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**FROM MAFIA TO VIOLENT EXTREMIST: EXAMINING
THE APPLICATION OF THE RICO ACT TO ANTIFA**

by

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March 2023

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EXAMINING THE APPLICATION OF THE RICO ACT TO ANTIFA**

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ABSTRACT

Factions within Antifa were responsible for criminal activity during the social injustice protests of 2020 in the United States, leading to some arrests. Despite the economic destruction caused nationally during the protests and Antifa's continual involvement in criminal acts, not much has been done to hold the group accountable. The Racketeer Influenced and Corrupt Organizations (RICO) Act offers one potential option to address Antifa. This thesis explores how the RICO statute has been applied to criminal enterprises similar to Antifa and how it might be applied to prosecute Antifa. This thesis uses a combination of two qualitative research methods: legal analysis and case studies. The legal analysis focuses on the RICO Act's application to non-economic enterprises and the related First Amendment issues involved when the act is applied to protest groups. The case studies focus on the successful application of the RICO Act to other types of criminal enterprises such as criminal street gangs, white supremacist groups, and other non-traditional criminal enterprises. This thesis finds that the RICO Act's use for non-traditional criminal enterprises has withstood legal challenges, making it a viable option for combating Antifa.

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LIST OF ACRONYMS AND ABBREVIATIONS

Antifa	anti-fascist group that formed in the United States in the 1980s in opposition to neo-Nazi and white supremacist groups
ARA	Anti-Racist Action
Brüder Schweigen	Silent Brotherhood, a white supremacist group also known as the Order
FBI	Federal Bureau of Investigation
FTO	foreign terrorist organization
ICE	U.S. Immigration and Customs Enforcement
MS12	street gang Maras Salvatrucha
RICO Act	Racketeer Influenced and Corrupt Organizations Act

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EXECUTIVE SUMMARY

The death of George Floyd at the hands of law enforcement triggered massive protests throughout the United States.¹ The death, which was perceived to be racially motivated by some civil rights activists such as the Black Lives Matter group, sparked a national focus on racial injustice.² Protests intended to highlight police reform typically start peacefully, yet they occasionally turn violent because of the involvement of such anarchists as Antifa.³ Evidence supports the involvement of Antifa in the destruction caused by 2020s protests.⁴ The destruction caused nationally during these protests is estimated to total \$1–\$2 billion in insurance claims.⁵

The discussion among practitioners regarding Antifa revolves around the group's make up—some argue Antifa is merely an ideology while others argue that Antifa is an organized and structured group, responsible for most of the destruction caused nationwide in 2020. Local and federal prosecution of Antifa groups has not deterred some of the group's persistent criminal activities during protests. Based on the lack of criminal prosecutions of Antifa members, this thesis pursued a current legal mechanism that could

¹ Elliot McLaughlin, “George Floyd’s Death Ignited a Racial Reckoning That Shows No Signs of Slowing Down,” CNN, August 9, 2020, <https://www.cnn.com/2020/08/09/us/george-floyd-protests-different-why/index.html>.

² “Rest in Power, Beautiful,” Black Lives Matter, accessed October 18, 2020, <https://blacklivesmatter.com/rest-in-power-beautiful/>.

³ Neil MacFarquhar, “Many Claim Extremists Are Sparking Protest Violence. But Which Extremists?,” *New York Times*, June 22, 2020, <https://www.nytimes.com/2020/05/31/us/george-floyd-protests-white-supremacists-antifa.html>; Kyle Shideler, “The Real History of Antifa,” *American Mind*, June 3, 2020, <https://americanmind.org/essays/the-real-history-of-antifa/>. Antifa is the anti-fascist group that formed in the United States in the 1980s in opposition to neo-Nazi and white supremacist groups.

⁴ Andy Ngo and Mia Cathell, “11 Arrested at Violent Antifa Protest outside Portland Ice Facility,” *Post Millennial*, September 21, 2020, <https://thepostmillennial.com/11-arrested-at-violent-antifa-protest-outside-portland-ice-facility>; Rachel Sandler, “Four Indicted for Allegedly Burning down Minneapolis Police Station during George Floyd Unrest,” *Forbes*, August 25, 2020, <https://www.forbes.com/sites/rachel-sandler/2020/08/25/four-indicted-for-allegedly-burning-down-minneapolis-police-station-during-george-floyd-unrest/>; Hannah Allam and Jim Urquhart, “Antifa Activist Killed at ICE Jail Becomes Symbol for the Right and Left,” *NPR*, June 23, 2020, <https://www.npr.org/2020/07/23/893533916/i-am-antifa-one-activist-s-violent-death-became-a-symbol-for-the-right-and-left>.

⁵ Jennifer A. Kingson, “Exclusive: \$1 Billion-Plus Riot Damage Is Most Expensive in Insurance History,” *Axios*, September 16, 2020, <https://www.axios.com/riots-cost-property-damage-276c9bcc-a455-4067-b06a-66f9db4cea9c.html>.

be used against criminal factions within Antifa. One viable legal mechanism is the Racketeer Influenced and Corrupt Organizations (RICO) Act, which was created to combat organized crime. This thesis analyzed how the RICO statute has been applied to a variety of criminal enterprises and how might it be applied to prosecute Antifa.

The research conducted for this thesis about Antifa demonstrates how it has evolved from a punk-rock group opposing white supremacist groups at concerts to a structured enterprise with an ideology opposing far-right politics and social injustice. Some U.S.-based Antifa groups have formed a national network named the Torch Network, which currently boasts 10 chapters. Some of the most prominent groups include Rose City Antifa based in Portland, Oregon, and Sacramento Antifa based in Sacramento, California. Research into Antifa reveals that some Antifa groups resemble organizations, dispelling claims that Antifa is merely an ideology. Some groups, for example, actively recruit members on their websites and ask for donations to support their local and national chapters.

Further, some Antifa members have committed criminal acts during protests in the name of anti-fascism. Despite the economic destruction caused nationally during the protests and Antifa's continual involvement in criminal acts, not much has been done to hold the group accountable. As noted, local and federal prosecution has failed to deter the groups' persistent criminal activities, leading some prominent politicians to label Antifa groups domestic terrorist organizations. Notably, however, there is no current process for designating a terrorist organization operating within the country as a *domestic* terrorist organization.⁶ The potential violation of civil rights and liberties protected under the First Amendment prevents such a designation and explains why the federal government has not taken such a step.

The RICO Act offers one potential option to address Antifa, but doing so presents opportunities and challenges. The RICO Act was created to combat the Italian Mafia, considered a criminal organization, targeting both the leadership and members for crimes

⁶ Francesca Laguardia, "Considering a Domestic Terrorism Statute and Its Alternatives," *Northwestern University Law Review* 114, no. 4 (2020): 1061–99.

committed in furtherance of the organization.⁷ Over the years, the act has been used for other forms of illegal enterprises. To violate the RICO Act, the prosecution must establish that a group of individuals who are part of an enterprise or association-in-fact enterprise has been involved in a pattern of racketeering, which involves committing two of 27 listed crimes within 10 years, and that the pattern of racketeering had an effect on interstate or foreign commerce.⁸

A review of the literature finds that opponents of the RICO Act consider it unconstitutional because prosecutions overstep the act's intended use and interfere with state jurisdiction. Proponents of the RICO Act argue that its established framework has been instrumental in defeating organized crime. This same framework can be used to combat other criminal enterprises because its stricter penalties can also serve as a deterrent to associating with or contributing to the growth of an illegal enterprise. Opponents argue that the act should not be applied to groups who are not economically motivated. Although the act was challenged under that presumption, the First Circuit Court of Appeals in *United States v. Nascimento* ruled that an economic motive is not required and that there is no distinction in the RICO Act between economic and non-economic enterprises.⁹ Another argument made by opponents is that the RICO Act may violate the First Amendment if applied to combat protest groups. The U.S. Supreme Court, though, has ruled that there is a distinction between First Amendment rights and criminal activity when advocating a group's ideological beliefs.¹⁰

Through the years, the RICO Act has been used to address forms of illegal enterprises other than the Italian Mafia. The RICO Act carries strict penalties that have proven instrumental in combating many types of organized crime, including criminal street gangs, white supremacist groups, and other non-traditional groups—groups similar to criminal Antifa groups. While opponents contest the RICO Act's validity, the U.S.

⁷ Nathan Koppel, "They Call It RICO, and It Is Sweeping," *Wall Street Journal*, January 20, 2011, <https://www.wsj.com/articles/SB10001424052748704881304576094110829882704>.

⁸ Racketeer Influenced and Corrupt Organizations, 18 U.S.C. § 1961 (1970).

⁹ *United States v. Nascimento*, 491 F.3d 25 (1st Cir. 2007).

¹⁰ *United States v. Dickens*, 695 F.2d 765 (3d Cir. 1982).

Supreme Court has already determined its legality, reaffirming that the act is a viable option for combating a variety of criminal enterprises. The RICO Act is superior to pursuing local criminal prosecutions because it was created to target leadership and members for crimes committed in furtherance of an organization with the goal of dismantling illegal enterprises as opposed to merely punishing them.

In this context, this thesis concludes that the RICO Act can be applied to Antifa because its groups have existed for a prolonged period. Antifa has loosely affiliated groups that work together through chapters as part of a national network, and the groups persist after committing crimes during protests. All these factors contribute to Antifa's being classified as an "enterprise association-in-fact," one element that allows it to be prosecuted under the RICO statute. In addition, the pattern of crimes, arson, and murder, for example, committed by Antifa members comprises predicate acts under RICO akin to criminal activities committed by gangs and white supremacy groups. The combination of these factors, the de minimis effect on interstate commerce required, and no need to consider economic gains by the criminal enterprise support the validity of applying the RICO Act to Antifa groups.

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Finally, I dedicate this thesis to my mother, Toribia Soto, who struggled to raise three children as a single mother. She managed to keep our family together through tough times and made sure we all succeeded in life.

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I. INTRODUCTION

The death of George Floyd at the hands of law enforcement triggered massive protests throughout the United States.¹ The death, which was perceived to be racially motivated by some civil rights activists, such as the Black Lives Matter group, sparked a national focus on racial injustice.² The Breonna Taylor outcome added controversy to the issue and set off a resurgence of social injustice protests throughout the country because the grand jury brought no charges against the officers involved in her fatal shooting.³ Protests intended to highlight police reform typically start peacefully, yet they occasionally turn violent because of the involvement of such anarchists as Antifa.⁴

Evidence supports the involvement of Antifa in the destruction caused by 2020s protests. The destruction caused nationally during these protests is estimated to total \$1–\$2 billion in insurance claims.⁵ Antifa’s members have been suspected and, in some instances, arrested for some of the crimes that occurred during the protests. In September 2020, for example, 11 Antifa members were arrested in Portland, Oregon, for vandalizing an Immigration and Customs Enforcement facility during a protest.⁶ On March 11, 2021, an Antifa member was arrested for felony first-degree criminal mischief and resisting arrest

¹ Elliot McLaughlin, “George Floyd’s Death Ignited a Racial Reckoning That Shows No Signs of Slowing Down,” CNN, August 9, 2020, <https://www.cnn.com/2020/08/09/us/george-floyd-protests-different-why/index.html>.

² “Rest in Power, Beautiful,” Black Lives Matter, accessed October 18, 2020, <https://blacklivesmatter.com/rest-in-power-beautiful/>.

³ Terri Cullen and Adam Jeffrey, “Protests Erupt around the Nation after Breonna Taylor Grand Jury Decision in Kentucky,” CNBC, September 24, 2020, <https://www.cnbc.com/2020/09/24/breonna-taylor-case-protests-erupt-after-kentucky-grand-jury-decision.html>.

⁴ Neil MacFarquhar, “Many Claim Extremists Are Sparking Protest Violence. But Which Extremists?,” *New York Times*, June 22, 2020, <https://www.nytimes.com/2020/05/31/us/george-floyd-protests-white-supremacists-antifa.html>; Kyle Shideler, “The Real History of Antifa,” *American Mind*, June 3, 2020, <https://americanmind.org/essays/the-real-history-of-antifa/>. Antifa is the anti-fascist group that formed in the United States in the 1980s in opposition to neo-Nazi and white supremacist groups.

⁵ Jennifer A. Kingson, “Exclusive: \$1 Billion-Plus Riot Damage Is Most Expensive in Insurance History,” *Axios*, September 16, 2020, <https://www.axios.com/riots-cost-property-damage-276c9bcc-a455-4067-b06a-66f9db4cea9c.html>.

⁶ Andy Ngo and Mia Cathell, “11 Arrested at Violent Antifa Protest outside Portland Ice Facility,” *Post Millennial*, September 21, 2020, <https://thepostmillennial.com/11-arrested-at-violent-antifa-protest-outside-portland-ice-facility>.

for breaking into a local bank in Portland. He was booked and released within hours of his arrest. Later that night, the same Antifa member was arrested again for assaulting a peace officer and participating in a violent riot.⁷ Local prosecutions of Antifa groups have not deterred some of the groups' persistent criminal activities during protests. For the 11 arrested in Portland, many of their cases were not even filed in criminal court.

Section 219 of the Immigration and Nationality Act outlines how *foreign* terrorist organizations are designated federally. Once an organization receives this designation, anyone who offers material support to the group can be prosecuted, and the group's assets can be forfeited.⁸ Such prosecutions can assist law enforcement in suppressing the group's growth and influence. No legislative or policy mechanism has been established, however, to designate and prosecute *domestic* terrorist groups like Antifa. The potential violation of civil rights and liberties under the First Amendment that such a designation might impose explains the federal government's reticence to pursue legislation. The First Amendment protects free speech and the right to assemble peaceably to protest the government. Consequently, monitoring the funding and support that domestic terrorist groups receive is difficult without the federal designation afforded to foreign terrorist organizations. With continual funding and support, domestic groups can continue to recruit and spread throughout the United States.

The federal Racketeer Influenced and Corrupt Organizations (RICO) Act offers one potential option to address Antifa, but doing so presents opportunities and challenges. Over the years, RICO has been used effectively for other forms of illegal enterprises, such as gangs. In his thesis, Gene Ryerson concludes that the RICO Act is a powerful tool in combating gang problems where "weak anti-gang laws or unaggressive state court attorneys" exist.⁹ Nevertheless, one of the obstacles federal prosecutors encounter when

⁷ Andy Ngo and Mia Cathell, "Montana Man Arrested Twice within Hours at Portland Riots Is an Antifa Member," Post Millennial, March 12, 2021, <https://thepostmillennial.com/montana-man-arrested-twice-within-hours-at-portland-riots-is-an-antifa-member>.

⁸ "Foreign Terrorist Organizations," Department of State, accessed October 4, 2020, <https://www.state.gov/foreign-terrorist-organizations/>.

⁹ Gene W. Ryerson, "RICO: Analyzing the Use of Federal Law to Combat Local Gang Problems" (master's thesis, Naval Postgraduate School, 2019), 45, <http://hdl.handle.net/10945/64057>.

applying the RICO Act to non-traditional groups, such as extremists, is trying to classify them as criminal enterprises due to the clandestine nature of their operations. Another issue is that groups committing criminal activity without profiting from their crimes can make RICO difficult to prosecute. As Mathew Blumenstein argues, non-economic groups should not be prosecuted under RICO unless the groups have had a substantial effect on interstate commerce.¹⁰ Since Antifa's crimes are not committed for the purpose of profit, Antifa is a non-economic group. Therefore, prosecutors would have to prove that Antifa has disrupted interstate commerce to apply the RICO Act.

Despite the economic destruction caused nationally during the recent police reform protests and Antifa's continual involvement in criminal acts, not much has been done to hold the group accountable. Local courts have been used ineffectively to prosecute the group, and a federal designation of domestic terrorist organization is not available. Perhaps the use of the RICO Act offers a solution. This thesis analyzes how the RICO Act has been applied to other criminal enterprises, examines other groups' similarity to Antifa, and assesses how RICO can be applied to prosecute this group.

A. RESEARCH QUESTION

How has the RICO statute been applied to criminal enterprises that are similar to Antifa, and how might it be applied to prosecute Antifa?

B. RESEARCH DESIGN

To answer the research question, I used a combination of two qualitative research methods: legal analysis and case studies. First, after introducing the history of Antifa, examining the domestic terrorist designation, and reviewing the RICO Act, this thesis presents a legal analysis. The analysis focuses on the RICO Act's application to non-economic enterprises and the related First Amendment issues involved when the RICO Act is applied to protest groups. I used primary sources to analyze previous applications of the RICO Act for non-economic enterprises and protest groups.

¹⁰ Matthew H. Blumenstein, "RICO Overreach: How the Federal Government's Escalating Offensive against Gangs Has Run Afoul of the Constitution," *Vanderbilt Law Review* 62, no. 1 (January 2009): 211–38.

For example, in *Waucaush v. United States*, the Sixth Circuit Court held that a significant effect on interstate commerce is required for the RICO Act to be imposed on a non-economic enterprise.¹¹ This decision challenged the application of the act for non-traditional groups. Califa further argues that the RICO Act was not intended to prosecute non-economic crimes, and the use of the act in ideological disputes violates the First Amendment. The contradictory decision in *United States v. Nascimento*, in which the First Circuit Court ruled that only a *de minimis* effect on interstate commerce was needed, reaffirmed the application of the RICO Act for non-traditional groups and continued the debate over the appropriateness of its application to such groups.¹²

Second, this thesis presents case studies of RICO's successful application for non-traditional criminal enterprises. This thesis analyzes RICO in the context of criminal street gangs, white supremacist groups, and other non-traditional criminal enterprises, cases selected because they share similarities with Antifa. For example, white supremacist groups are ideologically based and have loosely affiliated membership like Antifa. Some criminal street gangs successfully prosecuted under the RICO Act have been deemed non-economic, another characteristic shared with Antifa. Other non-traditional criminal enterprises, such as pro-life groups and environmental groups, have challenged the RICO Act's potential violation of First Amendment rights, an issue that might be challenged if the act were applied to Antifa. Some of the sources consulted for this thesis include an article by Cherie Deogracias on the application of the RICO Act for white supremacist organizations in America, Ryerson's thesis on the application of the act for criminal street gangs, and Patricia Barnes's article on the use of the RICO Act for anti-abortion groups.¹³ Analyzing these cases should provide further insight into the potential application of the RICO Act for Antifa.

¹¹ *Waucaush v. United States*, 380 F.3d 251 (6th Cir. 2004).

¹² *United States v. Nascimento*, 491 F.3d 25, 27 (1st Cir. 2007).

¹³ Cherie L. Deogracias, "Race, Reconstruction, and the RICO Act: Using the Racketeer Influenced and Corrupt Organizations (RICO) Act in Prosecutions against White Supremacist Organizations in America," *University of Maryland Law Journal of Race, Religion, Gender and Class* 20, no. 2 (2020): 306–38; Ryerson, "Use of Federal Law to Combat Local Gang Problems"; Patricia G. Barnes, "Civil Disobedience and Civil RICO: Anti-Abortionists as Racketeers," *West Virginia Law Review* 93, no. 2 (1991): 359–85.

Finally, based on the legal analysis and cases studies, this thesis assesses the viability of the RICO Act in prosecuting Antifa. It also provides recommendations for applying the RICO Act to Antifa based on prior court rulings and current applications to similar groups such as white supremacists and criminal street gangs.

C. CHAPTER OVERVIEW

Chapter II offers a background on Antifa, from its early beginnings to its current structure in the United States. It also examines some crimes committed by Antifa's members and the legal actions taken against them. The chapter concludes with a section on the challenges with a domestic terrorist designation in the United States and the legal action that could be used to combat Antifa. Chapter III encompasses an overview of the RICO Act, a review of scholarly literature, the application of the RICO Act to non-economic criminal enterprises, and First Amendment issues with the application of the RICO Act to protest groups. Chapter IV includes findings on the feasibility of applying the RICO Act to Antifa—a non-traditional application of the RICO Act. Chapter V concludes with recommendations for future investigations and research, as well as final thoughts on the topic.

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II. BACKGROUND ON ANTIFA AND THE LEGAL ACTION TAKEN OR CONSIDERED TO COMBAT IT

According to the Congressional Research Service, Antifa's ideology originated in the United States around 1980. Antifa's primary philosophy is to counter anything its group members deem to be fascist or white supremacist. Antifa also vows not to cooperate with law enforcement and to use violence as a tactic during protests.¹⁴ Antifa gained national attention in February 2017 when it protested a planned appearance by right-wing commentator Milo Yiannopoulos at the University of California, Berkeley. The group demanded that the college cancel the appearance because of Yiannopoulos's anti-immigrant, anti-transgender rhetoric.¹⁵ During the protest, the group caused \$100,000 in damage when it used a Molotov cocktail to start a fire, and its members assaulted two Berkeley College Republicans.¹⁶ Antifa continued its violent tactics in 2020, attending many social justice-motivated protests after the killing of George Floyd.¹⁷ The destruction caused nationally in 2020 during these protests has been estimated at \$1–\$2 billion in insurance claims.¹⁸

Antifa's violent reputation and destructive nature caught the attention of the federal government. During his tenure, President Trump (2017–2021) vowed to designate Antifa as a domestic terrorist group.¹⁹ As of this writing, there is no legislative or policy mechanism for such a designation, as explored later in this chapter. Christopher Wray, former director of the Federal Bureau of Investigation (FBI), contradicted President

¹⁴ Lisa N. Sacco, *Antifa—Background*, CRS Report No. IF10839, version 2 (Washington, DC: Congressional Research Service, 2018), <https://crsreports.congress.gov/product/pdf/IF/IF10839/2>.

¹⁵ Andrew Marantz, "How Social-Media Trolls Turned U.C. Berkeley into a Free-Speech Circus," *New Yorker*, July 2, 2018, <https://www.newyorker.com/magazine/2018/07/02/how-social-media-trolls-turned-uc-berkeley-into-a-free-speech-circus>.

¹⁶ Madison Park and Kyung Lah, "Berkeley Protests of Yiannopoulos Caused \$100,000 in Damage," CNN, February 2, 2017, <https://www.cnn.com/2017/02/01/us/milo-yiannopoulos-berkeley/index.html>.

¹⁷ McLaughlin, "George Floyd's Death Ignited a Racial Reckoning."

¹⁸ Kingson, "\$1 Billion-Plus Riot Damage."

¹⁹ "Amid Protests, Trump Says He Will Designate Antifa as Terrorist Organization," Reuters, May 31, 2020, <https://www.reuters.com/article/uk-minneapolis-police-trump-antifa-idUKKBN2370LP>.

Trump’s claim at the time by stating that Antifa was not an organization but an ideology.²⁰ He concluded the group comprised members who shared a common ideology that employed violence as a tool for civil disorder.

This contradiction of characterization has led some to question whether Antifa is an ideology or an organization. The distinction matters if law enforcement is to prosecute the organization as a criminal enterprise. Thus, what is Antifa, and how has it garnered the attention of the federal government? This chapter begins with a review of Antifa’s origins, its inception in the United States, and the group’s current ideologies.

A. EARLY BEGINNINGS

The anti-fascist movement arose in the 1930s in Italy and Germany in opposition to fascist regimes.²¹ This movement was established to oppose the National Fascist Party led by Benito Mussolini and the National Socialist German Workers’ Party, or Nazi Party, led by Adolf Hitler.²² The first militant anti-fascist group to resist Mussolini was the *Adriti del Popolo* (People’s Daring Ones) in 1921. The group had approximately 20,000 members who opposed fascist activities.²³ The anti-fascist movement spread across Europe, most notably to England, where groups such as the Zionist League of Jewish Youth, the Jewish United Defense Association, and the Communist Party of Great Britain formed in opposition to the growth of fascist groups after World War II.²⁴ In France, SOS Racisme, the Red Warriors, RÉFLEX, and SCALP were formed to combat racism and fascism.²⁵ While their names differed, their opposition to racism and fascism was virtually identical.

²⁰ Eric Tucker and Ben Fox, “FBI Director Says Antifa Is an Ideology, Not an Organization,” AP News, September 17, 2020, <https://apnews.com/article/donald-trump-race-and-ethnicity-archive-bdd3b6078e9efadcfcd0be4b65f2362e>.

²¹ Troy Whitford, “Explainer: What Is Antifa, and Where Did It Come From?,” Conversation, August 29, 2017, <http://theconversation.com/explainer-what-is-antifa-and-where-did-it-come-from-82977>.

²² *Encyclopedia Britannica*, s.v. “fascism,” accessed October 6, 2020, <https://www.britannica.com/topic/fascism>.

²³ Mark Bray, *Antifa: The Anti-Fascist Handbook* (Brooklyn: Melville House Publishing, 2017).

²⁴ Bray.

²⁵ Bray.

The anti-fascist movement in the United States sprung up in the 1980s even though the country had not experienced a period with a formally fascist government.²⁶ Nevertheless, American-based anti-fascist philosophy has opposed authoritarianism, right-wing extremism, and white supremacy, which have a long history in American society and politics.²⁷ Militant Antifa members in the United States have based their ideology on historical events such as slavery, confrontations with the Ku Klux Klan, social injustices, and the growth of American fascism.²⁸ Antifa traces its origins to Anti-Racist Action (ARA), which comprised loosely formed units opposed to neo-Nazi and white supremacist groups.²⁹ ARA is said to have emerged from a punk-rock band called The Baldies out of Minneapolis, Minnesota.³⁰ ARA opposed white-supremacist punk bands that victimized people of color, homosexuals, and anti-racist members at punk-rock shows.³¹ The Baldies frequently clashed with The White Knights, a white supremacist group that denigrated minority populations.³² Several other Antifa groups began to form throughout the country after the inception of ARA to combat the proliferation of white supremacist groups in the late eighties.³³

Through the years, how anti-fascist groups define fascism has varied. One core principle is resistance to ultra-nationalism. As explained by Nigel Copsey and Samuel Merrill in their article “Violence and Restraint within Antifa,” Antifa perceives fascism as “‘a slippery animal’ [that] tends to be approached more in terms of everyday ‘reactionary’ social forces and tendencies, such as racism, anti-Semitism, Islamophobia, sexism,

²⁶ Lisa N. Sacco, *Are Antifa Members Domestic Terrorists? Background on Antifa and Federal Classification of Their Actions*, CRS Report No. IF10839, version 4 (Washington, DC: Congressional Research Service, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF10839/4>.

²⁷ Shideler, “The Real History of Antifa.”

²⁸ Stanislav Vysotsky, *American Antifa: The Tactics, Culture, and Practice of Militant Antifascism* (New York: Routledge, 2021).

²⁹ Shideler, “The Real History of Antifa.”

³⁰ Southern Poverty Law Center, “Roots of the ARA,” *Intelligence Report*, May 16, 2013, <https://www.splcenter.org/fighting-hate/intelligence-report/2013/roots-ara>.

³¹ Southern Poverty Law Center.

³² Bray, *The Anti-Fascist Handbook*.

³³ Southern Poverty Law Center, “Roots of the ARA.”

homophobia, transphobia, the scapegoating and marginalizing of oppressed groups, and police brutality.”³⁴ Its primary focus has been to oppose the political far-right movement.

B. ANTIFA OF THE 21ST CENTURY

American Antifa displayed militant tactics for the first time in 2002, when several of its groups donned black clothing and masks to confront white supremacist groups gathered in York, Pennsylvania. The tactic of donning black clothing and masks, known as “black bloc,” had been used by Antifa groups in Europe for several years to conceal members’ identities. On January 12, 2002, Matt Hale, chief of the Neo-Nazi World Church of the Creator, organized a rally at Martin Memorial Library attended by several white supremacist groups. That day saw Antifa and white supremacists clashing in the streets and garnering national attention.³⁵ Members of Antifa groups throughout the United States have gathered and employed the black bloc tactic to confront white supremacist groups.³⁶

ARA went on to form the Torch Network, or Torch Antifa, on October 19, 2013.³⁷ Torch describes itself as “a network of Militant antifascists across (but not limited to) the United States.”³⁸ The group interprets fascism as “an ultra-nationalist ideology that mobilizes around and glorifies a national or perceived racial identity, valuing this identity above all other interests (for example, gender or class).”³⁹ Torch currently has no known national leader. To be part of the Torch Network, Antifa groups must adopt the following “five points of unity”:

1. We disrupt fascist and far right organizing and activity.
2. We don’t rely on the cops or courts to do our work for us. This does not mean we never go to court, but the cops uphold white supremacy and

³⁴ Nigel Copsey and Samuel Merrill, “Violence and Restraint within Antifa: A View from the United States,” *Perspectives on Terrorism* 14, no. 6 (2020): 126–27.

³⁵ Mike Argento et al., “In 2002, Protests Prompted by Hate Group’s Visit Turned Violent on York Streets,” *York Daily Record*, August 13, 2017, <https://www.ydr.com/story/archives/2017/08/13/2002-protests-prompted-hate-groups-visit-turned-violent-york-streets/563511001/>.

³⁶ Dennis B. Roddy, “York Street Fighting between Neo-Nazis, Anti-Racists Leads to 25 Arrests,” *Post-Gazette*, January 13, 2002, <https://old.post-gazette.com/regionstate/20020113yorkriot0113p5.asp>.

³⁷ “History,” Torch Network, accessed October 26, 2020, <https://torchantifa.org/history/>.

³⁸ “About,” Torch Network, accessed October 20, 2020, <https://torchantifa.org/about/>.

³⁹ Torch Network.

the status quo. They attack us and everyone who resists oppression. We must rely on ourselves to protect ourselves and stop the fascists.

3. We oppose all forms of oppression and exploitation. We intend to do the hard work necessary to build a broad, strong movement of oppressed people centered on the working class against racism, sexism, nativism, anti-Semitism, Islamophobia, homophobia, transphobia, and discrimination against the disabled, the oldest, the youngest, and the most oppressed people. We support abortion rights and reproductive freedom. We want a classless, free society. We intend to win!
4. We hold ourselves accountable personally and collectively to live up to our ideals and values.
5. We not only support each other within the network, but we also support people outside the network who we believe have similar aims or principles. An attack on one is an attack on all.⁴⁰

The Torch Network has expanded to 10 chapters across the United States.⁴¹ Most of the groups affiliated with the network have donation or support tabs on their websites for those who might contribute financially to the group. Under Antifa Sacramento's donation tab, for example, the chapter states that some of the funding is directed toward the "national network" (Torch Network).⁴² Most of the chapters' websites claim that the groups have no members, yet the websites provide instructions to contact the groups to "get involved." Rose City Antifa, however, acknowledges its membership in stating that group involvement is "closed to members," but one may send an email to be considered for group acceptance.⁴³

In 2014, the Torch Network held its first annual conference in Chicago. Torch advertised the conference as "the time and place in which the TORCH network strategizes for not only internal growth but for our resistance against fascism, white supremacy, and the Far-right."⁴⁴ A "private day" was set aside in 2018 at the fifth annual conference for

⁴⁰ "Points of Unity," Torch Network, accessed October 20, 2020, <https://torchantifa.org/points-of-unity/>.

⁴¹ "Chapters," Torch Network, accessed October 20, 2020, <https://torchantifa.org/chapters/>.

⁴² "Donate," *Antifa Sacramento* (blog), accessed September 14, 2021, <https://antifasac.blackblogs.org/donate/>.

⁴³ "About," Rose City Antifa, accessed October 20, 2020, <https://rosecityantifa.org/about/>.

⁴⁴ "2014 Torch Antifa Conference a Success," *Turning the Tide* 27, no. 4 (October 2014): 6.

Torch Network chapters to gather with “vetted potential” members to discuss the national network, membership, particular operations, and chapter policies.⁴⁵

In terms of leadership, one could deduce from the intricacies involved in hosting various Antifa group websites, fundraising to support such groups, and planning annual Antifa conferences that there must be a hierarchy to Antifa. Another indicator of Antifa leadership is the use of *affinity groups* during demonstrations and riots, defined as “the essential building block of an anarchist organization.”⁴⁶ Affinity groups comprise Antifa members who come together during demonstrations. Several affinity groups assembled during a demonstration are called a cluster. As CrimethInc., a decentralized anarchist collective of autonomous cells, states,

The cluster formation enables a larger number of individuals to act with the same advantages a single affinity group has. If speed or security is called for, representatives of each group can meet ahead of time, rather than the entirety of all groups; if coordination is of the essence, the groups or representatives can arrange methods for communicating through the heat of the action.⁴⁷

The perception that Antifa does not have a hierarchical structure is a well-planned tactic. Kyle Shideler explains in his article on Antifa’s history that “these methods are no less organized for being non-hierarchical and help Antifa avoid police and law enforcement investigations, as well as preserve the above-ground support structures from facing criminal consequences for the acts they enable.”⁴⁸ Perhaps Antifa is using the idea of leaderless resistance to shield participants and leaders from legal action.⁴⁹ Clandestine

⁴⁵ Torch Network, “Announcing the 5th Annual Torch Network Conference,” It’s Going Down, June 22, 2018, <https://itsgoingdown.org/announcing-the-5th-annual-torch-network-conference/>.

⁴⁶ “How to Form an Affinity Group: The Essential Building Block of Anarchist Organization,” CrimethInc., February 6, 2017, <https://crimethinc.com/2017/02/06/how-to-form-an-affinity-group-the-essential-building-block-of-anarchist-organization>.

⁴⁷ CrimethInc.

⁴⁸ Shideler, “The Real History of Antifa.”

⁴⁹ Matthew M. Sweeney, “Leaderless Resistance and the Truly Leaderless: A Case Study Test of the Literature-Based Findings,” *Studies in Conflict & Terrorism* 42, no. 7 (2019): 617–35, <https://doi.org/10.1080/1057610X.2017.1407480>. Sweeney describes *leaderless resistance* as the strategy or tactic of an extremist organization.

operations by the group, which include black bloc tactics to conceal identities, safeguard the members from identification and prosecution.

Through the years, Antifa groups and members have been involved in several violent and destructive incidents. Most recently, these violent incidents reflect Antifa's ideology of opposing far-right politics and social injustices. Some of the hostilities have been directed at law enforcement and federal agencies.

- In July 2019, Willem Van Spronsen, an admitted Antifa member, orchestrated a violent attack at a U.S. Immigration and Customs Enforcement (ICE) facility in Takoma, Washington.⁵⁰ Van Spronsen set fire to vehicles, threw Molotov cocktails at the facility, and had a shootout with ICE agents, resulting in his death. In a letter, Van Spronsen had written that detention camps were “abominations” and that he would not be “standing by.”⁵¹
- In May 2020, three Antifa members were arrested by the FBI in Austin, Texas, for looting, burglarizing, and damaging property at a local Target retailer.⁵² The crimes occurred during an Abolish the Police protest after George Floyd's death. The crimes were allegedly planned and tactically coordinated via an Antifa social media account.
- In August 2020, Antifa Sacramento organized a Solidarity with Kenosha protest in downtown Sacramento. The group protested the shooting of African American Jacob Blake during a domestic violence incident on August 23, 2020, and demanded the police force be abolished.⁵³ As a

⁵⁰ Hannah Allam and Jim Urquhart, “Antifa Activist Killed at ICE Jail Becomes Symbol for the Right and Left,” NPR, June 23, 2020, <https://www.npr.org/2020/07/23/893533916/i-am-antifa-one-activist-s-violent-death-became-a-symbol-for-the-right-and-left>.

⁵¹ Allam and Urquhart.

⁵² Ian Miles Cheong, “FBI Arrests Three Antifa Members for Looting Target Store in Austin,” Post Millennial, June 8, 2020, <https://thepostmillennial.com/fbi-arrests-three-antifa-austin-target-looting>.

⁵³ Katy Grimes, “Antifa Rioters Again Leave Destruction in Downtown Sacramento,” *California Globe*, August 28, 2020, <https://californiaglobe.com/section-2/sacramento-antifa-rioters-leave-destruction-in-downtown-sacramento-again/>.

result of the three days of protests, several government buildings and small businesses were vandalized and set on fire.⁵⁴ These events had been coordinated through Antifa Sacramento's social media sites, where members were instructed to wear masks and black clothing, a common tactic for Antifa groups.

- In August 2020, an Antifa member murdered Aaron Danielson during a pro-Trump rally in Portland. Michael Reinoehl, an admitted Antifa member, allegedly shot Danielson in the chest because of the latter's affiliation with a far-right group. Police later shot Reinoehl while attempting to arrest him for the murder.⁵⁵ This incident was the most violent act committed by an Antifa member.
- In September 2020, 11 Antifa members were arrested in Portland for vandalizing an ICE facility during a protest.⁵⁶ The group had been displeased with the mayor's apparent refusal to defund the Portland Police Department.

Antifa has evolved from a punk-rock group opposing white supremacist groups at concerts to a group with an ideology opposing far-right politics and social injustices. Antifa's entrance into the George Floyd protests—leading to clashes with law enforcement and federal agencies—gained the attention of some political leaders, such as Senator Ted Cruz and former President Donald Trump, both of whom called for Antifa to be criminally prosecuted and designated as a domestic terrorist organization.⁵⁷ The following sections

⁵⁴ Grimes.

⁵⁵ Eileen AJ Connelly, "Antifa-Linked Portland Shooter Appeared to Target Victim, Images Show," *New York Post*, September 5, 2020, <https://nypost.com/2020/09/05/antifa-shooter-michael-reinoehl-appeared-to-target-victim-photos/>.

⁵⁶ Ngo and Cathell, "11 Arrested at Violent Antifa Protest."

⁵⁷ Reuters, "Trump Says He Will Designate Antifa as Terrorist Organization"; "Sen. Cruz: Open an Investigation into Antifa, a Left-Wing Anarchist Terrorist Organization," Official website of Senator Ted Cruz, July 23, 2019, https://www.cruz.senate.gov/?p=press_release&id=4603.

cover the feasibility of a domestic terrorist designation and legal actions that have been used to combat Antifa.

C. DOMESTIC TERRORIST DESIGNATION

President Trump’s proclaimed desire to designate Antifa as a domestic terrorist organization has opened the debate surrounding the U.S. government’s authority to do so. To date, such designations are available only for foreign terrorist organizations under section 219 of the Immigration and Nationality Act.⁵⁸ This section requires the following: “(A) the organization is a foreign organization; (B) the organization engages in terrorist activity. . . ; [and] (C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.”⁵⁹ There are currently 69 terrorist organizations designated by the Bureau of Counterterrorism, which is part of the Department of State.⁶⁰

After an organization is labeled a foreign terrorist organization (FTO), there are legal ramifications. One law prohibits “person [s] in the United States or subject to the jurisdiction of the United States [from] knowingly provid [ing] ‘material support or resources’ to a designated FTO.”⁶¹ Another law states that “representatives and members of a designated FTO, if they are aliens, are inadmissible to and, in certain circumstances, removable from the United States.”⁶² A third law requires that “any U.S. financial institution that becomes aware that it has possession of or control over funds in which a designated FTO or its agent has an interest must retain possession of or control over the funds and report the funds to the Office of Foreign Assets Control of the U.S. Department of the

⁵⁸ Designation of Foreign Terrorism Organizations, 8 U.S.C. § 1189 (1996).

⁵⁹ Designation of Foreign Terrorism Organizations, § 1189(a)(1).

⁶⁰ Department of State, “Foreign Terrorist Organizations.”

⁶¹ Department of State, “Foreign Terrorist Organizations.” See also Providing Material Support or Resources to Designated Foreign Terrorist Organizations, 18 U.S.C. § 2339B (1990).

⁶² Department of State, “Foreign Terrorist Organizations.” See also Inadmissible Aliens, 8 U.S.C. § 1182 (2020).

Treasury.”⁶³ Thus, these laws help law enforcement combat terrorism by reducing the funding and support provided to FTOs.

Research reveals that no current process exists for designating a group as a domestic terrorist organization.⁶⁴ The potential violation of civil rights and liberties under the First Amendment that such a designation might impose explains the federal government’s reticence to pursue legislation. The First Amendment protects free speech and the right to assemble peaceably to protest the government. Opposing social injustices and right-wing politics, Antifa protests throughout the country, a right afforded by the First Amendment. However, when militant Antifa members cross the line of civility into criminality during protests, they pique the attention of policymakers and garner calls for a domestic terrorist designation.⁶⁵ In 2019, Republican Senators Bill Cassidy and Ted Cruz introduced a non-binding resolution (S. Res. 279) calling for the designation of Antifa as a domestic terrorist group.⁶⁶ If passed, this designation would express the Senate’s opinion but result in no negative legal consequences for followers of Antifa. In other words, the non-binding resolution would be solely a political stance against the group.

It would be difficult for law enforcement to monitor the funding and support that domestic terrorists receive without the federal designation afforded to FTOs. Once a foreign terrorist organization receives a federal designation, several enumerated laws on terrorism, under title 18, chapter 113B, of the *U.S. Code*, assist with combating these organizations. One such section, 18 U.S.C. § 2339, prohibits providing material support to a designated FTO.⁶⁷ No such law exists for domestic terrorist groups. Thus, with continual funding and support, domestic terrorist groups may continue to recruit and spread throughout the United States.

⁶³ Department of State, “Foreign Terrorist Organizations.”

⁶⁴ Francesca Laguardia, “Considering a Domestic Terrorism Statute and Its Alternatives,” *Northwestern University Law Review* 114, no. 4 (2020): 1061–99.

⁶⁵ A Resolution Calling for the Designation of Antifa as a Domestic Terrorist Organization, S. Res. 279, 116th Cong. (2019).

⁶⁶ A Resolution Calling for the Designation of Antifa as a Domestic Terrorist Organization.

⁶⁷ Providing Material Support to Terrorists, 18 U.S.C. § 2339A (2009).

The federal government has no legal process to designate domestic terrorist organizations nor roster of domestic terrorist groups to help law enforcement control their spread. The possible violation of First Amendment rights might account for the government's restraint in enabling such a designation. Conversely, such a designation for FTOs assists the United States in its counterterrorism efforts. The absence of a formal domestic terrorist designation process makes it difficult for federal, state, and local governments to combat such groups and bring public awareness to the threat that domestic terrorists present.

D. POSSIBLE LEGAL ACTIONS TO COMBAT ANTIFA

Local law enforcement has faced numerous challenges when addressing crimes committed during protests. Prosecutions of protest-related crimes during recent periods of social unrest have been few. Cases have been dropped due to a lack of evidence, the overwhelming nature of the criminal justice system, and some offices' unwillingness to pursue criminal filings. In April 2021, from its analysis of law enforcement records, the *Guardian* revealed that in a dozen jurisdictions, an astonishing 90 percent of cases against protestors arrested by officers were not pursued in court.⁶⁸ For example, in Dallas, 95 percent of cases were not filed because of the Dallas Police Department's unwillingness to pursue them; in Philadelphia, 95 percent of filed charges were dropped by the district attorney; and in Minneapolis, more than 90 percent of cases were dropped because the court system was overwhelmed, with prosecutors instead opting to pursue cases against other criminal defendants.⁶⁹ In Portland, where Antifa had a strong presence during

⁶⁸ Tom Perkins, "Most Charges against George Floyd Protesters Dropped, Analysis Shows," *Guardian*, April 17, 2021, <http://www.theguardian.com/us-news/2021/apr/17/george-floyd-protesters-charges-citations-analysis>; Cassandra Jaramillo and Hayat Norimine, "Dallas Police Chief Renee Hall Says Protesters Who Marched on Margaret Hunt Hill Bridge Will Not Be Charged," *Dallas Morning News*, June 5, 2020, <https://www.dallasnews.com/news/courts/2020/06/04/dallas-police-chief-renee-hall-says-protesters-who-marched-on-margaret-hunt-hill-bridge-will-not-be-charged/>.

⁶⁹ Perkins, "Most Charges against George Floyd Protesters Dropped."

protests starting in May 2020, 91 percent of protest arrests have not been prosecuted.⁷⁰ The majority of cases presented by arresting agencies were rejected by the district attorney in the interest of justice.⁷¹

While most of the crimes committed during protests have not been prosecuted, some individual Antifa members have been successfully prosecuted at the local level using state criminal statutes. These prosecutions were pursued because of the severity of the crimes involved. For example, in October 2019, David Campbell, an alleged Antifa member, was sentenced to 18 months in jail for crimes he committed during a right-wing-sponsored event in New York.⁷² Campbell attacked a 56-year-old man and assaulted a police officer at the event. Later, in November 2019, Gage Halupowski, another alleged Antifa member, was sentenced to six years in prison for a brutal attack in Portland, Oregon. Halupowski used an expandable baton to strike a man over the head, which required 25 staples to treat the man's wounds. In December 2020, 11 Antifa members were charged with conspiracy to commit a riot by the San Diego District Attorney's Office.⁷³ The criminal complaint states that group members organized themselves weeks before a pro-Trump rally in January 2021 in San Diego, California. This case is believed to be the first to use conspiracy charges against alleged members of Antifa.⁷⁴ Finally, a judge dismissed several charges against Alexander Dial, an Antifa member who was arrested in 2019 in

⁷⁰ Neil Giardino, Mack Muldofsky, and Allie Yang, "After a Year of Protests, Portland Residents Have Waning Patience for Antifa," ABC News, May 5, 2021, <https://abcnews.go.com/US/year-protests-portland-residents-waning-patience-antifa/story?id=77511470>; Hannah Lambert, "91% of Portland Protest Arrests Not Being Prosecuted," *Portland Tribune*, January 5, 2021, <https://pamplinmedia.com/pt/9-news/493642-396291-91-of-portland-protest-arrests-not-being-prosecuted>.

⁷¹ "Protest Cases," Multnomah County District Attorney, accessed February 7, 2022, <https://www.mcda.us/index.php/protest-cases>.

⁷² Jon Levine, "Antifa Protester Who Attacked Trump Supporter Pleads Guilty to Assault," *New York Post*, October 5, 2019, <https://nypost.com/2019/10/05/antifa-protester-who-attacked-trump-supporter-pleads-guilty-to-assault/>.

⁷³ Steve Walker and Tanya Sierra, "DA Charges Defendants Responsible for Violent Pacific Beach Incident," Office of the District Attorney, County of San Diego, December 6, 2021, https://www.sdca.org/content/office/newsroom/tempDownloads/1f3e52b7-b8d6-4314-bc7f-362ef57bb209_PB%20Violence%20News%20Release%2012-7-21%20FINAL.pdf.

⁷⁴ Alex Riggins, "DA Charges San Diego, Los Angeles 'Antifa' Groups with Violently Countering P.B. 'Patriot March,'" *San Diego Union-Tribune*, December 6, 2021, <https://www.sandiegouniontribune.com/news/courts/story/2021-12-06/da-charges-san-diego-los-angeles-antifa-groups-that-violently-countered-p-b-patriot-march>.

Portland for assault, rioting, unlawful use of a weapon, and criminal mischief during a right-wing demonstration.⁷⁵ Dial pleaded no contest to the remaining charges—a misdemeanor riot charge and an felony for attempted assault. He was sentenced to three years’ probation and 80 hours of community service.

Prosecutions of individual protestors have also been pursued at the federal level. In August 2020, the U.S. Attorney’s Office reported the prosecution of 74 people in Portland who had committed crimes under the guise of peaceful protest.⁷⁶ The charges included assaults on federal officers, arson, attempted arson, damaging federal government property, failing to obey lawful orders, and unlawful use of a drone. The federal prosecution in Portland targeted crimes committed by individuals. However, there has been no federal indictment of an Antifa group, such as the criminal complaint issued by the San Diego District Attorney’s Office against Antifa, likely due to Antifa’s loose affiliations and clandestine mode of operation. Individual prosecution does not address the problem of criminal Antifa groups that commit crimes during protests because the groups persist despite the prosecution of some members. Groups such as Rose City Antifa, which has been accused of inciting riots and arson during protests in Portland, continue to operate without criminal culpability for all.⁷⁷

Recently, other criminal groups have been named in a federal lawsuit citing the Ku Klux Klan Act, a federal law created to protect Americans from political intimidation.⁷⁸ In December 2021, Karl Racine, the attorney general for Washington, DC, filed a federal complaint against the Proud Boys and Oath Keepers for their involvement in the attack on

⁷⁵ Alex Zielinski, “Judge Dismisses Charges against Portland Activist for 2019 Protest Clashes,” *Portland Mercury*, November 19, 2021, <https://www.portlandmercury.com/blogtown/2021/11/19/37003253/judge-dismisses-charges-against-portland-activist-for-2019-protest-clashes>.

⁷⁶ “74 People Facing Federal Charges for Crimes Committed during Portland Demonstrations,” U.S. Attorney’s Office, District of Oregon, August 28, 2020, <https://www.justice.gov/usao-or/pr/74-people-facing-federal-charges-crimes-committed-during-portland-demonstrations>.

⁷⁷ Giardino, Muldofsky, and Yang, “After a Year of Protests.”

⁷⁸ Erick Trickey, “The 150-Year-Old Ku Klux Klan Act Being Used against Trump in Capitol Attack,” *Washington Post*, February 18, 2021, <https://www.washingtonpost.com/history/2021/02/18/ku-klux-klan-act-capitol-attack/>.

the Capitol on January 6.⁷⁹ The lawsuit listed several individual members of the organizations and the two entire organizations as defendants.⁸⁰ The Ku Klux Klan Act, however, holds violators civilly—not criminally—liable.

Another federal mechanism that could be applied to criminal groups is covered under federal sentencing guidelines, which provide sentencing enhancements for crimes involving terrorism acts transcending national boundaries.⁸¹ One limitation to these enhancements is that they can be applied only upon conviction of a federal crime of terrorism, as defined in 18 U.S.C. § 2332b, if the act violates one of many enumerated federal crimes and if the crime was intended to intimidate, coerce, or retaliate against the government in some way.⁸² Otherwise, the enhancements do not apply.

E. CONCLUSION

The anti-fascist movement originated in Europe in the 1930s to combat the Nazis and other fascist regimes. In the 1980s, Antifa emerged in the United States in opposition to white supremacist groups. Through the years, some U.S.-based Antifa groups have become violent, committing crimes across the country during protests. The persistent criminal activity of some Antifa groups during protests has led some to call for Antifa to be federally designated as a domestic terrorist group, a designation that does not exist as of this writing. Prosecuting Antifa members has also proven ineffective, with most charges being rejected or not filed in court by local prosecutors.

Given the ineffectiveness of pursuing local prosecutions, the lack of a criminal penalty in the Ku Klux Klan Act, and the limited scope of federal sentencing terrorist

⁷⁹ John Kruzell, “DC Attorney General Sues Far-Right Groups over Jan. 6 Attack,” *Hill*, December 12, 2021, <https://thehill.com/regulation/court-battles/585732-dc-attorney-general-sues-far-right-groups-over-jan-6-attack>.

⁸⁰ Devlin Barrett, Tom Hamburger, and Rachel Weiner, “D.C. Attorney General Sues Proud Boys, Oath Keepers over Jan. 6 Attack,” *Washington Post*, December 14, 2021, https://www.washingtonpost.com/national-security/racine-jan-6-lawsuit/2021/12/14/4e581d00-5c51-11ec-bda6-25c1f558dd09_story.html.

⁸¹ U.S. Sent’g Guidelines Manual § 3A1.4 (U.S. Sent’g Comm’n 2021), <https://guidelines.uscourts.gov/guidelines>.

⁸² Acts of Terrorism Transcending National Boundaries, 18 U.S.C. § 2332b (2015).

enhancements, another viable option is needed to hold Antifa members responsible for their crimes. The RICO Act has been a successful tool for prosecuting criminal organizations—most notably, the Mafia.⁸³ The act can be applied both civilly and criminally. Chapter III provides an overview of the RICO Act, presents scholarly literature on its use, and identifies issues related to the application of RICO to non-traditional groups.

⁸³ Lesley Suzanne Bonney, “The Prosecution of Sophisticated Urban Street Gangs: A Proper Application of RICO,” *Catholic University Law Review* 42, no. 3 (1993): 579–613.

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III. THE RICO ACT

This chapter provides an overview of the RICO Act, which was created to combat organized crime. Then, it presents a literature review spanning the perspectives on using the act outside its original intended purpose, exploring the arguments for and against expanding the use of RICO to other kinds of organized crime.

A. BACKGROUND

Organized crime has been a problem in the United States for many years. U.S. Supreme Court Justice Felix Frankfurter, while delivering the opinion of the court in *Callahan v. United States*, stated, “Group association for criminal purposes often, if not normally, makes possible the attainment of ends more complex than those which one criminal could accomplish.”⁸⁴ The court at the time had reviewed a case for which the petitioner had been convicted under the Hobbs Anti-Racketeering Act, passed in 1946 to battle organized crime. The act imposed strict penalties for acts of robbery or extortion that affected interstate commerce.⁸⁵ The Hobbs Anti-Racketeering Act was a predecessor of the RICO Act of 1970.

The RICO Act was created to combat the Italian Mafia, considered a criminal organization, targeting both the leadership and members for crimes committed in furtherance of the organization.⁸⁶ The law stipulates that organization leaders may be tried for the crimes they order, even if they do not otherwise participate in the criminal activity.⁸⁷ Its original goal was to dismantle the Italian Mafia. Through the years, though, the act has been used for other forms of illegal enterprises. As detailed in the *Gale Encyclopedia of U.S. Economic History*, RICO has been “invoked to prosecute sexual

⁸⁴ Callanan v. United States, 364 U.S. 587, 593 (1961).

⁸⁵ Charles Doyle, *Robbery, Extortion, and Bribery in One Place: A Legal Overview of the Hobbs Act*, CRS Report No. R45395 (Washington, DC: Congressional Research Service, 2018).

⁸⁶ Nathan Koppel, “They Call It RICO, and It Is Sweeping,” *Wall Street Journal*, January 20, 2011, <https://www.wsj.com/articles/SB10001424052748704881304576094110829882704>.

⁸⁷ *Gale Encyclopedia of U.S. Economic History*, s.v. “Racketeer Influenced and Corrupt Organizations Act (1970),” accessed October 20, 2020, Credo Reference.

abuse cases against the Catholic Church, labor unions that have embezzled funds, police departments that have protected drug smugglers, manufacturers that have hired illegal aliens, and health insurance companies that have accepted bribes and kickbacks.”⁸⁸

The RICO Act, codified in 18 U.S.C. §§ 1961–1968, prohibits the following activities:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions . . . of this section.⁸⁹

The federal definition of enterprise appears in § 1961(4): “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals

⁸⁸ *Gale Encyclopedia*.

⁸⁹ Racketeer Influenced and Corrupt Organizations, 18 U.S.C. § 1962(a)–(d) (1970).

associated in fact although not a legal entity.”⁹⁰ The definition includes any association of a group of people, legal or otherwise, involved in either legitimate or illegitimate businesses.⁹¹ The U.S. Supreme Court has ruled that an association-in-fact enterprise is “a group of persons associated together for a common purpose of engaging in a course of conduct” and “is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit.”⁹²

As detailed in the RICO Act, a “pattern of racketeering activity” is established when two acts of racketeering—from a list of 27 federal and state crimes—are committed within 10 years.⁹³ These crimes include murder, robbery, and arson. The racketeering pattern must have an impact on domestic or international commerce to be illegal under the RICO Act. The courts have decided that non-economic enterprises participating in a pattern of racketeering activity can also be prosecuted under the act because only a minimal effect on interstate commerce is required to meet the threshold.⁹⁴

In summary, to violate the RICO Act, the prosecution must establish that a group of individuals as part of an enterprise or association-in-fact enterprise was involved in a pattern of racketeering, which involved committing two of the 27 listed crimes within a decade, and that the pattern of racketeering had an effect on interstate or foreign commerce.

B. LITERATURE REVIEW

This literature review presents the academic debate on the non-traditional application of the RICO Act. The act became law in 1960 and aimed to combat the Italian Mafia, considered a criminal organization by many. Through the years, the RICO Act has been used for other forms of criminal enterprises, including criminal street gangs, anti-abortion groups, and white supremacist gangs, due to its stricter penalties and effectiveness

⁹⁰ Racketeer Influenced and Corrupt Organizations, § 1961(4).

⁹¹ United States v. Turkette, 452 U.S. 576, 581–582 (1981).

⁹² Boyle v. United States, 566 U.S. 938 (2009).

⁹³ Racketeer Influenced and Corrupt Organizations, § 1961.

⁹⁴ Brian Nisbet, “What Can RICO Not Do?: RICO and the Non-economic Intrastate Enterprise That Perpetrates Only Non-economic Racketeering Activity,” *Journal of Criminal Law & Criminology* 99, no. 2 (Spring 2009): 509–39.

in dismantling organized crime. For this reason, academics and experts have debated the RICO Act's legality when applied to non-traditional criminal enterprises.

This research begins with debates opposing the use of the RICO Act for non-traditional criminal enterprises. Researchers who oppose its use have deemed it unconstitutional because the act oversteps its intended use and interferes with state jurisdiction. Proponents of the RICO Act argue that its established framework has been instrumental in defeating organized crime. This same framework can be used to combat other criminal enterprises since its stricter penalties can also serve as a deterrent to associating with or contributing to the growth of an illegal enterprise.

1. Opponents of the Non-traditional Use of the RICO Act

Scholars opposing the use of the RICO Act challenge its constitutionality. For example, Matthew H. Blumenstein argues that the use of the act for non-economic street gangs is unconstitutional.⁹⁵ He contends a gang that is neither profiting from its crimes nor affecting interstate commerce should not fall under federal jurisdiction.⁹⁶ He cites two appellate cases that resulted in split opinions as support. One court ruled that gangs cannot be convicted under the RICO Act unless the gang activity had a substantial effect on interstate commerce.⁹⁷ The other court ruled that a de minimis effect on interstate commerce qualifies as sufficient for its use.⁹⁸ Antonio J. Califa agrees with Blumenstein, stating that "RICO was not meant to encompass noneconomic crimes."⁹⁹ Frank D'Angelo further argues that a substantial effect on interstate commerce should be required for the RICO Act to be applied to non-economic enterprises.¹⁰⁰ Opponents of the use of the RICO Act for non-traditional groups all agree that the act is being used outside its intended scope of combating organized crime.

⁹⁵ Blumenstein, "RICO Overreach."

⁹⁶ Blumenstein.

⁹⁷ *Waucaush*, 380 F.3d at 251.

⁹⁸ *Nascimento*, 491 F.3d at 37.

⁹⁹ Antonio J. Califa, "RICO Threatens Civil Liberties," *Vanderbilt Law Review* 43, no. 3 (1990): 806.

¹⁰⁰ Frank D'Angelo, "Turf Wars: Street Gangs and the Outer Limits of RICO's 'Affecting Commerce' Requirement," *Fordham Law Review* 76, no. 4 (2008): 2075–111.

Literature on the topic also contends that the federal government is overstepping its jurisdiction by prosecuting criminal enterprises with the RICO Act. Blumenstein, for one, posits that state and local governments, not the federal government, should have the responsibility of prosecuting these criminal enterprises.¹⁰¹ Similarly, Whitney Schmidt argues that the RICO statute is being used outside its intended scope of stopping “financial infiltration and corrupt operation of legitimate business.”¹⁰² He claims the act should be restructured by the judiciary or legislative branch to limit its application to its intended purpose, which is to combat organized crime.

Another concern over the application of the RICO Act to non-traditional criminal enterprises is its potential violation of First Amendment rights when charging protest groups suspected of participating in alleged racketeering activity. For example, the RICO Act was successfully used against an anti-abortion group accused of committing wire fraud, extortion, and robbery on separate occasions.¹⁰³ Those crimes under the RICO Act are racketeering activities. Forty-two members of the group were named as plaintiffs because of their association. The defendants argued the RICO Act should not apply to them because their actions were motivated by their political beliefs and, thus, were protected activities. The court ruled that “civil disobedience” did not give them immunity from the crimes they had committed.¹⁰⁴

Xavier Beltran points out that the U.S. Supreme Court’s waiver of the requirement for enterprises to have an economic motive opened RICO’s application to protest groups, falling outside the act’s intended scope.¹⁰⁵ According to Califa, the liberal interpretation of an enterprise under RICO unfairly associates protest groups with rogue members

¹⁰¹ Blumenstein, “RICO Overreach.”

¹⁰² Whitney L. Schmidt, “Racketeer Influenced and Corrupt Organizations Act: An Analysis of the Confusion in Its Application and a Proposal for Reform: The Notes,” *Vanderbilt Law Review* 33, no. 2 (1980): 479.

¹⁰³ Xavier Beltran, “Applying RICO to Eco-Activism: Fanning the Radical Flames of Eco-Terror,” *Boston College Environmental Affairs Law Review* 29, no. 2 (2002): 281–310; *Northeast Women’s Center v. McMongale*, 868 F.2d 1342 (3rd Cir. 1989).

¹⁰⁴ *Northeast Women’s Center*, 868 F.2d at 1342.

¹⁰⁵ Beltran, “Applying RICO to Eco-Activism.”

responsible for criminal activity during protests.¹⁰⁶ He concurs with Xavier Beltran that the act is being used outside its intended purpose. Researchers on this perspective agree that the broad use of the RICO Act for protest groups, in turn, suppresses the groups' First Amendment rights of freedom of speech and peaceable assembly.

Other literature on the topic points to RICO's disproportionate application for minority populations when used to prosecute criminal street gangs. Jordan Woods supports Califa's and Schmidt's findings that the RICO Act should not be applied to street gangs because their crimes do not have a substantial effect on interstate commerce. He also notes the act's disproportionate application for minority gangs compared to white gangs.¹⁰⁷ Similarly, Blumenstein highlights the RICO Act's inequitable impact on minority communities because of its increased use for street gangs.¹⁰⁸ In sum, scholars assert that the act needs reforming to prevent its unjust use.

2. Proponents of the Non-traditional Use of the RICO Act

Proponents of the use of the RICO Act for non-traditional criminal enterprises agree that the stricter penalties associated with successful prosecution make it an invaluable tool. According to Lesley Bonney, the act is an effective tool in combating criminal street gangs. He notes that criminal gangs are committing sophisticated crimes like the ones the Mafia had been committing when the RICO Act was enacted to combat it.¹⁰⁹ The RICO Act has proven effective in prosecuting organized crime enterprises. Therefore, the act should be used on criminal street gangs involved in a pattern of racketeering activity enumerated under RICO's interpretation of an enterprise. Gene Ryerson concludes that "the cost of gang violence is too high not to consider all available options."¹¹⁰ He agrees that the RICO Act is a powerful tool in combating criminal street gangs.

¹⁰⁶ Califa, "RICO Threatens Civil Liberties."

¹⁰⁷ Jordan Blair Woods, "Systemic Racial Bias and RICO's Application to Criminal Street and Prison Gangs," *Michigan Journal of Race & Law* 17, no. 2 (Spring 2012): 303–57.

¹⁰⁸ Blumenstein, "RICO Overreach."

¹⁰⁹ Bonney, "The Prosecution of Sophisticated Urban Street Gangs."

¹¹⁰ Ryerson, "Use of Federal Law to Combat Local Gang Problems," 45.

Researchers agree that the established framework of the RICO Act is appropriate for combating other forms of criminal enterprises as well. Patricia Barnes notes that the act is a powerful tool against anti-abortion groups involved in racketeering activity.¹¹¹ The RICO Act has also been used to combat criminal white supremacist groups.¹¹² All of these groups fit into the framework of the RICO Act because their actions show a pattern of racketeering activity: they are part of a criminal enterprise, and they affect interstate commerce. The courts have decided that non-economic enterprises participating in a pattern of racketeering activity can also be prosecuted under the act because only a minimal effect on interstate commerce is required.¹¹³ According to D'Angelo, this ruling widens the scope of the RICO Act, thereby allowing its application to other forms of criminal enterprises.¹¹⁴ Researchers agree that the use of the RICO Act has been instrumental in combating criminal enterprises where local and state government prosecution has proven unsuccessful.

3. The Application of RICO to Non-economic Criminal Enterprises

Opponents of the RICO Act argue it should not be applied to groups that are not economically motivated. Youngblood, for example, notes that “the Act, as enacted by Congress, is an extremely powerful tool to be employed only where criminal actors are motivated by economic concerns.”¹¹⁵ Although the act was challenged under that presumption, the U.S. Court of Appeals for the First Circuit in *United States v. Nascimento* ruled that an economic motive is not required and that the RICO Act makes no distinction between economic and non-economic enterprises.¹¹⁶

¹¹¹ Barnes, “Civil Disobedience and Civil RICO.”

¹¹² Deogracias, “Race, Reconstruction, and the RICO Act.”

¹¹³ Nisbet, “What Can RICO Not Do?”

¹¹⁴ D'Angelo, “Turf Wars.”

¹¹⁵ Joel A. Youngblood, “*NOW v. Scheidler*: The First Amendment Falls Victim to RICO,” *Tulsa Law Journal* 30, no. 1 (1994): 196.

¹¹⁶ *Nascimento*, 491 F.3d at 25.

In December 2005, three members of the Stonehurst gang were convicted under the RICO Act for conspiracy to commit murder.¹¹⁷ From 1998 to 2000, the gang had been involved in a series of violent attacks against the Wendover gang. Several shootings between the two gangs eventually resulted in murder. In September 2005, a federal grand jury indicted 13 defendants from the Stonehurst gang for violations of the RICO Act. The gang was accused of being a criminal organization that committed murder and assault with the intention of killing members of other gangs, according to the indictment. Out of the 13 named defendants, seven were tried and three were convicted under the RICO Act. On appeal, the three challenged the application of RICO to their case because their gang was a non-economic enterprise, and their crimes did not affect interstate commerce.¹¹⁸

The U.S. Court of Appeals for the First Circuit upheld the conviction, stating that only a de minimis effect on interstate commerce was needed to satisfy the application of RICO.¹¹⁹ The court reached this conclusion because the RICO statute applies to any “enterprise engaged in, or the activities which affect, interstate or foreign commerce.”¹²⁰ Furthermore, the RICO Act neither distinguishes between economic and non-economic enterprises nor qualifies the effect on interstate or foreign commerce:

The evidence showed the gang’s regular use of guns that had moved in interstate commerce, as well as one trip by a gang member across state lines to procure such weapons. The guns were not peripheral; they related directly and centrally to the gang’s activities. This nexus is enough to satisfy the Commerce Clause.

The record reflects that Stonehurst maintained an arsenal—no fewer than nine different firearms used by Stonehurst members in carrying out Stonehurst business. This and other evidence led the district court to conclude that Stonehurst was a “massive purchaser of guns.” With one exception (a Smith & Wesson revolver made in Massachusetts), all the

¹¹⁷ *Nascimento* at 25.

¹¹⁸ *Nascimento* at 25.

¹¹⁹ *Nascimento* at 25.

¹²⁰ Racketeer Influenced and Corrupt Organizations, § 1962.

firearms acquired by Stonehurst had been manufactured outside of Massachusetts and, thus, had moved in interstate commerce.¹²¹

Thus, the court upheld the convictions of the three members of the Stonehurst gang for violations of the RICO Act. The court's ruling expanded the scope of RICO in addressing non-traditional criminal enterprises.

4. First Amendment Issues with the Application of RICO to Protest Groups

Opponents of RICO cite First Amendment violations when the act is applied to combat protest groups. The First Amendment forbids the government from passing laws that restrict free speech, the press, assembly, or the ability to petition the government for redress of grievances, as well as the establishment of religion or the free exercise of religion. Opponents of the RICO Act argue that the liberal interpretation of the term "enterprise" under the RICO Act unfairly associates protest groups with rogue members who are responsible for criminal activities during protests.¹²² This liberal interpretation, opponents argue, could lead to the labeling of the entire group as a criminal enterprise, thus suppressing the First Amendment civil liberties of the non-criminal faction of the group.

The U.S. Supreme Court has ruled there is a distinction between First Amendment rights and criminal activity when advocating a group's ideological beliefs.¹²³ Criminal acts such as trespassing, arson, assaults, and robbery are not covered by the First Amendment regardless of the expressed political statement that coincides with those acts. To date, the RICO Act has been used against anti-abortion groups considered political protestors, as demonstrated in *Northwest Women's Center v. McMonagle*. The Northwest Women's Center, a gynecological service center that provided pregnancy testing and abortions, filed a civil RICO case against the Pro-Life Coalition of Southeastern Pennsylvania, whose members trespassed on the center's facility on four separate occasions from August 10,

¹²¹ *Nascimento*, 491 F.3d at 25.

¹²² Califa, "RICO Threatens Civil Liberties."

¹²³ *United States v. Dickens*, 695 F.2d 765 (3d Cir. 1982).

1985, through May 23, 1986.¹²⁴ During these trespassing episodes, employees at the location were assaulted, property vandalized, and employees and patients intimidated. The U.S. District Court for the Eastern District of Pennsylvania found the 24 defendants liable under the RICO Act. The defendants were assessed \$42,087.95 in compensatory damages and \$48,000 in punitive damages. The court determined that the defendants were part of an enterprise that extorted the center, a racketeering activity enumerated under the RICO Act, on separate occasions between 1985 and 1986.

The U.S. Third Circuit Court of Appeals affirmed the judgment, partially because the defendants' actions went beyond political-based civil disobedience. The court cited *United States v. Dickens*, noting that “the First Amendment, which guarantees individuals freedom of conscience and prohibits governmental interference with religious beliefs, does not shield from government scrutiny practices which imperil public safety, peace or order.”¹²⁵

C. CONCLUSION

The RICO Act has been an effective tool against organized crime—from the Italian Mafia to other forms of criminal enterprises, including white supremacist and anti-abortion groups. Opponents of non-traditional applications of the RICO Act disagree on its application beyond the act's original intended purpose. Citing such extensions as unconstitutional, opponents perceive the federal government as intruding on the authority of local and state jurisdictions. One of their arguments is that prosecutors have inappropriately applied the act to non-economic criminal enterprises, groups that have no economic motivation in the commission of their crimes. Opponents also allege that First Amendment rights violations accompany its application. Proponents of RICO's expanded use cite its established framework and strict penalties as proof of a successful instrument to combat a variety of criminal enterprises. Most of the literature contests the RICO Act's validity; however, the U.S. Supreme Court has already determined its legality, reaffirming that the act is a viable option in combating a variety of criminal enterprises.

¹²⁴ *Northeast Women's Center*, 868 F.2d at 1342.

¹²⁵ *Dickens*, 695 F.2d at 765.

IV. EXPLORING USES OF THE RICO ACT

Over the years, the RICO Act has been used to address forms of illegal enterprises other than the Italian Mafia, carrying strict penalties that have proven instrumental in combating many types of organized crime. This chapter illustrates the application of the RICO Act to criminal street gangs, white supremacist groups, and other non-traditional groups using analyses of criminal charging decisions, statements issued by prosecutors' offices, and, where available, case law.

A. NON-TRADITIONAL APPLICATION OF THE RICO ACT

Criminal street gangs and white supremacist groups, most notably Mara Salvatrucha and the Universal Aryan Brotherhood, share several similarities with Antifa groups. These similarities include expansive membership across the country, strong ideological beliefs, and clandestine criminal operations. Each of these groups has operated as a criminal enterprise for an extended period and has shown a pattern of racketeering that makes it a candidate for prosecution under RICO. This section provides examples of criminal enterprises in the form of criminal street gangs, white supremacist groups, and other non-traditional groups that have been successfully prosecuted under the RICO Act and illustrate some similarities to Antifa's criminal factions.

1. Criminal Street Gangs

Criminal street gangs have evolved into sophisticated criminal organizations that plague American communities. The street gang Maras Salvatrucha (MS13), for example, commits crimes throughout South America and the United States. In 2006, the Federal Bureau of Investigation estimated there were 10,000 MS13 gang members in the United States and 50,000 in Central America.¹²⁶

With the sophistication of these modern criminal street gangs and their vast geographical reach, the RICO Act has been proven an effective tool in prosecuting these

¹²⁶ Jennifer J. Adams and Jesenia M. Pizarro, "MS-13: A Gang Profile," *Journal of Gang Research* 16, no. 4 (Summer 2009): 1–14.

criminal enterprises.¹²⁷ The RICO Act has also been used to prosecute criminal street gangs that do not profit from their crimes.¹²⁸ These types of gangs are considered non-economic enterprises. The following paragraphs illustrate the RICO Act's applicability to criminal street gangs.

In June 2009, 39 members of the 18th Street Gang of Los Angeles were arrested on racketeering charges under the RICO Act. As a criminal enterprise, the gang controlled narcotic sales in the MacArthur Park and Westlake districts of Los Angeles. The investigation stemmed from the gang's involvement in a shooting at MacArthur Park, which resulted in the death of a three-month-old infant; the murder of an innocent young man in 2001; and other racketeering-related crimes like kidnapping, drug trafficking, and money laundering.¹²⁹ The gang also extorted money from street vendors in exchange for their remaining in business. One of those detained was a criminal defense lawyer who had helped the gang launder more than \$1.3 million in proceeds from drugs and extortion.¹³⁰ Forty-three defendants were named in the indictment, and 37 were successfully convicted after trial for their involvement in acts of violence, narcotic distribution, money laundering, and various violent crimes in aid of racketeering. Five members of the gang were sentenced to life in prison with parole, and the criminal attorney was sentenced to seven years in prison for money laundering.¹³¹ The six remaining defendants are fugitives.

¹²⁷ Ryerson, "Use of Federal Law to Combat Local Gang Problems."

¹²⁸ *Nascimento*, 491 F.3d at 25.

¹²⁹ U.S. Attorney's Office, Central District of California, "RICO Indictment Expands Case against Clique of 18th Street Gang Involved in Murder of 3-Week-Old Child, a Cold Case Murder Committed in 2001, and Other Crimes," Federal Bureau of Investigation, Los Angeles Division, June 16, 2009, <https://www.fbi.gov/losangeles/press-releases/2009/la061609.htm>.

¹³⁰ "18th Street Gangmember Sentenced to Life in Federal Prison for Racketeering Offenses Related to Fatal Shooting of 23-Day-Old Infant," U.S. Attorney's Office, Central District of California, January 9, 2013, <https://www.justice.gov/usao-cdca/pr/18th-street-gangmember-sentenced-life-federal-prison-racketeering-offenses-related>.

¹³¹ "Attorney Sentenced to Seven Years in Prison for Racketeering and Money Laundering Offenses Committed on Behalf of Mexican Mafia," U.S. Attorney's Office, Central District of California, January 10, 2013, <https://www.justice.gov/usao-cdca/pr/attorney-sentenced-seven-years-prison-racketeering-and-money-laundering-offenses>; U.S. Attorney's Office, Central District of California, "Four Members of 18th Street Gang Convicted of Federal Racketeering Offenses, Including Fatal Shooting of 3-Week-Old Infant," Federal Bureau of Investigation, Los Angeles Division, May 11, 2012, <https://www.fbi.gov/losangeles/press-releases/2012/four-members-of-18th-street-gang-convicted-of-federal-racketeering-offenses-including-fatal-shooting-of-3-week-old-infant>.

In October 2020, a member of the Gangster Disciples, a gang that operated a criminal enterprise in West Tennessee and other states, pled guilty to conspiracy to participate in a racketeering enterprise that violated the RICO Act. The guilty plea was the last conviction for a group of 16 members of the gang who were charged. According to court documents, the gang “committed attempted murders; robberies; assaults; distribution of large quantities of cocaine, crack and marijuana; firearms trafficking; kidnappings; intimidations of witnesses and victims; extortion; obstruction of justice; and other offenses in furtherance of the Gangster Disciples criminal enterprise and to promote and enhance the members’ position within the gang.”¹³² The gang had a sophisticated hierarchy that it used to control the criminal enterprise. Key leaders of the gang were arrested and convicted in an effort to dismantle the organization. The prison sentences ranged from 292 to 360 months.

In August 2021, six members of the MS13 gang in Boston, Massachusetts, pled guilty to racketeering charges under the RICO Act. The ringleader of the group, Djavier Duggins, organized the murder of a teenage boy in Lynn, Massachusetts.¹³³ The murder was carried out by five other members of the gang. Under the RICO Act, all six members were indicted for the crime, and all six pled guilty. The members were found guilty of conspiracy to conduct enterprise affairs through a pattern of racketeering.¹³⁴ Djavier Duggins was sentenced to 15 years in state prison. Three other defendants received prison terms of life, 40 years, and 33 years, respectively. As of this writing, two defendants await sentencing.¹³⁵

¹³² “Last Defendant in Gangster Disciple RICO Conspiracy Pleads Guilty,” U.S. Attorney’s Office, Western District of Tennessee, October 30, 2020, <https://www.justice.gov/usao-wdtn/pr/last-defendant-gangster-disciple-rico-conspiracy-pleads-guilty>.

¹³³ “MS-13 Member Pleads Guilty to RICO Conspiracy,” U.S. Attorney’s Office, District of Massachusetts, August 12, 2021, <https://www.justice.gov/usao-ma/pr/ms-13-member-pleads-guilty-rico-conspiracy-1>.

¹³⁴ U.S. Attorney’s Office, District of Massachusetts.

¹³⁵ “MS-13 Leader Sentenced to 15 Years in Prison for RICO Conspiracy,” U.S. Attorney’s Office, District of Massachusetts, February 22, 2022, <https://www.justice.gov/usao-ma/pr/ms-13-leader-sentenced-15-years-prison-rico-conspiracy>.

Antifa shares some characteristics with criminal street gangs. Like criminal street gangs, such as MS13, Antifa groups have vast geographical reach, spread across the United States in several distinct chapters under the Torch Network, for example, as detailed in Chapter II. Some prominent Torch Network chapters include Rose City Antifa in Portland, Oregon, and Antifa Sacramento in Sacramento, California. Like some criminal gangs, Antifa groups are not economically driven, meaning the groups' criminal activity is not motivated by profit. In addition, Antifa groups, like criminal gangs, are ideologically motivated. Finally, in *United States v. Nascimento*, the U.S. Supreme Court ruled that an economic motive is not required and that there is no distinction in the RICO Act between economic and non-economic enterprises.¹³⁶ This ruling paved the way for the successful prosecutions of criminal street gangs deemed non-economic criminal enterprises. As such, criminal Antifa groups could be prosecuted under the RICO statute even if their crimes have no economic motivation.

2. White Supremacist Groups

In 2020, the Department of Homeland Security announced that white supremacists presented the severest terror threat to the United States.¹³⁷ That same year, the Southern Poverty Law Center tracked 838 hate groups across the country using its interactive hate map.¹³⁸ Of the 838 groups, 50 percent of them were identified as white supremacist organizations, most notably those affiliated with the Ku Klux Klan, neo-Nazis, racist skin heads, and white nationalists. Also in 2020, the Federal Bureau of Investigation revealed

¹³⁶ *Nascimento*, 491 F.3d at 25.

¹³⁷ Betsy Swan, "DHS Draft Document: White Supremacists Are Greatest Terror Threat," POLITICO, September 4, 2020, <https://www.politico.com/news/2020/09/04/white-supremacists-terror-threat-dhs-409236>.

¹³⁸ "Hate Map," Southern Poverty Law Center, accessed September 20, 2021, <https://www.splcenter.org/hate-map>. The most notable tracked groups include anti-immigrant, anti-LGBTQ, neo-Nazi, and male supremacy groups and the Ku Klux Klan.

that 7,759 hate crimes had been reported by U.S. citizens.¹³⁹ Nearly half of the hate crimes were allegedly committed by white assailants.

White supremacist groups believe the white race is superior to other races and, therefore, should exercise control over them.¹⁴⁰ They believe that white people should live in a separate white-only society. White supremacist groups have been known to use violence to further these ideological beliefs.¹⁴¹ Some white supremacist groups have substantial membership spread throughout the United States. The Ku Klux Klan, for example, has a national membership of 3,000 and several chapters in southern and eastern states.¹⁴²

With the rise of hate crimes and the prevalence of white supremacist organizations in the country, the RICO Act has been instrumental in prosecuting and dismantling criminal white supremacist organizations. The following paragraphs demonstrate the successful use of the RICO Act for white supremacist groups.

In November 1988, a white supremacist group called the Order, or Brüder Schweigen (Silent Brotherhood), was convicted under the RICO Act. Members of the group committed robberies to fund the organization, which dedicated itself to overthrowing the U.S. government.¹⁴³ Members had all been adherents to radical ideological groups such as the Ku Klux Klan, neo-Nazi organizations, or Christian identity movements. The group also committed two murders—one of the victims was Alan Berg, a Denver radio talk show host of Jewish decent. Twenty-three members of the group were indicted. Twelve

¹³⁹ David Nakamura, “Hate Crimes Rise to Highest Level in 12 Years amid Increasing Attacks on Black and Asian People, FBI Says,” *Washington Post*, August 30, 2021, https://www.washingtonpost.com/national-security/hate-crimes-fbi-2020-asian-black/2021/08/30/28bede00-09a7-11ec-9781-07796ffb56fe_story.html.

¹⁴⁰ “White Supremacy,” Anti-Defamation League, accessed March 16, 2022, <https://www.adl.org/resources/glossary-terms/white-supremacy>.

¹⁴¹ Swan, “DHS Draft Document.”

¹⁴² Anti-Defamation League, *Tattered Robes: The State of the Ku Klux Klan in the United States* (New York: Anti-Defamation League, 2016), <https://www.adl.org/education/resources/reports/state-of-the-klk>.

¹⁴³ *United States v. Yarbrough*, 852 F.2d 1522 (9th Cir. 1988).

pled guilty before trial, and the rest were found guilty of violating the RICO Act. Ten members of the group were sentenced to 20 years in prison.¹⁴⁴

In August 2012, David Joseph “Joey” Pedersen and Holly Ann Grigsby were indicted under the RICO Act in Portland, Oregon. The couple had been involved in a crime spree that included kidnapping, robbery, and murder. The indictment charged that Pedersen and Grigsby were white supremacists who had formed a criminal enterprise using violence to further its ideology.¹⁴⁵ Both Pedersen and Grigsby were convicted and sentenced to life in prison with no chance of release.¹⁴⁶

In February 2019, multiple white supremacists were indicted under the RICO Act in Russellville, Arkansas. The white supremacists belonged to the New Aryan Empire and were allegedly involved in violent acts, including murder, kidnapping, and maiming.¹⁴⁷ A total of 54 members were charged in the RICO indictment. Fifty-two members pled guilty, one was convicted after trial, and one is a fugitive. Some defendants are still awaiting sentencing, though the harshest sentence issued so far was 35 years imprisonment to the president of the criminal enterprise.¹⁴⁸

¹⁴⁴ *Yarbrough*, 852 F.2d at 1526.

¹⁴⁵ U.S. Attorney’s Office, District of Oregon, “Federal Indictment Charges Two Individuals with RICO and Other Capital Crimes in Furtherance of a White Supremacist Movement,” Federal Bureau of Investigation, Portland Division, August 17, 2012, <https://www.fbi.gov/portland/press-releases/2012/federal-indictment-charges-two-individuals-with-rico-and-other-capital-crimes-in-furtherance-of-a-white-supremacist-movement>.

¹⁴⁶ “White Supremacists Sentenced to Life in Prison for Murderous Crime Spree,” U.S. Attorney’s Office, District of Oregon, August 4, 2014, <https://www.justice.gov/usao-or/pr/white-supremacists-sentenced-life-prison-murderous-crime-spre>.

¹⁴⁷ “Multiple White Supremacist Gang Members among 54 Defendants Charged in RICO Indictment,” U.S. Attorney’s Office, Eastern District of Arkansas, February 12, 2019, <https://www.justice.gov/usao-edar/pr/multiple-white-supremacist-gang-members-among-54-defendants-charged-rico-indictment>.

¹⁴⁸ “Pope County White Supremacist Operative Convicted of Racketeering,” U.S. Attorney’s Office, Eastern District of Arkansas, September 27, 2021, <https://www.justice.gov/usao-edar/pr/pope-county-white-supremacist-operative-convicted-racketeering>.

In February 2019, 18 members of a white supremacist organization known as the Universal Aryan Brotherhood, based in Oklahoma, were indicted under the RICO Act.¹⁴⁹ The group was involved in drug trafficking, had committed murders, and used kidnapping as a form of intimidation. Six members of the gang have been convicted on racketeering charges as of this writing. Four members received 22-year sentences. Two other members received 28- and 15-year prison terms, respectively.¹⁵⁰

White supremacist groups are ideologically motivated like Antifa. These groups believe the white race is superior to other races and seek to exercise control over them.¹⁵¹ As discussed in Chapter II, Antifa's ideology involves suppressing fascist organizations that it deems a threat. Both groups' beliefs are protected by the First Amendment; however, when extremist factions within the groups commit crimes, the protection dissolves. In *United States v. Dickens*, the U.S. Supreme Court distinguished between First Amendment rights and criminal activity when advocating a group's ideological beliefs.¹⁵² Therefore, the First Amendment protections for Antifa, like those for white supremacist groups, disappear once it commits crimes, for example, during a protest. Moreover, if a pattern of racketeering can be established, the RICO Act could be applied to Antifa, just as prosecutors applied it to white supremacist groups.

¹⁴⁹ "18 Members and Associates of White Supremacist Gang Indicted for Racketeering and Drug Distribution," Immigration and Customs Enforcement, February 21, 2019, <https://www.ice.gov/news/releases/18-members-and-associates-white-supremacist-gang-indicted-racketeering-and-drug>.

¹⁵⁰ "Two Influential Members of the Universal Aryan Brotherhood Admit to Participating in a Racketeering Enterprise and Drug Conspiracy from Prison," U.S. Attorney's Office, Northern District of Oklahoma, December 7, 2021, <https://www.justice.gov/usao-ndok/pr/two-influential-members-universal-aryan-brotherhood-admit-participating-racketeering>; "Universal Aryan Brotherhood Member Pleads Guilty for Participating in a Racketeering Conspiracy and Kidnapping," U.S. Attorney's Office, Northern District of Oklahoma, December 17, 2021, <https://www.justice.gov/usao-ndok/pr/universal-aryan-brotherhood-member-pleads-guilty-participating-racketeering-conspirac-0>; "Man Who Orchestrated the Sale of Hundreds of Kilos of Meth for the Universal Aryan Brotherhood Pleads Guilty," U.S. Attorney's Office, Northern District of Oklahoma, January 28, 2022, <https://www.justice.gov/usao-ndok/pr/man-who-orchestrated-sale-hundreds-kilos-meth-universal-aryan-brotherhood-pleads-guilty>; "Universal Aryan Brotherhood Member Who Killed a Man in 2017 Pleads Guilty to Participating in a Racketeering Conspiracy," U.S. Attorney's Office, Northern District of Oklahoma, January 14, 2022, <https://www.justice.gov/usao-ndok/pr/universal-aryan-brotherhood-member-who-killed-man-2017-pleads-guilty-participating>.

¹⁵¹ Anti-Defamation League, "White Supremacy."

¹⁵² *Dickens*, 695 F.2d at 765.

3. Other Groups

RICO has been used to prosecute non-traditional groups involved in a pattern of racketeering activity. Loosely affiliated with no organized hierarchal structure, much like Antifa, some non-traditional groups have been deemed association-in-fact enterprises, which allows prosecutors to indict them under the RICO statute. As defined by the U.S. Supreme Court, an association-in-fact enterprise is “‘a group of persons associated together for a common purpose of engaging in a course of conduct,’ and ‘is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit.’”¹⁵³ The following paragraphs present examples of non-traditional criminal enterprises that have been prosecuted under the RICO Act.

In May 2013, David Ray Camez was convicted under the RICO Act for his part in a sophisticated cyber fraud enterprise.¹⁵⁴ Camez was one of 39 individuals charged in the indictment. The organization, Carder.su, conducted business via the internet, where members could purchase illicitly obtained personal information to commit fraud. Members of the enterprise, such as Camez, gained control of the sensitive information and then used it to commit identity theft. U.S. Attorney Bogden explained in a press release, “As shown in this case, cybercrime has grown into an industry and is rapidly overtaking traditional crime such as bank robbery.”¹⁵⁵ The court decided that the members had formed a criminal enterprise via the web and were involved in a pattern of racketeering activity. Camez was sentenced to 20 years in prison. Seven others have pled guilty, two are scheduled for trial, and the rest are fugitives. In three different indictments, 16 additional individuals were accused of participating in the conspiracy, and 14 of them have already entered guilty pleas.¹⁵⁶

¹⁵³ *Boyle*, 556 U.S. at 938.

¹⁵⁴ “Member of Organization That Operated Online Marketplace for Stolen Personal Information Sentenced to 20 Years in Prison,” Department of Justice, May 15, 2014, <https://www.justice.gov/opa/pr/member-organization-operated-online-marketplace-stolen-personal-information-sentenced-20>.

¹⁵⁵ Department of Justice.

¹⁵⁶ Department of Justice.

In July 2020, 11 people pled guilty under the RICO Act for stealing \$6 million from the Floyd County School System in Georgia.¹⁵⁷ The defendants admitted to conspiring to commit theft by using fraudulent invoices. Derry Richardson, the maintenance director of the school system, orchestrated the theft by creating fraudulent invoices for construction projects. The other defendants, who were vendors, accepted the fraudulent invoices. The court decided that the group had been part of a criminal enterprise that perpetrated frauds over a prolonged period. Derry Richardson received the harshest sentence as the mastermind—20 years in prison. The others were sentenced to 10 years’ probation with two to three years of home confinement and restitution.¹⁵⁸

On September 27, 2021, R&B singer R. Kelly was found guilty of racketeering for acts of bribery and sexual exploitation of children.¹⁵⁹ Kelly was charged with leading a criminal organization, according to the indictment, which included his managers, bodyguards, drivers, personal assistants, and runners. The group was involved in recruiting women and girls to engage in illegal sexual activity with Kelly and producing pornography, including child pornography. A jury decided that Kelly had coerced and transported his victims throughout the United States to engage in illegal sexual activity, obvious violations of RICO’s interstate commerce clause.¹⁶⁰ Kelly is awaiting sentencing for his conviction.

In sum, loosely affiliated groups that come together to form a criminal enterprise can be prosecuted under the RICO statute even if they lack a hierarchal structure or organization. The U.S. Supreme Court has ruled than once a group begins to associate, it

¹⁵⁷ John Bailey, “RICO Defendants Plead Guilty, Derry Richardson Sentenced to 20 Years in Prison,” *Rome News Tribune*, July 27, 2020, https://www.northwestgeorgianews.com/rome/news/local/rico-defendants-plead-guilty-derry-richardson-sentenced-to-20-years-in-prison/article_b13711ae-d00e-11ea-8905-af8ca635b24d.html.

¹⁵⁸ “Video: Floyd County Schools RICO Case Ends with Guilty Pleas,” *Coosa Valley News*, July 27, 2020, <https://coosavalleynews.com/2020/07/floyd-county-schools-case-ends-with-guilty-pleas/>.

¹⁵⁹ “‘R. Kelly’ Convicted of All Counts by a Federal Jury in Brooklyn,” U.S. Attorney’s Office, Eastern District of New York, September 27, 2021, <https://www.justice.gov/usao-edny/pr/r-kelly-convicted-all-counts-federal-jury-brooklyn>.

¹⁶⁰ “‘R. Kelly’ Charged with Racketeering, Including Predicate Acts of Coercing and Transporting Minor Girls to Engage in Sex,” U.S. Attorney’s Office, Eastern District of New York, July 12, 2019, <https://www.justice.gov/usao-edny/pr/r-kelly-charged-racketeering-including-predicate-acts-coercing-and-transporting-minor>.

may be deemed an association-in-fact enterprise.¹⁶¹ The Georgia group that came together under Derry Richardson’s direction to commit fraud is an example of an association-in-fact enterprise under RICO. The school system’s workers and vendors formed the association to commit fraud.

Rose City Antifa is another example of such an association. The chapter provides evidence of association on its website, where it acknowledges having a closed membership and using the site to recruit new members. This type of clandestine operation via the internet is like the Carder.su criminal enterprise organized by David Ray Camez, whereby the enterprise evolved through membership on the web. Based on those similarities, Antifa could be prosecuted under the RICO Act.

B. EXPLORING THE APPLICATION OF RICO TO ANTIFA

Republican Senator Ted Cruz authored a letter to the Department of Justice, urging Attorney General William Barr to consider prosecuting Antifa, specifically Rose City Antifa, under the RICO Act.¹⁶² Senator Cruz argued that Antifa fit the definition of an enterprise under the RICO statute because it was an identifiable group of individuals, associated in fact, and had been involved in crimes with a racketeering nexus, such as arson and robbery. He also pointed out that Rose City Antifa had a predictable pattern, as evidenced by its website stating the group formed in 2007 and was currently active.¹⁶³

To classify Antifa as an “enterprise association-in-fact” like the groups in the Floyd County School System and R. Kelly cases, prosecutors, for example, must determine that it satisfies the four enumerated sections of the RICO Act. First, prosecutors must find “there was an on-going enterprise with some sort of formal or informal framework for carrying out its objectives consisting of a group or person associated together for a common purpose of engaging in a course of conduct.”¹⁶⁴ In the case of Antifa, the Torch Network

¹⁶¹ *Boyle*, 556 U.S. at 938–39.

¹⁶² Official website of Senator Ted Cruz, “Open an Investigation into Antifa.”

¹⁶³ Official website of Senator Ted Cruz.

¹⁶⁴ 9th Cir. Manual of Model Crim. Jury Instructions § 8.161 (2015), <https://www.ce9.uscourts.gov/jury-instructions/node/622>.

was established on October 19, 2013, but Rose City Antifa in October 2007. The other chapters have also existed for a long time. These Antifa groups, formed to fight fascism, persisted beyond the crimes detailed in Chapter II. Antifa's criminal factions are like criminal street gangs, such as the 18th Street Gang of Los Angeles, which formed many years ago and committed racketeering activities for the benefit of the gang.

Second, prosecutors need proof that “the defendant was employed by or associated with the enterprise.”¹⁶⁵ All Antifa groups identified in the Torch Network have websites and social media platforms. Several of them also have pages dedicated on their websites to getting involved or becoming a member. Their goals are made evident in their five points of unity, which individuals follow as part of the network. This structure is comparable to the internet-based criminal enterprise of David Ray Camez, whereby members organized via the web and were involved in a pattern of racketeering activity spanning the world.

Third, a prosecutor needs evidence that “the defendant [conducted] [participated, directly or indirectly, in the conduct of] the affairs of the enterprise through a pattern of racketeering activity or collection of unlawful debt. To conduct or participate means that the defendant had to be involved in the operation or management of the enterprise” (brackets in the original).¹⁶⁶ The Antifa network and chapters were established to disrupt fascist and far-right organizing and activities. Members of these Antifa groups, such as Rose City Antifa, come together to commit racketeering crimes, such as arson, during protests for the furtherance of their ideological beliefs.

The group's relationship is delineated by distinct regional subgroups (e.g., Rose City Antifa, Atlanta Antifa, and Antifa Sacramento). The subgroups' association with the national network and their observance of the five points of unity exemplify their common purpose. The relationship between Antifa's subgroups is similar to that of white supremacist groups, which are ideologically based. White supremacist groups form to further their belief that the white race is superior to other races and should exercise control over those deemed inferior. Antifa groups form for the purpose of fighting perceived

¹⁶⁵ 9th Cir. Manual, § 8.161.

¹⁶⁶ 9th Cir. Manual, § 8.161.

fascism. Members of both groups function as a continuous unit to achieve a common purpose.

Fourth, a prosecution requires that “the enterprise engaged in or its activities in some way affected commerce between one state and [an]other state [s], or between the United States and a foreign country” (brackets in the original).¹⁶⁷ The arson committed by Antifa members at several retail locations during protests could be used to establish an effect on commerce. As covered in Chapter II, the U.S. Court of Appeals for the First Circuit decided that only a de minimis effect on interstate commerce is needed to satisfy the application of RICO. Like white supremacist groups and gang members, members of Antifa have also been involved in crimes prosecutable under the RICO Act. Members have perpetrated arson and murder, which are predicate acts under RICO.

C. CONCLUSION

In summary, a case prosecuted under the RICO Act requires that a group of individuals be part of an enterprise or comprise an association-in-fact enterprise, be involved in a pattern of racketeering, and commit two of the 27 listed crimes within 10 years, and that the pattern of racketeering have an effect on interstate or foreign commerce. The RICO Act applies to Antifa because its groups have existed for some time, such as Rose City Antifa, which was established in 2007. Antifa also has loosely affiliated groups that work together through chapters as part of the Torch Network, and the groups have persisted beyond the crimes committed during various protests. All these factors contribute to Antifa’s being classified as an enterprise association-in-fact, one element of a prosecution under the RICO statute. In addition, the pattern of crimes—arson and murder, for example—committed by Antifa members comprises predicate acts under RICO akin to criminal activities committed by gangs and white supremacist groups. The combination of these factors, the de minimis effect on interstate commerce required, and no need to consider economic gains by the criminal enterprise support the validity of applying the RICO Act to Antifa groups.

¹⁶⁷ 9th Cir. Manual, § 8.161.

V. CONCLUSION

This thesis explored how the RICO statute has been applied to criminal enterprises that are similar to Antifa and how it might be applied to prosecute Antifa members. This chapter provides the findings from the research, followed by recommendations for future analysis of the topic. The chapter concludes with final thoughts regarding the research conducted.

A. FINDINGS

There are several findings associated with this research. First, there is no current legal mechanism available to label organizations domestic terrorist groups. Second, local and federal criminal prosecutions of Antifa members have been ineffective, thus calling for a more useful alternative. Finally, the research conducted in this thesis into the RICO Act reveals that it has successfully been used to prosecute organizations like Antifa and, thus, could be a viable tool for prosecuting criminal factions within Antifa. The following paragraphs provide an overview of the relevance and importance of the findings revealed in the thesis.

The civil unrest that followed the death of George Floyd in May 2020 brought national attention to several anti-fascist groups known as Antifa. Some of these groups were easily identified due to their uniform tactics and propensity for violence. The discussion among practitioners regarding Antifa revolves around the groups' make up—some argue Antifa is merely an ideology while others argue that Antifa is an organized, structured group responsible for most of the destruction caused nationwide in 2020.

The research conducted for this thesis demonstrates how Antifa has evolved in the United States into the Torch Network, which currently comprises 10 chapters. Some of the most prominent groups are Rose City Antifa in Portland, Oregon, and Antifa Sacramento, in Sacramento, California. This research reveals that the groups resemble an organization, dispelling claims that Antifa is merely an ideology. Some groups, for example, actively recruit members on their websites and ask for donations to support their local and national chapters. Obviously, Antifa has evolved from a punk-rock group opposing white

supremacist groups at concerts to a structured group with an ideology opposing far-right politics and social injustice. Furthermore, some Antifa members have committed criminal acts during protests in the name of anti-fascism. Thus, Antifa's similarity to an organization and the crimes committed by members to further the organization fulfill some of the requirements for applying the RICO Act as an enforcement tool.

Recent events have prompted calls to label Antifa groups domestic terrorist organizations. The literature presented in this thesis reveals that no current process exists for designating an organization operating within the country as a domestic terrorist organization.¹⁶⁸ The potential violation of civil rights and liberties that are protected under the First Amendment prevents such a designation and explains the federal government's reticence to take such a step. Therefore, an alternative legal mechanism such as the RICO Act is needed to combat and dismantle such illegal enterprises as criminal Antifa groups that commit crimes in the United States.

Local criminal prosecution of Antifa members has also been ineffective. This thesis reveals that criminal cases have been dropped due to a lack of evidence, the overwhelming nature of the criminal justice system, and some offices' unwillingness to even pursue criminal filings. This thesis has determined that the ineffectiveness of local prosecution, the lack of a criminal penalty in the Ku Klux Klan Act, and the scope of federal sentencing terrorist enhancements have limited the sentences that can be imposed on criminal members of Antifa groups. The ineffectiveness of prosecution as an option to address Antifa has allowed the criminal activity of some Antifa groups to persist. Therefore, a more effective prosecution tool is needed to combat criminal groups within Antifa.

This research reveals that the RICO Act has proven instrumental in combating organized crime and criminal gangs. Prosecutors have successfully used the RICO Act for street gangs, ideological groups such as white supremacists and anti-abortion groups, and other non-traditional criminal enterprises. The RICO Act has helped to deter crimes and dismantle some criminal enterprises. In short, the act was created to combat criminal organizations.

¹⁶⁸ Laguardia, "Considering a Domestic Terrorism Statute and Its Alternatives."

Prosecution under RICO requires that a group of individuals, as part of an enterprise or an association-in-fact enterprise, be involved in a pattern of racketeering and commit two of the 27 listed crimes within 10 years, and that the pattern of racketeering have an effect on interstate or foreign commerce.¹⁶⁹ Successful prosecution under the RICO Act can lead to the dismantling of a criminal enterprise. The RICO Act was created to target both the leadership and members for crimes committed in furtherance of the organization. The law stipulates that organization leaders may be tried for the crimes they order, even if the leaders do not otherwise participate in the criminal activity.¹⁷⁰ The RICO approach to combating a criminal organization is superior to local prosecution, which is directed merely at individual criminal actors, thereby allowing the overall organization to thrive. Therefore, the RICO Act is more effective at dismantling criminal organizations.

This research also finds that the prosecution of Antifa under the RICO Act has been opposed because some argue that the group cannot be defined as an illegal enterprise. Other opponents of the RICO Act claim that the statute should not be used for organizations that are not financially motivated. The courts, however, have decided that non-economic enterprises participating in a pattern of racketeering activity can also be prosecuted under the act because only a minimal effect on interstate commerce is required.¹⁷¹ Antifa, for example, has not committed crimes for financial gain but could be prosecuted under RICO because the First Circuit Court of Appeals ruled that only a de minimis effect on interstate commerce is needed for the statute to apply to non-traditional groups.¹⁷²

This research also finds that the RICO Act has been effectively utilized to prosecute non-traditional groups involved in a pattern of racketeering activity. Some of these non-traditional groups have been loosely affiliated with no organized hierarchy, much like Antifa. The act has also been successfully applied to groups that have no financial motivation, such as the Stonehurst gang.¹⁷³ The successful prosecution of such groups has

¹⁶⁹ Racketeer Influenced and Corrupt Organizations, § 1962.

¹⁷⁰ *Gale Encyclopedia*, s.v. “Racketeer Influenced and Corrupt Organizations Act.”

¹⁷¹ Nisbet, “What Can RICO Not Do?”

¹⁷² *Nascimento*, 491 F.3d at 25.

¹⁷³ *Nascimento* at 25.

proven that the RICO Act can be applied to non-traditional criminal enterprises such as Antifa. Therefore, this thesis recommends that researchers continue to study the application of the RICO Act to such organizations as white supremacist and other ideologically motivated groups so that a law enforcement framework might be established to apply the statute to Antifa's criminal factions.

B. FUTURE RESEARCH

Future research could examine the effectiveness of applying the RICO Act by following up with local authorities on the status of groups involved in the RICO cases discussed in this thesis. Did the prosecution effectively dismantle the illegal organizations or deter further criminal actions of the groups? Also, ideological motivations differ from one criminal enterprise to another. Most ideological groups, for example, are not motivated by financial benefits, so the traditional crime deterrence tools used by law enforcement are not effective at dismantling such groups. The question of efficacy could be answered with long-term monitoring of groups involved in the most recent criminal cases.

Research could also involve reviewing completed investigations of Antifa groups to map out Antifa's group structure, which might aid in bolstering prosecutions of such groups under the RICO Act. Identifying members of prominent Antifa groups, such as Antifa Sacramento and Rose City Antifa, as well as the roles they play could assist law enforcement with learning the intricacies of the groups and their hierarchal structures. Such information could assist in applying the RICO Act to Antifa groups.

C. FINAL THOUGHTS

This thesis analyzed how the RICO statute has been applied to a variety of criminal enterprises and how might it be applied to prosecute Antifa. The RICO Act has been successfully used to address non-traditional criminal enterprises, non-economic enterprises, and ideologically based groups with similarities to Antifa. The act is superior to pursuing local criminal prosecutions because the former was created to target both the leadership and members for crimes committed in furtherance of the organization, with the goal of dismantling illegal enterprises.

With the recent announcement of former President Trump's intention to run for re-election in 2024, a resurgence of protest activity against far-right politics is expected. The continued monitoring of criminal Antifa groups is crucial for the protection of property and life. Using such tools as the RICO Act will be instrumental in preventing future damage or injuries as a result of criminal Antifa activity.

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