them."

The memorandum directs Joint Terrorism Task Forces (JTTFs) to "coordinate and supervise a comprehensive national strategy to investigate, prosecute, and disrupt entities and individuals engaged in acts of political violence and intimidation designed to suppress lawful political activity or obstruct the rule of law." Given the framing of the threat as anti-fascism, the direction to law enforcement is to focus its resources on the left-leaning organizations and people who oppose the administration's policies, rather than on the types of political violence that **most threaten** [link-18] Americans' life at home.

NSPM-7 also targets major grant-making organizations in multiple ways. First, NSPM-7 directs JTTFs to investigate not just the entities providing funding, but also their officers and employees. This ratchets up pressure by putting individuals rather than institutions in the crosshairs. Second, when questioning individuals they arrest for political violence, NSPM-7 instructs law enforcement officers to question them regarding "financial sponsorship of those actions prior to adjudication or initiation of a plea agreement." This seems an attempt to incentivize protesters to point the finger at others in a perversion of the common prosecution strategy of turning lower-level participants in a criminal conspiracy against those further up the food chain.

Third, NSPM-7 directs the treasury secretary to "disrupt financial networks that fund domestic terror and political violence." **Disrupting** [link-19] the **financing mechanisms** [link-20] used by terrorist groups is a **longstanding feature** [link-21] of counterterrorism strategy. In the context of the vast anti-fascist conspiracy conjured up by NSPM-7, however, investigators could abuse it to block the bank accounts and financial transactions of various organizations merely because they stand in opposition to the administration.

Finally, both NSPM-7 and the antifa executive order take aim at the tax-exempt status of the foundations that fund civil society groups as well as civil society groups themselves. NSPM-7 directs the commissioner of the Internal Revenue Service to ensure that "no tax-exempt entities are directly or indirectly financing political violence or domestic terrorism." The antifa executive order instructs federal law enforcement to investigate and prosecute those who provide "material support" by funding the "illegal operations" of "Antifa" or anyone claiming to act for it. Like the instruction to the treasury secretary, this directive must be read in the context of the memorandum's unsupported allegations of a left-wing conspiracy, which will likely drive the commissioner's investigations.

In 2024, civil society groups raised **serious concerns** [link-22] about a bill that would have given the treasury secretary virtually unfettered discretion to designate a U.S. nonprofit as a "terrorist supporting organization" and strip it of its tax-exempt status.

In a letter to the House, more than 350 organizations wrote, "The executive branch could use this authority to target its political opponents and use the fear of crippling legal fees, the stigma of the designation, and donors fleeing controversy to stifle dissent and chill speech and advocacy. And while the broadest applications of this authority may not ultimately hold up in court, the potential reputational and financial cost of fending off an investigation and litigating a wrongful designation could functionally mean the end of a targeted nonprofit before it ever has its day in court."

All these concerns also apply to the antifa executive order and NSPM-7.

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Existing laws give the president great latitude in combating threats to national security. NSPM-7 and the antifa executive order are an obvious abuse of this latitude, threatening to turn the full force of the federal government to rooting out a conjured-up left-wing conspiracy of political violence funded by shadowy figures. Neither the law nor the facts support this premise, and court challenges to actions taken pursuant to these orders will likely meet with success. But in the process, many individuals and organizations will be vilified and harmed for their constitutionally protected activities and others will be muzzled as they fear the consequences of associating with or speaking up for groups that have been targeted. And we will all be less safe as law enforcement resources are diverted from real threats to imagined ones.

Links

link-1: executive order https://www.whitehouse.gov/presidential-actions/2025/09/designating-antifa-as-a-domestic-terrorist-organization/
link-2: National Security Presidential Memorandum 7 https://www.whitehouse.gov/presidential-actions/2025/09/countering-domestic-terrorism-and-organized-political-violence/

link-3: motivated https://apnews.com/article/legal-proceedings-new-york-buffalo-crime-terrorism-a13cf95d1fbecfa64571de87d2ccfa8a
link-4: Chris Wray https://apnews.com/article/donald-trump-ap-top-news-elections-james-comey-politics-bdd3b6078e9efadcfcd0be4b65f2362e
link-5: Congressional Research Service https://www.congress.gov/crs-product/IF10839
link-6: here https://www.brennancenter.org/our-work/analysis-opinion/reasons-why-dylann-roof-wasnt-charged-terrorism
link-7: fraught https://www.brennancenter.org/media/9825/download/PCLOB%20DT%20Forum%20Additional%20BCJ%20Comments_06.30.22%20.pdf?inline=1
link-8: careful to say https://tile.loc.gov/storage-services/service/ll/usrep/usrep561/usrep561001/usrep561001.pdf?inline=1
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link-13: truckers https://www.npr.org/2022/02/10/1079870231/super-bowl-truckers-protest-dhs
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link-15: rules https://www.brennancenter.org/media/7951/download/Double_Standards_Content_Moderation.pdf?inline=1
link-16: suspension https://www.nytimes.com/2025/09/17/business/media/abc-jimmy-kimmel.html
link-17: removal https://www.cnn.com/2025/10/03/tech/iceblock-apple-removed-trump
link-18: most threaten https://www.cato.org/blog/politically-motivated-violence-rare-united-states#datawrapper-chart-8LVIq
link-19: Disrupting https://www.dhs.gov/topic/disrupt-terrorist-financing
link-20: financing mechanisms https://www.state.gov/bureau-of-counterterrorism-programs-and-initiatives/#CFT
link-21: longstanding feature https://doi.org/10.1080/09546553.2022.2083507
link-22: serious concerns https://www.aclu.org/documents/civil-society-letter-to-congress-opposing-hr-9495