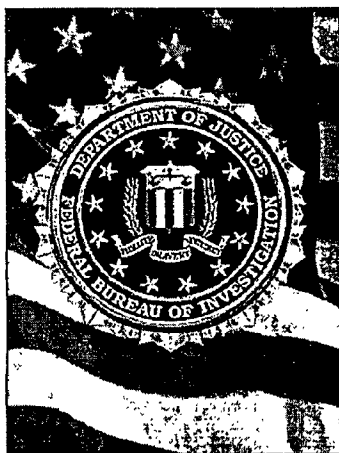


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**(U) Civil Rights Program**  
**(U) Policy Implementation Guide**



**(U) Federal Bureau of Investigation**

**(U) 0342PG**

**(U) October 18, 2010**

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Civil Rights Program Policy Implementation Guide

**(U) GENERAL INFORMATION:** Questions or comments pertaining to this handbook can be directed to:

- (U) FBIHQ/Criminal Investigative Division, Division 6**
- (U) Public Corruption/Civil Rights Section, Civil Rights Unit**
- (U) Division Point of Contact:**  **Unit Chief**

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**(U) Supersession Information:**

**(U) For a complete list of supersessions see Appendix H of this policy implementation guide.**

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**1. (U) Scope**

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**1.1. (U) Purpose**

(U//FOUO) The purpose of the *Civil Rights Program Policy Implementation Guide* is to provide Federal Bureau of Investigation (FBI) personnel with a detailed framework and clear guidance about the Civil Rights Program (CRP), including designated responsibilities; Civil Rights (CR) subprograms; statutes applicable to each CR-related violation; instructions for completing CR reports; applicable administrative procedures; mandatory reporting requirements; investigatory guidance; and best practices.

**1.2. (U) Background**

(U//FOUO) The FBI is the primary federal agency responsible for investigating all allegations associated with violations of federal civil rights statutes. These laws are designed to protect the civil rights of all persons, citizens, and non-citizens within the United States (U.S.) and its territories. The mission of the CRP is to enforce federal CR statutes and to ensure that the protected rights of all persons in the United States are not abridged. The CRP is divided into four subprograms: Hate Crimes (HC), Color of Law (COL), Human Trafficking (HT), and the Freedom of Access to Clinic Entrances (FACE) Act. Because of the nature of CR violations and the impact of those crimes on victims and communities, CR investigations must be immediately addressed. In order to assist FBI personnel with the investigation of credible allegations of violations of federal civil rights laws, and in order for the Civil Rights Unit (CRU) to maintain accurate records and statistics regarding each case's initiation, the administrative procedures and reporting requirements detailed in this guide have been implemented.

(U//FOUO) In order to be responsive to both the public and the Department of Justice Civil Rights Division (DOJ-CRD) in matters involving CR violations, FBI personnel need a clear and comprehensive policy implementation guide that addresses the basic elements of CR violations and the investigative process applicable to this type of case. This PG was updated following the FBI's adoption of the *Attorney General's Guidelines for Domestic FBI Operations* (AGG-Dom) on September 29, 2008, and the *Domestic Investigations and Operations Guide* (DIOG) on December 16, 2008. All CR investigations must comply with the AGG-Dom and the DIOG. Any changes to the CR investigative process are shared in substance with DOJ-CRD.

**1.3. (U) Intended Audience**

(U//FOUO) This policy implementation guide is for the use of all FBI employees who have the responsibility of analyzing information, investigating crimes, and collecting evidence in matters involving violations of statutes and laws applicable to CR cases. These employees must be familiar with the general framework and guidelines that articulate the circumstances when CR investigations are initiated, the types of investigations that are opened, the documentation to be submitted, and the pertinent reporting requirements.

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**2. (U) Roles and Functional Responsibilities**

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**2.1. (U) Department of Justice - Civil Rights Division**

- (U) Manages the DOJ's CRP.
  - (U) Coordinates prosecution of CR matters with various United States Attorney's Offices (USAO), the FBI, and other federal, state, and local investigative agencies.
  - (U) Forwards allegations of possible violations of criminal civil rights statutes to the FBI.
  - (U) Reviews FBI investigative reports and coordinates with USAOs to make prosecutorial decisions.
  - (U) Provides closing notifications to field offices (FO).
- (U) Coordinates with case agents on investigative steps and prosecutorial decisions.

**2.2. (U) United States Attorney (USA)**

- (U) Coordinates prosecutions of CR matters with DOJ-CRD and the FBI.
- (U) Reviews FBI investigative reports and coordinates with DOJ-CRD to make prosecutorial decisions.
- (U) Forwards allegations of possible violations of criminal civil rights statutes to the FBI.

**2.3. (U) Field Offices**

**2.3.1. (U) Program Manager (Assistant Special Agent in Charge [ASAC])**

- (U) Advises the Special Agent in Charge (SAC) on all facets of the CRP.
- (U) Ensures effective direction, guidance, and leadership for the program.
- (U) Oversees the operational, administrative, and intelligence components of the CRP.
- (U) Analyzes and evaluates the division's CR domain analysis to ensure that the division is adequately addressing CR issues.
- (U) Establishes proper CR investigative priorities, goals, objectives, and resource allocation.
- (U) Monitors major case initiations.
- (U) Monitors participation in CR task forces and/or working groups.
- (U) Conducts periodic reviews of the CRP to ensure that divisions utilize the FD-610, identify sensitive investigative matters (SIM), and communicate investigative results to DOJ-CRD.
- (U) Ensures that proper files are established to document activities.
- (U) Cultivates/develops case-enhancing liaison with outside agencies.
- (U) Monitors liaison, training, and intelligence base applicable to the CRP to ensure adequate coverage of all four CR subprograms.

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- (U) Oversees compliance with CRP administrative guidance and reporting requirements.
- 2.3.2. (U) Program Coordinator (Supervisory Special Agent [SSA])
- (U) Oversees the CRP on a daily basis.
  - (U) Confers with the ASAC regularly regarding CRP developments, concerns, priorities, goals, and objectives.
  - (U) Frequently advises the CRU on significant case developments, including matters garnering media attention and cases that are in the prosecutorial stage.
  - (U) Ensures proper utilization of CRP resources.
  - (U) Coordinates with other program SSAs to ensure a unified and focused investigative effort.
  - (U) Tracks resource utilization, intelligence base development, crime problem/domain analysis, liaison, and training associated with the CRP and its subprograms.
  - (U) Plays a pivotal role in developing beneficial liaison contacts for the program.
  - (U) Serves as a link for CRP coordination between a division's headquarters city and resident agency/agencies (RA).
  - (U) Implements a proactive CR training program for outside organizations, including state and local police departments and law enforcement agencies; nongovernment organizations (NGO); and community, minority, and special interest groups that are relevant and active in the division's territory.
  - (U) Ensures that all special agent (SA) personnel working CR matters are properly trained in conducting such investigations and are knowledgeable of CRP administrative and reporting requirements.
  - (U) Conducts CR investigations in a thorough and expeditious manner.
  - (U) Complies with all CRP administrative guidelines and reporting requirements.
  - (U) Coordinates CR investigations with DOJ-CRD and the USAO.
  - (U) Creates, develops, and establishes a strong intelligence base in support of CR investigations.
- 2.3.3. (U) Special Agent
- (U) Conducts CR investigations in a thorough and expeditious manner.
  - (U) Complies with all CRP administrative guidelines and reporting requirements.
  - (U) Coordinates CR investigations with DOJ-CRD and the USAO.
  - (U) Creates, develops, and establishes a strong intelligence base in support of CR investigations.



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**2.3.4. (U) Field Intelligence Group (FIG)**

- (U) Gathers, reviews, analyzes, and disseminates CR intelligence information that assists the division in implementing an efficient CRP.
- (U) Prepares the CRP domain assessment with input from the division's CRP coordinator.
- (U) Prepares and disseminates the necessary intelligence bulletins on significant CRP issues, intelligence, or events.

**2.4. (U) Federal Bureau of Investigation Headquarters (FBIHQ)**

**2.4.1. (U) Civil Rights Unit**

- (U) Oversees the national CRP.
- (U) Develops and implements CR training, policies, administrative procedures, and reporting guidelines.
- (U) Provides guidance to the field on program management and investigative matters.
- (U) Conducts CRP reviews, inspections, briefings, and other required assignments, as necessary.
- (U) Coordinates investigative matters and policy issues with DOJ-CRD.

(U) Establishes national liaison contacts.

**2.4.1.1. (U) Unit Chief (UC)**

- (U) Provides direction to the CRP.
- (U) Provides direction and guidance to all unit personnel.
- (U) Reports significant issues to the section chief, assistant section chief, and Criminal Investigative Division (CID) executive management.
- (U) Coordinates program management with FBIHQ entities and DOJ-CRD.
- (U) Maintains liaison with national CR advocacy organizations and other government agencies.
- (U) Oversees the implementation of CRP training and policies.
- (U) Establishes program goals, objectives, and priorities.

**2.4.1.2. (U) FBIHQ Supervisory Special Agent**

- (U) Manages all aspects of the CRP within an assigned region and subprogram.
- (U) Provides guidance and assistance to field offices.
- (U) Handles requests from the DOJ-CRD.
- (U) Directs supervision and professional development of assigned professional staff employees.

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- (U) Handles program evaluations and reviews, CR inspections, urgent reports, SAC Performance Appraisal Reports (PAR), SAC briefings, congressional requests, and any other matters assigned by the unit chief, assistant section chief, section chief, and CID executive management.
- (U) Conducts SAC briefings.
- (U) Analyzes Semiannual Program Reviews (SAPR).
- (U) Prepares talking points, briefing papers, Director's notes, and any other material for executive management.
- (U) Conducts training for the FBI National Academy, new agents classes, and other state, local, and international entities.
- (U) Reviews proposed legislation affecting the program.
- (U) Monitors significant investigations.

**2.4.1.3. (U) Management Program Analyst (MPA)**

- (U) Assists and supports CRU SSAs in the preparation of program assessments, CR inspections, SAC PARs, SAC briefings, talking points, briefing papers, Director's notes, and related documents.
- (U) Maintains unit statistics.
- (U) Assists SSAs and the unit chief in their preparation for training new agent classes and other local, state, federal, and international entities.
- (U) Assists SSAs with FO and/or DOJ-CRD requests.
- (U) Checks Automated Case Support (ACS) for leads pertaining to assigned field offices (in the absence of the management program assistant [MPAT]) and forwards leads to the SSA for appropriate action.
- (U) Reviews all incoming DOJ communications and forwards same to the SSA for appropriate action.
- (U) Conducts research projects, prepares reports, and performs any other work which may be requested by the SSA or unit chief.
- (U) Conducts quarterly verification of CR task forces and working groups.
- (U) Maintains any assigned subprogram databases.
- (U) Maintains and updates subprogram materials for dissemination to the field.
- (U) Regularly updates talking points for assigned subprograms.
- (U) Participates in regional meetings, conferences, other significant meetings and training events related to the assigned region and subprogram.
- (U) Handles all logistics and coordination for meetings, conferences, and training events for the assigned region and subprogram.

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- (U) Executes additional administrative projects and/or duties assigned by the UC or SSA.
- 2.4.1.4. (U) Management Program Assistant**
- (U) Regularly checks ACS for leads pertaining to the assigned region and forwards leads to the SSA/analyst for appropriate action.
  - (U) Reviews all incoming DOJ-CRD communications and forwards these to the SSA/analyst for appropriate action.
  - (U) Assists the SSA with requests from assigned field offices and/or DOJ-CRD.
  - (U) Uploads and disseminates all outgoing communications.
  - (U) Updates field office program coordinator and program manager lists.
  - (U) Copies, distributes, and mails program information pertinent to the assigned regions.
  - (U) Organizes and maintains the CRU file cabinets and records.
  - (U) Assists MPAs with short deadline projects.
  - (U) Acts as a backup for the MPA.
  - (U) Handles any additional administrative projects and/or duties assigned by the UC or SSA.
- 2.4.2. (U) Public Corruption/Civil Rights Intelligence Unit (PC/CRIU)**
- (U) Develops a national CRP domain analysis.
  - (U) Provides tactical and strategic analytical support to pending CR investigations.
  - (U) Identifies regional trends associated with each CR subprogram.
  - (U) Publishes regional and nationwide intelligence work products on CR matters.
- 2.4.3. (U) Office for Victim Assistance**
- (U) Coordinates continued presence requests for victims of human trafficking.
  - (U) Assists with emergency services associated with victims of HT, to include translation services, documentation associated with the immigration process, and refugee certification.

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**3. (U) Policies**

**3.1. (U) Considerations for Initiation of CR Investigations**

(U//FOUO) FOs must critically and thoroughly evaluate each complaint, referral, or allegation of CR violations occurring within their territories when they become aware of them. If an FO concludes that a specific complaint warrants the initiation of an investigation, an assessment, a preliminary investigation (PI), or a full investigation will be opened in accordance with the regulations contained in the DIOG.

(U//FOUO) If the complaint is a referral from the DOJ-CRD that does not warrant an investigation following a thorough and careful review by the FO, the FO must document the justification for that conclusion in a Letterhead Memorandum (LHM). Recognizing that FOs must regularly correspond with DOJ-CRD in writing, the LHM is the proper document for to use for these communications. The LHM must be forwarded to DOJ-CRD. Copies of any documentation that supports the FO's decision not to open an assessment or predicated investigation must be forwarded to DOJ-CRD with the LHM, and must also be maintained in the division's appropriate CR zero file. The CRU may be contacted by either FOs or DOJ-CRD to resolve any disputes regarding the disposition of referrals from DOJ-CRD.

(U//FOUO) FOs are reminded that there will be instances when the CRU will exercise its program oversight responsibilities and direct that a particular case be initiated. This is necessary when both the CRU and DOJ-CRD strongly believe that the FO has decided not to investigate a complaint that is clearly a CR violation and/or has a significant community impact.

(U//FOUO) Because of the sensitive nature of CR investigations and the impact they have on communities, no CR investigation is allowed to be placed in unaddressed status or in pending inactive status. All CR matters must be promptly addressed and resolved.

**3.2. (U) Opening a Civil Rights Investigation Using an FD-610**

(U//FOUO) The FD-610 "Civil Rights Case Initiation Form" is the only document to be used to open a new civil rights PI or full investigation. A civil rights investigation may not be opened from the FD-71 "Complaint Form" or an electronic communication (EC). The data provided in this form is utilized by CRU and CRIU to compile specific data relating to pending CR cases. CRU and CRIU review and analyze this data to identify and monitor trends and developments in FOs. The FD-610 is disseminated to the DOJ-CRD in full, and is used by trial attorneys to initially assess the merits of all civil rights investigations.

(U//FOUO) The FO must draft the FD-610 after receiving the complaint and determining that enough predication is present to initiate a case. If the PI or full investigation is a SIM, as the term is defined in the DIOG, CRU must be notified by the FO. SIM designation must also be noted in the "Details" section of the FD-610. Color of law cases are not automatically considered SIMs simply because a police or correctional officer is the subject. SIM designation only applies if the officer's position qualifies the investigation as a SIM and the officer's conduct includes corrupt activities. Corruption involves accepting a kickback, payment or acceptance of bribes, or receiving other things of value in exchange for official action or inaction. Normally, if the case has those elements, it will likely be a public corruption case (194 investigative classification), and not a civil rights case (282 investigative classification). However, if the FO does open a

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civil rights case on an officer, the case must be designated as a SIM if the subject officer's position and corrupt activities qualify the investigation as a SIM or if in the judgment of the FBI official opening the investigation, the significance of the matter calls for the SIM designation. (See the "Sensitive Investigative Matters/Academic Nexus" section of the DIOG.)

(U//FOUO) Upon electronic approval by the SSA, the FD-610 opens a new case in ACS and the FD-610 is automatically uploaded and serialized with an action lead set for the CRU, and an information lead for the PC/CRIU. The lead to the CRU is to "Review and Forward to DOJ-CRD." The lead to the PC/CRIU is to "Read and Clear." The FO is not required to submit a hard copy of the FD-610 to the CRU.

(U//FOUO) When the CRU receives the electronic FD-610, the CRU SSA who oversees the division reviews the document and forwards a copy to DOJ-CRD. This process expedites the dialogue between DOJ-CRD and the FO. Upon receipt of the FD-610, and after a trial attorney or investigator is assigned to the case, DOJ-CRD will contact the case agent to advise of the identity of the assigned trial attorney or investigator. The case agent and the DOJ-CRD attorney work as a team throughout the course of the investigation.

3.2.1. (U) Assessments

(U//FOUO) Assessments may be initiated upon receipt of a DOJ-CRD referral. The field office CRP coordinator has the authority and discretion to handle a referral as any other CR complaint. The CR coordinator must, however, respond (by LHM) to DOJ-CRD, advising of the field office's decision after the referral has been received and a decision has been made regarding its disposition.

(U//FOUO) A field supervisor may initiate an assessment that is not based upon a DOJ-CRD referral, but rather is based upon information in an FD-71. The supervisor may share information gathered pursuant to that assessment with DOJ-CRD and the USAO at the supervisor's discretion. Supervisors are encouraged to share information with DOJ-CRD and the USAO especially in matters garnering significant media attention. (See the "Retention and Sharing of Information" section of the DIOG.)

(U//FOUO) FOs may be contacted by DOJ-CRD regarding whether or not an assessment was opened on a particular matter. If an assessment was conducted, then based upon the DOJ-CRD inquiry, the FO must provide DOJ-CRD with the results of the assessment via an LHM.

If a type 1 or 2 assessment is opened, and the field supervisor determines that there is enough information to initiate a CR case, the assessment must remain open until the case is initiated using the FD-610. After any relevant documents (i.e., attachments to the FD-71) are filed in the CR case, the assessment must be closed and filed in the appropriate [redacted] for example, [redacted] for the new CR case.

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If a type 3 assessment case is opened and it is subsequently determined that information collected is sufficient to open a predicated CR case, the assessment may remain open, at the discretion of the field supervisor. A new spinoff case should be opened using the FD-610, identifying it as a spinoff of the type 3 assessment case. Approvers must choose Source Code 15 (Assessment Spinoff/Consolidated) when uploading the FD-610.

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3.2.2. (U) Preliminary Investigation

(U//FOUO) All CR preliminary investigations will be initiated on an FD-610, which will be drafted, uploaded, and sent electronically to CRU after the SSA has determined that an investigation should be opened. An FD-610 must be sent to CRU for review and for dissemination to DOJ-CRD.

(U//FOUO) In the course of all color of law PIs, the FO must (1) advise the relevant local law enforcement agency that a CR preliminary investigation has been initiated, and (2) request copies of the agency's investigative file. The field office may choose to delay this notification if the delay is warranted for investigative purposes. The local law enforcement file should include police reports, subject/victim/witness statements, and crime scene reports and photographs. The FO must also request internal affairs reports if they have been generated. If the FO discovers that these reports contain or may contain potential Garrity statements, the FO must send the reports in a sealed and marked envelope to DOJ-CRD with an LHM requesting that the documents be appropriately redacted and returned to the FO. (See section 4.9.2, for further details regarding Garrity issues.) The FO should contact and interview the victim, but only if doing so would not interfere with the local investigation and/or prosecution. The FO must also conduct criminal history and indices checks on subjects and victims. (See the "Preliminary Investigations" and "Retention and Information Sharing" sections of the DIOG.)

(U//FOUO) In accordance with the AGG-Dom and the DIOG, all preliminary investigations will be concluded within six months of the date of the FD-610. One extension may be granted with SAC approval. Further extensions require FBIHQ CRU Section Chief approval [redacted] (See the "Preliminary Investigations" section of the DIOG.)

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(U//FOUO) During the course of a CR preliminary investigation, and prior to the initial six-month deadline, the case agent will forward information gathered during the investigation to the USAO and the DOJ-CRD. The case agent will draft and forward an LHM with supporting documentation attached to the USAO and to the DOJ-CRD. Because the DOJ-CRD would have opened a companion investigation upon receipt of the FD-610, the FO must forward its investigative file to DOJ-CRD to enable the assigned deputy chief to make an informed prosecutorial decision on the advisability of initiating a federal prosecution. The USAO and/or DOJ-CRD may initiate contact with the SSA or case agent to obtain the documentation at an earlier point in the investigation if there is a justifiable reason for the request. In order to allow ample time for a prosecutorial review, SAs are encouraged to forward the LHM and supporting documentation to the USAO and DOJ-CRD as soon as the information has been compiled. If the SSA has determined that the preliminary investigation must be closed, the case agent must indicate this decision and the reason for this decision on an LHM. If the USAO or DOJ-CRD is of the opinion that the preliminary investigation must not be closed, but instead converted to a full investigation, they may submit their reconsideration request in writing to the SSA. (See the "Preliminary Investigations" section of the DIOG.) While the SSA has the authority to close, reopen, or convert a CR case, absent the receipt of a prosecutorial decision, CRU may be contacted by either the FO or DOJ-CRD to resolve any disputes regarding the continuation or closing of CR PIs.

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3.2.3. (U) CR Full Investigations

(U//FOUO) Field office full investigations must be conducted in compliance with the AGG-Dom and the DIOG. (See the "Full Investigations" section of the DIOG.)

(U//FOUO) All full investigations will be initiated using an FD-610 that has been completed, uploaded, and sent electronically to CRU after the SSA has determined that an investigation must be opened. The CRU will provide the FD-610 to DOJ-CRD.

(U//FOUO) In the course of all color of law full investigations, the FO must (1) advise the relevant, local law enforcement agency that a civil rights full investigation has been initiated and (2) request copies of agency's investigative file. The field office may choose to delay this notification if the delay is warranted for investigative purposes. The local law enforcement file should include police reports, subject/victim/witness statements, and crime scene reports and photographs. The FO must also request internal affairs reports if such reports have been generated. If the FO discovers that such reports contain, or may contain, potential Garrity statements, the FO must send those reports in a sealed and marked envelope to DOJ-CRD with an LHM requesting that the documents be appropriately redacted and returned to the FO. See section 4.9.2 for further details regarding Garrity issues. The FO should contact and interview the victim, but only if doing so would not interfere with the local investigation and/or prosecution. The FO must also conduct criminal history and indices checks on subjects and victims. (See the DIOG, "Authorized Investigative Methods in Full Investigations.")

(U//FOUO) Following the initiation of the full investigation, the FO must submit an LHM to DOJ-CRD and the USAO which (1) states that the case has been opened as a full investigation, (2) identifies the facts predicated the case, (3) gives a summary of the investigation to date, (4) provides the envisioned investigative steps, and (5) documents the USAO and/or DOJ-CRD preliminary opinion that the allegation(s) indicate a potential violation of a federal civil rights law. The FO must attach all available investigative documents (e.g., FD-302s, police reports, and medical reports) to the LHM. Because DOJ-CRD would have opened a companion investigation upon receipt of the FD-610, the FO must forward its investigative file to DOJ-CRD to enable the assigned deputy chief to make an informed prosecutorial decision on the advisability of initiating a federal prosecution.

(U//FOUO) During the course of a CR full investigation, the case agent will forward information gathered during the investigation to the USAO and the DOJ-CRD, as necessary and appropriate, to keep them apprised of the status of the case. The case agent will draft and forward an LHM with supporting documentation to the USAO and to the DOJ-CRD. The USAO and/or DOJ-CRD may initiate contact with the SSA or case agent to obtain the documentation at an earlier point in the investigation if there is a justifiable reason for the request. In order to allow ample time for a prosecutorial review, SAs are encouraged to forward an LHM with supporting documentation to the USAO and DOJ-CRD as soon as the information has been compiled. If the SSA has determined that the full investigation must be closed, the case agent must indicate this decision on the LHM. If the USAO or DOJ-CRD is of the opinion that the full investigation must not be closed, they may submit their reconsideration request in writing to the SSA. While the SSA has the authority to close or reopen a full investigation, the CRU may be contacted by either the FO or DOJ-CRD to resolve any disputes regarding the continuation of CR full investigations. (See the DIOG.)

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(U//FOUO) When a full investigation has been completed, the FO must submit a final LHM to DOJ-CRD and the USAO. The LHM must summarize the investigation, have the remaining investigative documents attached to it, and advise the recipients that the FO has closed the case. The FO may close the case if that decision is warranted and supportable, absent a decision by the USAO or DOJ-CRD to decline prosecution. A final LHM and supporting documentation will not only advise the USAO and DOJ-CRD that the FO has concluded its investigation, but it will also provide them with ample information on which to base their prosecutorial decision. CRU recommends that the FO request and obtain a prosecutorial opinion prior to closing the full investigation.

**3.2.4. (U) Submission of Reports**

(U//FOUO) One copy of the LHM and all supporting documents must be sent directly to DOJ-CRD, and one copy must be sent to the USAO within the judicial district where the investigation was initiated. It is not necessary to provide any documents to the CRU. The address for DOJ-CRD is listed below:

(U) Department of Justice, Civil Rights Division, Criminal Section  
(U) 601 D Street, NW, Room 5339  
(U) Washington, DC 20004  
(U) (202) 514-3204

(U) For DOJ-CRD Deputy Regional Assignments, click [here](#).

**3.2.5. (U) Field Coordination with CRU**

(U//FOUO) Field offices are required to regularly communicate with CRU on significant events that occur within their respective divisions, including national media coverage of a hate crime or color of law matter. Furthermore, FOs are required to notify CRU of any indictment/information, arrest, conviction, or sentencing at least several days prior to its occurrence. This communication may take place in the form of electronic mail (e-mail) and telephone contacts. FOs are requested to notify the CRU prior to the submission of any Urgent Reports (UR).

**3.2.6. (U) Field Coordination with DOJ-CRD**

(U//FOUO) DOJ Criminal Section trial attorneys and FO case agents must be in regular contact with each other in order to expedite the completion and resolution of all CR investigations. Field SSAs and SAs are encouraged to call DOJ-CRD frequently to discuss the status of any pending investigation and to obtain guidance regarding any prosecution strategies.

(U//FOUO) Once all logical investigation has been completed, and after DOJ/CRD has carefully reviewed the LHMs and supporting documentation received for each case, DOJ-CRD will determine whether or not the matter warrants prosecution. If prosecution is declined, DOJ-CRD will send the closing communication directly to the FO and will also notify the victim(s) that DOJ-CRD has declined to pursue a federal prosecution.

(U//FOUO) To better facilitate case management, CRU has asked that DOJ Criminal Section trial attorneys and paralegal/investigators call field supervisors directly when additional investigation is needed, or when the DOJ Criminal Section has not received the results of required investigation. These inquiries ensure that the DOJ Criminal Section's Case Management System contains current information on the status of its cases.



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(U//FOUO) The CRU expects CR investigators to work in conjunction and in cooperation with DOJ-CRD, Criminal Section trial attorneys, paralegals/investigators. DOJ-CRD inquiries to FOs are intended to foster a more efficient and expeditious management of the CRP investigative/prosecutorial caseload.

(U//FOUO) The Criminal Section is divided into four geographical teams. Each team is managed by a deputy section chief with an assigned paralegal/investigator, and is responsible for certain states in alphabetical order. Trial attorneys are assigned to a specific team. For a current listing of DOJ-CRD attorney assignments please reference the [CRU Intranet site](#).

(U//FOUO) The main telephone number for the Criminal Section, (202) 514-3204, will be used to contact all line attorneys and paralegals/investigators during business hours. After business hours, messages can be left on a deputy section chief's voice mail.

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**4. (U) Definitions and Procedures**

**4.1. (U) Hate Crime Investigation**

(U) A hate crime is "a criminal offense against a person or property motivated in whole or in part by the individual's bias against a race, religion, disability, ethnic/national origin or sexual orientation." HCs are not separate, distinct offenses, but rather traditional crimes such as murder, forcible rape, aggravated assault, simple assault, intimidation and harassment, actionable threats, arson, and other offenses that are motivated by an individual's biases. The FBI has jurisdiction to investigate those crimes where the motive appears to be based on a bias against race, religion, ethnic/national origin, sexual orientation, gender, gender identity, and disability.

(U) In order for an HC matter to be considered a federal crime under Title 18 United States Code (U.S.C.) Section (§) 245, three elements must be present:

1. (U) Threat of force or use of force.
2. (U) Motivation of bias against a victim's protected characteristic: race, religion, or national origin/ethnicity.
3. (U) Interference with the victim's participation in a federally protected activity, as outlined under 18 U.S.C. § 245.

(U) Federally protected activities include voting; applying for or enjoying employment; participating in any program receiving federal financial assistance; participating as a student at, or applicant for, a public school or college; using of any facility of interstate commerce; or using any public accommodation/establishment principally engaged in selling foods or beverages for consumption on the premises.

(U) In order for an HC matter to be considered a federal crime under 18 U.S.C. § 249, there is no need to satisfy the requirement of the victim's participation in a federally protected activity. The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009 created a new federal, criminal civil rights law which criminalized willfully causing bodily injury (or attempting to do so with fire, a firearm, or any other dangerous weapon) when:

- (U) The crime was committed because of the actual or perceived race, color, religion, or national origin of any person.
- (U) The crime was committed because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person, *and* the crime affected interstate or foreign commerce or occurred within federal special maritime and territorial jurisdiction.

**4.1.1. (U) Characteristics of Hate Crimes**

- (U//FOUO) HCs involve a higher level of assaults against persons and often involve more violence.
- (U//FOUO) Attacks are often preceded by a series of confrontations and incidents that escalate in severity.
- (U//FOUO) HCs are more likely than other criminal activity to be committed by groups of offenders.

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- (U//FOUO) Unlike traditional violent crimes, victims of HCs are more likely to be attacked by someone they do not know.

4.1.2. (U) Hate Crime Reporting

(U) In response to the Hate Crimes Statistics Act of 1990 (HCSA), the Attorney General designated the FBI's Uniform Crime Report (UCR) to develop a data collection system for its nearly 17,000 voluntary law enforcement agency participants. The HCSA was amended by the Violent Crime and Law Enforcement Act of 1994 to include crimes motivated by a bias against persons with disabilities. Although the HCSA of 1990 mandated collection for only five years, the Church Arson Prevention Act of 1996 amended HCSA by permanently extending the data collection mandate. The data collection effort is designed to capture information about the type of bias serving as the motivating factor, the nature of the offense, and the characteristics of the victims and individuals involved. The Criminal Justice Information Services (CJIS) Division is responsible for the collection of this data.

(U//FOUO) FOs are encouraged to frequently review the UCR data pertinent to their territories to determine which racial, ethnic, or religious group is targeted the most for HCs in their domains. Such reviews will ensure that the FO adequately addresses credible threats targeting this victim class.

4.1.3. (U) Groups that Monitor Hate Crimes

(U//FOUO) Establishing and cultivating professional relationships with liaison partners, such as the [redacted]

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[redacted] and other national and community special interest and non-governmental organizations represents an integral part of a field division's successful CRP. Effective liaison relationships are an essential vehicle by which FOs can communicate the FBI's role in CR investigations to organizations representing the segments of society most likely affected. SSAs and SAs must maintain regular contact with organizations that monitor HC matters. Successful liaison partnerships will also provide a resource to SSAs and SAs through which they can obtain information to better understand the HC problem within their domains and more accurately assess threats. All substantive contacts with FO liaison partners must be appropriately documented using an [redacted] form.

4.2. (U) Investigation of Racially- or Religiously-Motivated Church Arson

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(U) The following points must be considered during HC investigations involving religious property and facilities:

- (U//FOUO) [redacted]
- (U//FOUO) [redacted]

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- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]

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4.3. (U) Housing Discrimination

(U) The Fair Housing Act of 1968 prohibits housing-related violence on the basis of a person's race, color, religion, sex, handicap, familial status, and national origin. Types of violence that are usually prosecuted under housing discrimination include cross-burnings, fire bombings, arsons, gunshots, rock-throwing, or vandalism. The protection of the act reaches all persons involved at any stage of the housing transaction, such as sellers, buyers, landlords, tenants, and real estate agents.

4.4. (U) Domestic Terrorism (DT)

(U) The FBI defines terrorism as an "unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any element thereof, in furtherance of political or social objectives." The mission of the Domestic Terrorism Program (DTP) is to detect, deter, prevent, and respond to Domestic Terrorist Organizations (DTO) or individuals who threaten or conduct domestic terrorist activities within the United States. (See the forthcoming *Counterterrorism Policy Implementation Guide*.)

(U) While HC investigations focus on crimes against a person or property and are motivated, in whole or in part, by the individual's prejudice against a race, religion, ethnicity, or national origin, DT investigations focus on crimes that are committed for political or social reasons by organized extremist groups. An example of a political agenda is an anarchist group carrying out activities to overthrow the government. Incidents related to a social agenda include criminal activities carried out by extremist groups in the animal rights or environmental movements.

(U//FOUO) When an HC occurs, and in an effort to bring consistency to classifying investigations that may be addressed under the CR and DT programs in which the subject has a nexus to any type of white supremacy extremist group, the investigation must have a dual caption under the 44 or 177 investigative classification (both involve hate crimes) and 266

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classification. The FD-610, which is used to initiate the investigation, must be sent to the attention of both the CRU and DTOU. When an HC occurs and the subject is not known or if the subject has no nexus to any type of white supremacy extremist group, the investigation is to be initiated as either a 44 or 177 classification, and the FD-610 will be sent only to the CRU. If it becomes apparent during the course of the investigation that the subject has a nexus to a white supremacy extremist group, or the crime escalates into a DT matter, an EC with that information must be submitted to CRU and DTOU. The EC must be dual-captioned under the 44, 177, and 266 classifications.

#### 4.5. (U) Hate Crime versus Hate Incident

(U) A variety of different "hate incident" allegations are regularly made to FBI field offices that suggest a racial, religious, or ethnic motivation for a particular incident or altercation. Not all such allegations are criminal in nature; of those that are criminal, not all are violations of federal, criminal law.

(U) As previously defined, an HC is a traditional crime that is motivated by a bias against an individual's protected characteristics. A hate incident is defined as a hateful act in which there is no violation of the law, but rather an act against expression of free speech, which is generally protected under the First Amendment.

#### 4.6. (U) Use of U Visas

(U) Undocumented victims of hate crimes are likely eligible to receive a U visa if they meet the requirements listed below. This visa requires law enforcement endorsement.

##### 4.6.1. (U) Benefits of a U Visa:

- (U) The U visa demonstrates four years "documented" status.
- (U) The U visa serves as an Employment Authorization Document (the applicant can work lawfully in the United States).
- (U) The applicant's status can be adjusted to "lawful permanent resident" after three years, if criteria are met.
- The U visa enables other family members (parents of a minor, children of an adult, spouses, and some other categories) to obtain visas (the U visa applicant may file a petition on behalf of the family member).

##### 4.6.2. (U) Requirements for Obtaining a U Visa

- (U) The applicant is a victim of a specified crime (any assault actionable under the 249 classification) that occurred in the United States.
- (U) The victim is cooperating with law enforcement to investigate and prosecute the crime (i.e., the applicant is described as being helpful, will be helpful, or is likely to be helpful in investigating the crime, regardless of whether the evidence results in prosecution or conviction.)
- (U) The victim suffered substantial mental or physical abuse, as determined by the United States Citizenship and Immigration Services (USCIS).

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- The victim is not excludable because of criminal activity (waivers can be obtained).

4.6.3. (U) Process to obtain a U Visa:

- (U) The victim petitions and completes an I-918 form available at [www.USCIS.gov](http://www.USCIS.gov).
- (U) Federal, state, or local law enforcement completes an I-918B (endorsement), certifying the applicant is the victim of a crime and is cooperating with law enforcement.

(U) The U visa is adjudicated and issued by USCIS. With a *bona fide* claim, the applicant will receive temporary status and an Employment Authorization Document pending the final adjudication, which can take several months to complete.

4.7. (U) Hate Crime Violations

4.7.1. (U) Federal Criminal Civil Rights Statutes

(U) There are racially motivated crimes which simply cannot be reached under federal jurisdiction and must be prosecuted by states. Title 18 U.S.C. § 245 reaches only racially motivated violence that is intended to interfere with the victim's federal rights or participation in a federally protected activity. Federal rights that are protected against interference by private parties, as opposed to those acting under the color of law, are limited. It is therefore crucial at the outset of an investigation to consider the federal right or rights that may be involved. Some of these rights are spelled out explicitly in statutes. Others, as explained below, must be found in the Constitution, civil statutes, or case law.

(U) In addition to identifying the federal right or rights as early as possible, it is also important to focus on developing evidence of intent early in an investigation. The statutes involved have a dual-intent requirement. The government is required to prove intent to act because of a racial or prohibited motivation (e.g., religion or national origin) and intent to interfere with the identified federal right or activity, with the exception of 18 U.S.C. § 249, which does not require interference with a federally protected activity.

(U) There is no single, federal "hate crime" statute. Rather, there are five criminal civil rights statutes that address hate crimes:

1. 42 U.S.C. § 3631 (interference with housing rights).
2. 18 U.S.C. § 245 (interference with federally protected activities).
3. 18 U.S.C. § 241 (conspiracy to interfere with federal rights).
4. 18 U.S.C. § 247 (damage to religious property and obstruction of the free exercise of religious rights).
5. 18 U.S.C. § 249 (the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009).

All of these statutes, except 18 U.S.C. § 249, generally require the following elements to be established:

- (U) The threat of force or use of force or the conspiracy to threaten or use force.

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- (U) The targeting of the victim because of race, color, religion, or national origin, and additionally in the case of § 3631, disability, gender, or familial status.
- (U) The additional motive to injure, intimidate, or interfere with some specific federally protected activity or right.

(U) Additionally, certain federally protected rights (those addressed in 18 U.S.C. § 247) also require that there be an effect on interstate commerce.

4.7.2. (U) Traditional Federal Hate Crimes, 18 U.S.C. §§ 241 and 245, and 42 U.S.C. § 3631

(U) These three statutes criminalize threats of force or use of force or conspiracy to do either, but only when the requisite dual-intent is satisfied. The subject must intend to harm the victim because the victim is, or is perceived to be, a person who belongs to a protected class of persons and because the victim is engaged in a specific federally protected activity or right.

4.7.2.1. (U) Force or Threat of Force

(U) While the existence of the use of force is obvious, determining whether there is a threat of force can be much more difficult. Often the threat of force takes the form of something the subject says or writes. Certain conduct that is a substitute for speech can also be a threat of force. A burning cross or a hangman's noose can be a threat of force.

4.7.2.2. (U) The "True Threats" Doctrine

(U) A subject does not violate federal law by merely espousing hate speech, which is protected by the First Amendment. The words must constitute what is called a true threat. For example, if white supremacists gather for a rally and make derogatory comments about certain minority groups and their rights, such comments are considered political speech that is protected by the First Amendment. Even if the white supremacists burn a cross at their rally, provided it was not intentionally done in such a way as to intimidate specific minority persons, the conduct is protected. Conversely, burning the cross at a rally on the property next door to, and visible to, a new African-American neighbor or videotaping the cross-burning and mailing it to the African-Americans in the neighborhood as a "warning" would constitute true threats.

(U) In 2003, the United States Supreme Court in *U.S. v. Black* defined true threats as speech or conduct "where the speaker intends to communicate a serious expression of intent to commit an act of unlawful violence to a particular individual or group of individuals." *U.S. v. Black* recognized that "the speaker need not actually intend to carry out the threat [because the intent of the law is also to protect] individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur." While evidence of the speaker's intent is relevant in determining whether a statement is a true threat, it is not the only factor considered. Even when the subject says, "I did not mean to threaten anyone," courts have found evidence of a threat in factors such as (1) the context of the statement, (2) direct delivery to the recipient, (3) the reaction of a reasonable recipient, (4) the relationship between the speaker and the recipient, and (5) the absence of a conditional nature of the threat.

4.7.2.3. (U) Racial or Other Protected Class Animus

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(U) Conduct motivated by animus toward a protected class of minority persons is usually the easiest element to recognize. It may appear, simply from surrounding circumstances, that the victim was selected by the subject because of race, religion, and so on. For example, skinheads begin an argument that ends in violence with the only interracial couple in a restaurant. Another element is the use of racial, ethnic, or other bias epithets, either in talking about the victim, before or after the incident, or to the victim during the incident. For example, as the subject beats the victim, he shouts, "take that, rag-head." Examples of a third element are communications such as graffiti or threatening e-mails containing language easily recognized as racially or religiously derogatory, such as a synagogue spray-painted with the words "8 million more" and swastikas.

4.7.2.4. (U) Federally Protected Right or Activity

(U) There must also be a demonstrative motive targeting the victim's federally protected right or activity. Title 18 U.S.C. § 245 protects individuals who are engaging in certain federal activities that are explicitly identified in the statute itself. Section 245 (a) (2) (b) protects: (1) enrolling or attending public school or college; (2) using any benefit, service, program, facility, or activity provided or administered by a state or a state subdivision; (3) applying for or enjoying employment; (4) serving as a juror; (5) traveling in or using a facility of interstate commerce, or (6) using the goods and services of a public accommodation (e.g., hotel, restaurant, gas station, theater, or arena).

Section 245 (a) (1) also protects certain federal rights without regard to the existence of racial or other prohibitive animus: (1) voting, (2) using facilities or programs administered by the United States, (3) employment by any agency of the United States, (4) serving as a federal juror, or (5) using the benefits of any program receiving federal financial assistance. The violence associated with this section usually involves assaults, arsons, gunshots, or vandalism perpetrated against some person engaged in one of these activities or perpetrated on the victim's property. Some examples of § 245 violations may have occurred while the victim was:

- (U//FOUO) Patronizing a bar, restaurant, convenience store, or gas station.
- (U//FOUO) Jogging in a public park, camping in a state forest, participating in a public parade, or using a public street.
- (U//FOUO) Attending a public school or private college that receives federal or state money, or participating in a program at a state university.
- (U//FOUO) Delivering the U.S. mail, acting as a government confidential human source (CHS), working for a private business, or working for a public advocacy group.
- (U//FOUO) Traveling on an interstate highway or waiting at a bus stop.

(U) Section 245 may also be used to protect persons who are affording other individuals the opportunity to participate in the protected activities under 18 U.S.C. § 245(b) (4) (B). For example, defendants who burn a cross in front of an auto body shop to "send a message" to minority employees to leave town have interfered with the employees' employment rights and the white shop owner's right to employ persons without regard to race. The firebombing of an NAACP office interferes with that organization's right to advocate for minority participation in the rights provided in § 245.



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4.7.2.5. (U) The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249

(U) This legislation, enacted in October 2009, is the first significant expansion of federal criminal civil rights laws in over a decade, since the passage of the Church Arson statute (18 U.S.C. § 247) in the mid-1990s. For the first time in the history of this Nation, the federal government will have authority to prosecute violent hate crimes, including violence directed at the gay, lesbian, bisexual, and transgender (GLBT) community, to the fullest extent of its jurisdiction. The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009 creates a new federal, criminal civil rights law which criminalizes willfully causing bodily injury (or attempting to do so with fire, a firearm, or other dangerous weapon) when (1) the crime was committed because of the actual or perceived race, color, religion, national origin of any person or (2) the crime was committed because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person *and* the crime affected interstate or foreign commerce or occurred within federal special maritime and territorial jurisdiction.

(U) The statute requires that all prosecutions be undertaken pursuant to guidelines issued by the Attorney General, or a designee, which establish neutral and objective criteria for determining whether a crime was committed because of the actual or perceived status of any person. The guidelines have now been issued and appear in the U.S. Attorney's Manual (USAM) Section 8-3.300. The statute criminalizes only violent acts resulting in bodily injury through the use of fire, firearms, explosive and incendiary devices, or other dangerous weapons. The statute criminalizes only violent acts resulting in bodily injury through the use of fire, firearms, explosive and incendiary devices, or other dangerous weapons. The statute does not criminalize threats of violence. Threats to inflict physical injury may be prosecutable under other hate crime statutes, such as 42 U.S.C. § 3631 or 18 U.S.C. § 245. The new law also provides funding and technical assistance to state, local, and tribal jurisdictions to help them more effectively investigate, prosecute, and prevent hate crimes.

4.7.2.6. (U) Housing Rights, 42 U.S.C. § 3631

(U) Title 42 U.S.C. § 3631 prohibits housing-related violence on the basis of race, color, religion, national origin, sex, handicap, and familial status. No other federal criminal hate crime statute protects sex (gender), handicap, or familial status. The violence usually prosecuted under this section includes cross-burnings, fire-bombings, arsons, gunshots, rock-throwing, or vandalism directed at someone's home or toward some person or property associated with it. Victims are usually targeted because they are occupying, or about to occupy, a dwelling. The statute reaches all persons involved at any stage of the housing transaction, such as sellers, buyers, landlords, tenants, and real estate agents. Significantly, it also protects the right to associate in one's home with those of another race or minority group. Some examples of § 3631 violations include:

- (U//FOUO) Burning a cross on lawn of an interracial family.
- (U//FOUO) Threatening a real estate agent who is assisting an African-American family's move into a certain neighborhood.
- (U//FOUO) Detonating an explosive device in a vehicle parked in front of a Palestinian family's home.

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- (U//FOUO) Littering a Mexican-American family's yard with numerous copies of a threatening flyer.
- (U//FOUO) Leaving a threatening voice mail on a male Pakistani's home telephone.
- (U//FOUO) Hanging a noose on a tree in an African-American family's front yard.
- (U//FOUO) Assaulting a group of Hispanic individuals because the offenders do not want the Hispanics patronizing "their" restaurant.
- (U//FOUO) Sending threatening letters to an adoption agency placing handicapped children in homes.

**4.7.2.7. (U) Conspiracy to Interfere with Federal Rights, 18 U.S.C. § 241**

(U) Title 18 U.S.C. § 241 requires the existence of a criminal agreement by two or more persons. The language of § 241 is extremely broad. In order to establish a violation of § 241, the investigator must determine what underlying right is involved, and determine whether that right is protected against private, as opposed to state, interference. For example, the Fifth Amendment right to not be deprived of life or property without due process of law, is not a right that is protected from interference by private parties, but rather a right that is only protected against interference by state actors. There are, however, other applicable rights in the Constitution and federal civil statutes and court decisions that are protected from private conduct. For example, in cases where a defendant has acted to interfere with a victim's housing rights, the underlying right for conspiracy purposes is found in the civil statute of 42 U.S.C. § 1982, a federal civil statute that provides for the enjoyment of property, regardless of race. In cases where the defendant has acted to interfere with a victim's right to enjoy public accommodations, the underlying rights for conspiracy purposes is found in the civil statute of 42 U.S.C. § 2000(a). It should be noted, however, that a criminal statute, such as § 2631 or 245, cannot establish the source of the right in a § 241 conspiracy. Examples of § 241 conspiracies include:

- (U//FOUO) A Latino street gang conspiracy to assault and murder African-Americans to interfere with their right to live in and visit a predominately Latino neighborhood.
- (U//FOUO) Skinhead conspiracies to (1) assault minorities in a park to interfere with their right to use a public accommodation or (2) vandalize Jewish community centers to interfere with members' right to enjoy property.
- (U//FOUO) Individuals in a white supremacist organization conspire to commit church arson to interfere with African-American parishioners' right to enjoy property, regardless of race.
- (U//FOUO) Conspiracies to interfere with the right to interstate travel, to a desegregated education, to be a federal witness, and to a fair and impartial trial.

**4.7.2.8. (U) House of Worship and Exercise of Religious Beliefs Hate Crimes, 18 U.S.C. § Section 247**

(U) Title 18 U.S.C. § 247 has a slightly different statutory scheme than the general federal criminal civil rights statutes. It prohibits damage to houses of worship and obstruction of any person's free exercise of religious beliefs. It requires that the offense is in or affects interstate

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commerce, unless the motive for the damage to the religious property is the race, color, or ethnic characteristics of an individual associated with the religious property. The reason for this distinction is that Congress has broad power to criminalize conduct that is based upon race under the Fourteenth Amendment to the Constitution.

**4.7.2.9. (U) Damage to a House of Worship**

(U) Investigation under this provision of § 247 is warranted when there is damage, destruction, or defacement to religious real property (e.g., a church, synagogue, mosque, religious cemetery, or other religious property, including fixtures or religious objects within a place of religious worship) because of the religious character of that property. It is important to determine as soon as possible whether the property was targeted because of the race, color, or ethnic characteristics of an individual associated with the property. If the damage is not racially or ethnically motivated, the interstate commerce nexus will be part of the investigation.

**4.7.2.10. (U) Obstruction of Free Exercise of Religion**

As with traditional hate crimes, the conduct under this provision of § 247 requires force or a threat of force to warrant an investigation. (See section 4.7.2.8. above.) An interstate commerce nexus is required in all obstruction of free exercise of religious belief cases.

**4.7.2.11. (U) In or Affecting Interstate or Foreign Commerce**

(U) Unless there is a racial or ethnic motivation for the damage to a house of worship, investigation to establish the interstate or foreign commerce nexus is required under § 247. Therefore, the arson of a predominately African-American church does not require an interstate commerce nexus. At the same time, graffiti targeting "Arabs" on a mosque does not require the interstate commerce nexus, but if the graffiti targets "Muslims," it does. If a subject uses force or a threat of force to obstruct a person's free exercise of religious beliefs, that conduct must be in, or must affect, interstate commerce. The offense would be in or would affect interstate or foreign commerce in accordance with the following examples:

- The subject acted "in" interstate commerce if he or she crossed a state line to burn the church or sent an e-mail to threaten the mosque.
- When the damage to the church was (1) repaired by a business with materials from out-of-state or (2) the threat to the mosque prevented out-of-state parishioners from attending services or (3) the church hired out-of-state security, that action affected interstate commerce.

Further examples under § 247 investigations are warranted when:

- (U) An Imam receives a threatening e-mail.
- (U) A church's religious objects were destroyed, but the collection plate was left full of money.
- (U) Worshipers were shot outside a mosque by a man shouting, "Death to Arabs!"
- (U) "Judaism is Evil" graffiti on a synagogue caused the closing of the synagogue's on-site, fee-supported day care center for a week.

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4.8. (U) Statutes

- (U) 18 U.S.C. § 243 - Exclusion of Jurors on Account of Race or Color.
  - (U) 18 U.S.C. § 244 - Discrimination Against a Person Wearing Uniform of Armed Forces.
  - (U) 18 U.S.C. § 245 - Federally Protected Activities.
  - (U) 18 U.S.C. § 246 - Deprivation of Relief Benefits.
  - (U) 18 U.S.C. § 247 - Damage to Religious Property.
  - (U) 18 U.S.C. § 249 - The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009.
  - (U) 42 U.S.C. § 1973i - Voting Rights Act of 1965.
  - (U) 42 U.S.C. § 1973dd - Overseas Citizens Voting Rights Act of 1975.
  - (U) 42 U.S.C. § 3604 - Discrimination in the Sale or Rental of Housing.
  - (U) 42 U.S.C. § 3605 - Discrimination in Residential Real Estate Related Transactions.
  - (U) 42 U.S.C. § 3606 - Discrimination in the Provision of Brokerage Services.
  - (U) 42 U.S.C. § 3617 - Interference, Coercion, or Intimidation; Enforcement by Civil Action.
- (U) 42 U.S.C. § 3631 - Criminal Interference With Right To Fair Housing.

(U) See Appendix D for detailed information on each statute or refer to the *Federal Criminal Code & Rules Booklet*.

4.9. (U) Bias Indicators

(U) Bias indicators are defined as objective facts, circumstances, or patterns attending a criminal act(s) which, standing alone or in conjunction with other facts or circumstances, suggest that the individual's actions were motivated in whole or in part by a form of bias. The following are examples of bias indicators that may suggest a crime was motivated by bias or hate:

- (U//FOUO) [Redacted]
- (U//FOUO) [Redacted]
- (U//FOUO) [Redacted]
- (U//FOUO) [Redacted]
- (U//FOUO) [Redacted]
- (U//FOUO) [Redacted]
- (U//FOUO) [Redacted]

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- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]

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(U//FOUO) The presence of one or more bias indicators suggests a hate crime may have occurred, but does not positively identify a crime or incident as being motivated by bias or hate. A small percentage of crimes motivated by bias or hate may not exhibit any of the above-listed bias crime indicators. Conversely, some crimes that exhibit bias indicators may not be motivated by bias. Therefore, each case must be examined for evidence that clearly indicates the motivation for the crime was bias-related. Also, it is not essential to determine whether the victim is actually a member of a targeted group when identifying bias indicators.

4.10. (U) Voting Rights Matters

(U) Agents are not to be assigned to "police" elections or act as observers at the polls. If a request is received for this type of activity, the appropriate local and/or state officials, the USA, and FBIHQ must be immediately advised of the receipt of the request. This notification must be directed to CRU, who in turn will coordinate with the Public Corruption Unit (PCU), DOJ-CRD, and DOJ-Public Integrity Section (PIS). The board of election commissioners, all appropriate local law enforcement officials, the USA, and FBIHQ (PCU and CRU) are to be informed of any report received in regard to anticipated disturbances at the polls.

(U) There may be circumstances, however, where it may be necessary for the FBI to investigate a credible allegation of a violation of federal law in the vicinity of the open polls (e.g., the report of a bomb discovered at a polling site). Such requests, however, must be immediately brought to the attention of CRU, FBIHQ and will be approved only on the instructions of the DOJ. Once the request is approved, and in order to avoid the potential for misunderstanding the purpose of the FBI's inquiry, every effort must be made to limit the investigation to only what is absolutely necessary to meet the objective(s) identified by DOJ. Agents may not enter the polls or conduct any investigation inside any facility in which the polls are located. (See the DIQG.)

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(U) Investigations conducted under 42 U.S.C. § 1973i (Voting Rights Act of 1965) are generally civil in nature. Therefore, unless the DOJ advises that the investigation under Title 42 is criminal in nature, the FBI is required under the Privacy Act of 1974 to furnish each individual interviewed with a statement that describes certain provisions of the Privacy Act. The FD-302 used to report the results of these interviews must clearly state that the interviewee was advised as to the protections contained within the Privacy Act. All other interviewees (third party persons), when feasible, must be apprised of the purpose for which the information is sought and how it will be used.

**4.11. (U) Color of Law Investigations**

(U) COL applies to any individual acting under his/her authority granted by the federal, state, or local government. Such acts are done outside the boundaries of lawful authority. In addition to law enforcement officials, persons who are bound by laws, statutes, ordinances, or customs include mayors, councilpersons, judges, nursing home proprietors, and security guards. When a security guard is involved in a COL allegation, the USAO and/or DOJ provide an opinion on whether or not the security guard was acting "under color of law," and can therefore be prosecuted. It should be noted that many police officers work part-time as security guards.

(U) A person acts under COL when he or she invokes authority vested in him or her by a governmental entity, such as a state or federal law enforcement agency. A police officer acting while on official duty acts under COL. A police officer who is off-duty, but is invoking his or her authority, is also acting under COL.

(U) Any allegations of COL violations involving Drug Enforcement Administration (DEA), U.S. Marshals Service (USMS), or U.S. Secret Service (USSS) personnel are investigated by DOJ.

**4.11.1. (U) Factors to Consider for Opening a COL Investigation**

(U//FOUO) In most instances, initial reporting of a CR incident contains sufficient information or detail to allow investigators to make an adequate judgment about whether or not there is a basis for initiating a predicated investigation. There are occasions in which a COL incident may fall into a "gray area," requiring an agent to further inquire about the circumstances of the incident before making a decision about initiating an investigation. The following guidance is provided in an attempt to assist investigators in their evaluation process as to whether or not FBI jurisdiction exists for an investigation. (Note: This list is not all-inclusive and all factors may not be present in each case.) Investigators must determine:

- (U//FOUO) Whether the complainant is the victim or someone with first-hand knowledge of the incident.
- (U//FOUO) Whether the victim has a documented history of submitting unsubstantiated complaints of excessive force against a particular law enforcement officer or police department.
- (U//FOUO) Whether the complainant repeats past complaints already proven to be groundless.
- (U//FOUO) Whether there have been other similar complaints about the subject(s) or a particular law enforcement agency.

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- (U//FOUO) The presence and extent of "serious bodily injury" and the degree to which such injury can be confirmed by observation, photographs, and/or medical documentation.
- (U//FOUO) The existence or likely existence of corroborating physical evidence, such as video/audio or forensic evidence obtained or developed by law enforcement.
- (U//FOUO) Whether eyewitnesses are specifically identified in the complaint.
- (U//FOUO) The existence of either willing or unwilling witnesses who may have credible information about the alleged incident, as noted in the complaint or as suggested by the nature of the alleged incident itself.
- (U//FOUO) The existence of some fact or related circumstance that makes an allegation plausible.
- (U//FOUO) The existence of suspicious information that contradicts or questions the credibility of, or suggests false exculpatory information or obvious omission in, a law enforcement statement.
- (U//FOUO) The success of a complainant's civil suit or some other judicial recognition of misconduct.
- (U//FOUO) Whether the harm resulting from the alleged misconduct is too minor or insignificant to warrant investigation.
- (U//FOUO) The extent and legitimacy of public concern or interest in the allegation.
- (U//FOUO) Whether an uncorroborated allegation presents any viable leads to pursue.

(U) See the "Investigative Methods" section of the DIOG.

#### 4.11.2. (U) Garrity

(U) The Garrity privilege arose from a 1967 Supreme Court decision, *Garrity vs. New Jersey*. The case involved police officers and other public officials who were accused of corruption in connection with the "fixing" of traffic tickets. During an investigation, these officials were required to give statements because of their status as state employees or face dismissal from their positions. The statements were subsequently introduced as evidence against them during criminal proceedings. Their convictions were upheld by the New Jersey Supreme Court, which ruled the defendants' Fifth Amendment privilege against self-incrimination was not violated. However, the U.S. Supreme Court reversed the convictions holding that while the state, as an employer, can compel/coerce an employee to cooperate in an investigation in order to take administrative action, a statement taken under those circumstances cannot later be used in criminal proceedings. The state, as an employer, can fire or suspend, but cannot criminally prosecute using this information. Accordingly, any Garrity statements, or compelled subject statements, which are contained within a local investigative report, must be removed before the entire investigative report is reviewed by the case agent and case attorney at CRD-DOJ.

(U//FOUO) During the course of a review of a local investigative police report in a COL matter, a case agent will most likely uncover a potential Garrity statement. When an agent discovers such a statement, he/she is instructed to stop reviewing the file and send it to DOJ/CRD with an LHM summarizing the investigation to date. The LHM must explain the origin and existence of

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the Garrity material, request that DOJ-CRD review the enclosed documents, redact the compelled statements, and return the redacted documents to the FO, DOJ-CRD, and not the FBI, must review the Garrity statements to avoid tainting the case agent with exposure to compelled statements. Designated DOJ personnel will review the statements and identify those sections that may be admissible for use in the investigation. Once the file has been cleansed of all Garrity statements and statements which were tainted by the original Garrity statements, DOJ-CRD will return the file to the agent so that the investigation may continue.

(U) Types of Misconduct in a Color of Law Investigation

- Use of excessive force.
- Sexual assault<sup>1</sup>.
- Failure to keep from harm.
- (U) Deprivation of medical attention.
- (U) Deprivation of property.
- (U) Presentation of false evidence.
- (U) Planting of evidence.

(U) Conspiracy against rights.

4.11.3. (U) Color of Law Statutes

- (U) 18 U.S.C. § 242 - Deprivation of Rights Under Color of Law.
- (U) 42 U.S.C. § 1997 - Civil Rights of Institutionalized Persons Act

(U) See Appendix D for detailed information on each statute or refer to the *Federal Criminal Code & Rules Booklet*.

4.11.4. (U) Double Jeopardy

(U) The Fifth Amendment states no person "shall be subject for the same offense to be twice put in jeopardy of life or limb. A defendant is protected against a second prosecution for an offense following either conviction or acquittal for the same offense, and against multiple punishments for the same offense." Corporations as well as individuals are protected by the double jeopardy clause.

<sup>1</sup> (U//FOUO) The DOJ-CRD does not generally prosecute matters in which sexual favors are exchanged for protection from arrest, favorable consideration on existing charges, or some other thing of value. While a false or illegal arrest made in an attempt to extort sexual favors from a victim is a more clear violation, it must not be presumed that a consensual or *quid pro quo* situation exists when the initial arrest is legal. Such a determination must be based on whether or not the officer did something using his or her authority to overbear the victim's will to refuse or resist. When the initial arrest is lawful, it is important to note whether the officer solicited sex from the arrestee or the arrestee suggested it. Did the officer solicit the arrestee in a manner which could be interpreted as threatening, such as putting their hand on his/her weapon? Did the officer misrepresent the seriousness of the charges faced or manufacture additional charges? All of these factors and others can play a role in determining whether or not a color of law violation has occurred.



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(U) When a crime violates both federal and state laws, the subject may be tried in both federal and state courts as a matter of prosecutorial discretion. As an example, if a police officer uses excessive force, he can be tried for assault under state law and for deprivation of civil rights under federal law. The prosecutions are for the same act, but involve two different laws. There is no double jeopardy because of the concept of dual sovereignty where federal and state governments are considered sovereign, each in its own right. Federal and state governments constitute two separate sovereignties, so double jeopardy does not apply.

(U) The decision to prosecute a case is strongly influenced by how adequate DOJ-CRD perceives the response of the local authorities to investigate and prosecute the misconduct of police officers. Local action can include administrative proceedings by the law enforcement agency as well as state prosecutions.

(U) In some rare circumstances both administrative action and local prosecution are determined to be inadequate. In many of these cases DOJ-CRD decides to pursue a federal prosecution. Such dual prosecutions are, however, not approved in the absence of compelling circumstances, and the Assistant Attorney General, DOJ-CRD must authorize them personally.

**4.11.5. (U) Civil Rights of Institutionalized Persons Act (CRIPA)**

(U) Civil Rights of Institutionalized Persons Act (CRIPA) cases, classification 214, are civil investigations, as opposed to criminal investigations. These matters are pursued through the DOJ-Special Litigation Section (SLS). When warranted, the SLS files a civil action against the targeted facility and gives the facility notice prior to any investigative proceeding. These civil suits address matters relative to the overall conditions or systematic deprivation of the constitutional rights of institutionalized persons. Included in the definition of "institution" are mental hospitals, mental retardation facilities, jails, prisons, certain types of nursing homes, and juvenile detention centers.

(U//FOUO) After receiving a credible complaint regarding a CRIPA matter, FOs must contact DOJ-CRD to discuss the merits of the complaint and the advisability of pursuing a CRIPA investigation. A universal case file number is assigned to an investigation only upon receiving a request from DOJ-SLS to conduct an investigation, and only after the completion of an FD-610.

**4.11.6. (U) Pattern and Practice**

(U) In 1991, in the aftermath of the Rodney King case, Congress passed the Police Accountability Act to address police misconduct issues. Subsequently, a gap was discovered in seeking suitable redress in systematic excessive force cases.

(U) Accordingly, Congress enacted the Violent Crime Control and Law Enforcement Act of 1994, which authorized the Attorney General to file lawsuits seeking a court order to reform police departments that violate citizens' federal rights. Title 42 U.S.C. § 14141 (the Police Misconduct Provision) makes it unlawful for state or local law enforcement officers to engage in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States. The types of conduct covered by this law include, but are not limited to, excessive force; discriminatory harassment; false arrests; coercive sexual conduct; and unlawful stops, searches, or arrests. In order to be covered by this law, the misconduct must constitute a pattern or practice; it may not simply be an isolated incident. DOJ-CRD must be able to show in court that the agency has an unlawful policy or the incidents constituted a pattern of

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unlawful conduct. However, DOJ does not have to show that discrimination has occurred in order to prove a pattern or practice of misconduct as in other civil laws.

(U) DOJ may seek injunctive relief to end the misconduct and changes in the agency's policies and procedures that resulted in or allowed the misconduct. The remedies available under this law do not include individual monetary relief for the victims of the misconduct. There is no private right of action under this law; only DOJ-CRD may file suit for violations of the Police Misconduct Provision.

(U) The Civil Rights Act of 1964 (Title VI) and the Omnibus Crime Control and Safe Streets Act of 1968 (Office of Justice Programs [OJP] statute), which are listed under 42 U.S.C. § 2000d, et seq. and § 3789d(c), prohibit discrimination on the basis of race, color, national origin, sex, and religion by state and local law enforcement agencies receiving financial assistance from DOJ. These laws prohibit both individual instances and patterns or practices of discriminatory misconduct, such as treating a person differently because of race, color, national origin, sex, or religion. The misconduct covered by these program statutes includes, but is not limited to, harassment or use of racial slurs, unjustified arrests, discriminatory traffic stops, coercive sexual conduct, retaliation for filing a complaint with DOJ or participating in an investigation, use of excessive force, or refusal by the agency to respond to complaints alleging discriminatory treatment by its officers.

(U) The focus of these civil actions, which is to have the law enforcement agency consent to change the discriminatory or abusive behavior, is very different from a typical federal criminal investigation that seeks to prosecute the individual(s). To date, these investigations have not significantly impacted FBI resources in that they are civil proceedings and do not normally require criminal investigative assistance.

(U) DOJ may seek changes in the policies and procedures of the agency to remedy violations of these laws and, if appropriate, also seek individual remedial relief for the victim(s). Individuals have a private right of action under Title VI and under the OJP statute. In other words, victims can file lawsuits themselves under these laws. However, if they wish to file in federal court under the OJP statute, they must first exhaust their administrative remedies by filing a complaint with DOJ-CRD.

4.12. (U) Human Trafficking

(U//FOUO) The Thirteenth Amendment to the United States Constitution states, "Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist in the United States. Congress shall have power to enforce this article by appropriate legislation." Nevertheless, various forms of involuntary servitude still exist in certain forms throughout the country. Section 4.13.2, of this PG provides a comprehensive listing of legislation commonly used as part of the prosecution of human trafficking cases. In the simplest of terms, under federal law, human trafficking has occurred if a person was induced to perform labor or a commercial sex act through force, fraud, or coercion.

(U//FOUO) The use of the word "trafficking" is often confusing since transportation of victims is not required under the law, and trafficking is distinct from alien smuggling, which requires transportation of people across an international border. The focus of the adult human trafficking

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statutes is on the use of force, fraud, or coercion to compel a victim to provide labor or commercial sex acts. Movement is not an element under the human trafficking statutes.

(U//FOUO) The majority of human trafficking cases typically fall under one of three broad categories: (1) forced labor, (2) forced domestic servitude, or (3) forced commercial sex. Often, immigrants enter the country thinking that wonderful opportunities await them. However, after their arrival they are forced into involuntary servitude with little recourse for escape because of threats, unfamiliarity with the U.S. legal system, and language and social barriers. While immigrants are particularly vulnerable to traffickers, U.S. citizens have also fallen victim to human trafficking.

(U//FOUO) FOs must coordinate their HT investigations with the Violent Crime Program/Crimes Against Children Unit if the case agent identifies minor victims. Although cases involving the victimization of U.S. citizens (minors) through commercial sex acts may involve a violation of the sex trafficking statute, the Crimes Against Children Unit has oversight of these matters. FOs must coordinate their HT investigations with the Gangs Criminal Enterprises Program/Organized Crime Unit if the investigation reveals a link to gang members/activity, a link to an organized crime group, or an organized crime violation.

(U//FOUO) A T visa is received from USCIS, Department of Homeland Security by a victim of human trafficking through a self-application process. The T visa program was created by Congress to provide long-term stability to victims of human trafficking. Often, the case agent is requested by a victim (or the victim's representative) to complete an I-914 form, Supplement B, "Declaration of Law Enforcement Officer for Victim of Trafficking in Persons." If the individual meets the requirements outlined in the I-914 (Supplement B), the case agent and his or her supervisor may complete the applicable sections of the form for submission to USCIS. It is important to note that the definitions that are used in the I-914 (Supplement B) are not the elements of the criminal offense, but those that are set forth in Title 8 Code of Federal Regulations (CFR) § 214.11 (a). Any questions regarding the completion of the Form I-914 (Supplement B) can be brought to the attention of the Civil Rights Unit, FBIHQ.

(U) U visas are frequently used for victims of human trafficking. (See [section 4.7](#) of this PG for additional information.)

**4.12.1. (U) Human Trafficking Investigations**

(U//FOUO) The focus of the human trafficking statutes is on those instances where force, fraud, and coercion were used to compel an individual to provide labor, service, or a commercial sex act. Most cases involve a pattern of coercion that can be difficult to prove. Often, the victim's testimony is the primary evidence of coercion. As a result, the investigation must focus on collecting evidence of force, fraud, and coercion, which can corroborate a victim's testimony. Coercion often takes place in subtle ways over a long period of time. A list of suggested questions to use for victim interviews can be found in [Appendix C](#) of this PG, but this list can also be used to help identify many different forms of coercion that may be employed in a human trafficking case.

(U//FOUO) Human trafficking investigations involving allegations of presently ongoing victimization provide unique challenges. While the safety and security of potential victims must not be jeopardized, covert methods of gathering evidence such as CHSs and undercover

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operations must seriously be considered. Efforts must be coordinated with the FO's victim specialist early in these investigations to ensure that there are services available to the victims when needed.

(U//FOUO) Victims of human trafficking are eligible for a variety of services and immigration relief. Agents investigating human trafficking matters must work closely with a victim specialist to ensure that victims are provided with necessary services. Of particular value to a human trafficking investigation is immigration relief through a continued presence application to Immigration and Customs Enforcement (ICE) for victims. Agents must complete continued presence application forms for victims in active investigations. The processing of the continued presence applications is coordinated by the Office for Victim Assistance at FBIHQ, and SAs must work with the victim specialists in their FOs to ensure that these applications are processed correctly.

(U//FOUO) The Department of Justice, Civil Rights Division, Human Trafficking Prosecution Unit is a valuable resource that can provide advice, guidance, consultations, brainstorming, and troubleshooting in human trafficking cases. Agents and AUSAs can contact the Human Trafficking Prosecution Unit for assistance via telephone number 202-514-3204.

(U//FOUO) While movement is not an element of the human trafficking statutes, proof of an effect on interstate commerce is required. Therefore, investigators must keep this interstate nexus requirement in mind and evidence of interstate commerce must be collected.

**4.12.2. (U) Human Trafficking Statutes**

- (U) 8 U.S.C. § 1324 - Smuggling Offenses.
- (U) 8 U.S.C. § 1328 - Harboring for Prostitution.
- (U) 18 U.S.C. § 894 - Collection of Extensions of Credit by Extortionate Means.
- (U) 18 U.S.C. § 1201 - Kidnapping.
- (U) 18 U.S.C. § 1203 - Hostage Taking.
- (U) 18 U.S.C. § 1546 - Fraud and Misuse of Visas, Permits, and Other Documents .
- (U) 18 U.S.C. § 1581 - Obstructing Enforcement.
- (U) 18 U.S.C. § 1582 - Vessels for Slave Trade.
- (U) 18 U.S.C. § 1583 - Enticement into Slavery.
- (U) 18 U.S.C. § 1584 - Sale Into Involuntary Servitude.
- (U) 18 U.S.C. § 1585 - Seizure, Detention, Transportation, or Sale of Slaves.
- (U) 18 U.S.C. § 1586 - Service on Vessels in Slave Trade.
- (U) 18 U.S.C. § 1587 - Seizure, Possession of Slaves Aboard a Vessel.
- (U) 18 U.S.C. § 1588 - Transportation of Slaves from the United States.
- (U) 18 U.S.C. § 1589 - Forced Labor.

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- (U) 18 U.S.C. § 1590 - Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor.
- (U) 18 U.S.C. § 1591 - Sex Trafficking of Children or by Force, Fraud, or Coercion.
- (U) 18 U.S.C. § 1592 - Unlawful Conduct with Respect to Documents in Furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude, or Forced Labor.
- (U) 18 U.S.C. § 1593 - Mandatory Restitution.
- (U) 18 U.S.C. § 1594 - General Provisions.
- (U) 18 U.S.C. § 2421 - Mann Act.
- (U) 18 U.S.C. § 2422 - Coercion and Enticement.
- (U) 18 U.S.C. § 2423(a) - Transportation of Minors with Intent to Engage in Criminal Sexual Activity.
- (U) 18 U.S.C. § 2424 - Filing Factual Statement about Alien Individual.

(U) See Appendix D for detailed information on each statute or refer to the *Federal Criminal Code and Rules Booklet*.

4.13. (U) Freedom of Access to Clinic Entrances

(U//FOUO) Since the murder of Dr. George Tiller on May 31, 2009, in Wichita, Kansas, there has been a marked increase in the number of abortion providers and clinic staff personnel reporting that they have been intimidated and threatened. There has also been an increase in the number of reproductive healthcare facilities reporting numerous incidents during which protesters have threatened clinic staff and have engaged in behavior which has caused a disruption in the clinics' operations.

(U) The FACE Act, 18 U.S.C. § 248, makes it unlawful for a person to use force, threat of force, or physical obstruction to intentionally injure, intimidate, or interfere with a person (or attempt to do so) because he/she is or has been obtaining or providing reproductive health services. Section 248 also makes it unlawful for a person to intentionally damage or destroy the property of a facility because it provides reproductive health services.

(U) The elements of prohibited activities under FACE are enumerated in 18 U.S.C. § 248(a). With respect to reproductive health care facilities, the following elements must be established to constitute a FACE violation: the use of force, threat of force, or physical obstruction which intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with a person because that person is or has been, or in order to intimidate such person or any other person or class of person, from seeking or providing reproductive health services. In addition, 18 U.S.C. § 248(a)(3) prohibits intentionally damaging or destroying property or attempting to do so because reproductive health services are provided there.

(U//FOUO) "Acts of force" include physical assaults, violent attacks, and tampering with the automobile of a physician who provides reproductive health services with the intent to cause an accident.

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(U//LES) "Threat of force" encompasses communications made under circumstances in which a reasonable person would foresee that the recipient could interpret the communication as a serious expression to inflict bodily harm. "Threat of force" includes both verbal and non-verbal threats and the specific factual context of the communication is crucial to a determination of whether it constitutes a "true threat." Factors the courts consider include, but are not limited to:

- Recipient reaction.
- Whether the threat was conditional.
- Whether the threat was conveyed directly to the recipient.
- Whether the victim had a reason to believe that the maker of the threat had the propensity to engage in violence.
- The history of the relationship between the subject and the recipient.
- The context of the threat.

(U//LES) The courts have emphasized that these cases are very fact-specific. Further, the presence or absence of one or more of these factors is not dispositive. Courts have uniformly held that a subject's inability to carry out a threat is not a defense.

(U//LES) In the FACE context, there are many instances in which a threatening communication also includes political or religious rhetoric that would otherwise be protected speech under the First Amendment. If, however, some portion of the communication conveys a true threat, the fact that it also includes political or religious rhetoric does not provide a defense, and it is therefore not considered "protected speech."

(U//LES) The threat analysis in FACE cases is essentially the same as in other criminal threat cases, and the Supreme Court has recognized that the prohibition on true threats is designed to "protect individuals from the fear of violence" and "from the disruption that fear engenders." *Virginia v. Black*, 123 S.Ct. 1536, 1548 (2003). The speaker need not actually intend to carry out the threat; a communication made in context where it is reasonably foreseeable that the victim will be placed in fear of physical harm is sufficient.

(U//LES) Several courts have addressed "true threats" in the context of the FACE Act. For example, in *United States v. Hart*, 212 F.3d 1067 (8th Cir. 2000), the court found that parking yellow Ryder trucks at the entrance of abortion clinics could constitute a "threat of force," because the trucks were similar to the truck used in the Oklahoma City bombing; the defendant targeted an abortion clinic which is often the site of protests and violence. The placement of the trucks coincided with a visit to the city by the President, which heightened concerns about potential violence; the defendant provided no notice or explanation for his actions; the clinic staff was in fact frightened and called the police; and the police brought in the bomb squad. In upholding the defendant's conviction, the court stated that his conduct violated the statute because of the particular manner in which he parked the trucks.

(U//LES) In *United States v. Dinviddie*, 76 F.3d 913 (8th Cir. 1996), the defendant was an anti-abortion activist, well-known for the view that it was justifiable to use lethal force against doctors who provide abortions. She made approximately 50 comments, via bull-horn, to an abortion provider, warning him that what had happened to a doctor who had recently been shot

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and killed could happen to him. The victim reacted by putting on a bulletproof vest. Some of the comments made by the subject were: "Remember [physician killed by anti-abortion activist]... This could happen to you... He is not in the world anymore... Whoever sheds man's blood by man, his blood shall be shed." The court found that although the defendant did not explicitly state that she was going to injure the physician, her comments still constituted a "true threat" because of the manner in which she made her statements, the context in which they were made, and the physician's reaction to the statements.

(U//LES) In *Planned Parenthood of Columbia/Willamette, Inc. v. American Coalition of Life Activists*, 290 F.3d 1058 (9th Cir. 2002), the defendant organization (American Coalition of Life Activists) developed a poster listing the names and addresses of a group of doctors performing abortions, declaring them guilty of crimes against humanity. Later they unveiled another poster targeting a particular doctor, offering money to anyone who would persuade the doctor to turn from child killing. The next year, [ACLA] unveiled the "Nuremberg Files," a series of dossiers on doctors, clinic employees, politicians, and judges. ACLA stated that it had compiled the files so that when the nation's opinion turned against abortion, Nuremberg-like trials could be held. The names were ultimately posted on a Website. On the site, persons who had been murdered had their names struck through and those who had been wounded had their names grayed out. The court found that "ACLA was aware that a 'WANTED'-type poster would likely be interpreted as a serious threat of death or bodily harm by a doctor in the reproductive health services community who was identified on one, given the previous pattern of 'WANTED' posters identifying a specific physician followed by that physician's murder. The same is true of the posting about these physicians on that part of the 'Nuremberg Files' where lines were drawn through the names of doctors who provided abortion services and who had been killed and wounded." As a result, the court found ACLA's communications constituted a true, threatening statement that violated FACE and was not protected under the First Amendment.

(U//LES) As these cases demonstrate, the determination of whether a communication constitutes a "true threat" turns on very specific facts.

(U//LES) The term "physical obstruction" means to render impassable or to make it "unreasonably difficult or dangerous" to enter or exit a place that provides reproductive health services.

(U//LES) Examples of "physical obstruction" include blockades and invasions, pouring glue into clinic locks, chaining people to entrances of buildings that provide reproductive health services, and placing nails on public roads leading to the clinic. Finally, examples of "damage or destruction" of property include arson, bombing, chemical attacks, and vandalism. It is important to remember that many prohibited activities will fall under more than one of these four categories. For example, physically restraining a provider of reproductive health services constitutes both unlawful physical obstruction and unlawful use of force.

(U//LES) The definitions section of 18 U.S.C. § 248(e) also provides definitions for the term "intimidate," "interfere with," "reproductive health services," and "facility." It is important to remember that "reproductive health service" is defined broadly to include not only places that provide abortions but also, for example, places that provide counseling services that relate to pregnancy and fertility clinics. It bears emphasizing that actual injury, interference, intimidation, or destruction is not necessary to establish a violation of FACE, but rather attempts are enough.

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(U//LES) Determining the motive of the subject is critical. The federal government must prove the subject committed the prohibited activity in order to intimidate the victim or any other person from providing or obtaining or seeking to provide or obtain reproductive health services. Under the express language of the statute, a person may violate FACE even if he or she is mistaken in the belief that the target of the conduct is, or has been providing or obtaining reproductive health services.

(U//LES) As a result of the fact that successful prosecutions of subjects for violating the FACE Act depend upon the establishment of specific details, it is important for investigating agents to document all available facts surrounding a particular incident. It is also important for investigators to refrain from inserting their own opinions or legal conclusions into their reports.

(U//LES) Because determinations of threats under the FACE Act turn on very specific facts, it is incumbent upon investigating agents to obtain and document those facts.

(U//FOUO) Under the FACE Act, a DT investigation is initiated when a criminal act involves an individual(s) who seeks to further political and/or social goals wholly or in part through activities that involve the use of force or violence and violate federal law. Also, if a specific, articulable, criminal violation on the part of a person or persons affiliated with a domestic terrorist group is determined to have occurred, is occurring, or is about to occur, a DT investigation is initiated.

(U//FOUO) When an anti-abortion incident/crime occurs in which the subject is not known, or if the subject(s) has no nexus to an anti-abortion extremist or group, the investigation is to be initiated as a civil rights 286 - FACE Violation.

(U//FOUO) When an anti-abortion incident/crime occurs in which the subject has a nexus to anti-abortion extremism or an anti-abortion group, a dual-captioned investigation will be initiated: 266J (Acts of Terrorism-Domestic Terrorism-Abortion Extremism) and 286 (FACE Violation) classifications.

(U//FOUO) When there is a bomb threat, attempted bombing, or actual bombing of a facility providing reproductive health care services and the subject has a nexus to anti-abortion extremism or an anti-abortion group, the investigation is to be opened under the 266J and 286 investigative classifications.

(U//FOUO) In instances where there is a bombing incident at a reproductive health care facility and there is no nexus to anti-abortion extremism or an anti-abortion group, the investigation is to be opened under the 174A (Actual or Attempted Bombings/Explosives Matter) and 286 (FACE Violations) classifications.

4.13.1. (U) 18 U.S.C. § 248 - Freedom of Access to Clinic Entrances Act

(U) See Appendix D for detailed information on each statute or refer to the *Federal Criminal Code and Rules Booklet*.

4.14. (U) Other Statutes Applicable to Civil Rights

(U) The following statutes apply to more than one of the CR subprograms.

1. (U) 18 U.S.C. § 241 - Conspiracy Against Rights.
2. (U) 18 U.S.C. § 844(h) - Federal Explosives Control Entrances.



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3. (U) 18 U.S.C. § 1001 - False Statement.

(U) See Appendix D for detailed information on each statute or refer to the *Federal Criminal Code and Rules Booklet*.

4.15. (U) Investigative Steps for Predicated Civil Rights Investigations

4.15.1. (U) Steps Applicable to all CR Investigations (See "Investigative Methods in the DIOG.")

- (U//LES) Interview the victim or complainant and witnesses for complete details.
- (U//LES) Obtain copies of all local police reports relevant to the incident under investigation. Prepare a cover FD-302 identifying the source of these records and the date obtained. Ensure the copies obtained from local police departments are legible. Determine the status of any local investigation and/or prosecution against the subject(s).
- (U//LES) Locate and preserve the physical evidence that may be at the scene of the crime or in the possession of the local police department.
- (U//LES) Interview any suspects/subjects, if identified.
- (U//LES) Obtain medical release authority from any victim(s).
- (U//LES) Observe and take or collect photographs of all injuries related to complaint.
- (U//LES) Prepare a notification list containing the names and mailing addresses of victim(s), subject(s), complainant, and/or responsible official (if requested). DOJ forwards information concerning the outcome of the investigation to all parties once they have closed their file.
- (U//LES) Conduct indices and criminal record checks on subject(s) and victim(s).
- (U//LES) Obtain medical reports, and in a death case, obtain autopsy/coroner's report.
- (U//LES) Obtain medical records.

4.16. (U) Unique Investigative Steps for Each Civil Rights Subprogram

4.16.1. (U) Conducting a Hate Crime Investigation (See "Investigative Methods in the DIOG.")

- (U//LES) [REDACTED]
- (U//LES) [REDACTED]
- (U//LES) [REDACTED]
- (U//LES) [REDACTED]
- (U//LES) [REDACTED]

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- o (U//LES) [redacted]
- o (U//LES) [redacted]
- o (U//LES) [redacted]
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- o (U//LES) [redacted]
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4.16.2. (U) Conducting a Color of Law Investigation

- (U//LES) Advise agency representative of the investigation (e.g., police chief, sheriff, internal affairs personnel, or warden) as soon as possible following the initiation of the investigation. The notification may be delayed if such notification will interfere with sensitive investigative techniques.
- (U//LES) Determine if any administrative or judicial action has been taken, such as internal affairs investigations.

4.16.3. (U) Conducting a Human Trafficking Investigation

(U//LES) The following must be evaluated during the investigation of a Human Trafficking allegation (not all-inclusive):

- (U//LES) Review police reports for any information of possible domestic violence, suspicious activity, or anonymous reports.
- (U//LES) Consider source information (e.g., street sources or jail sources).
- (U//LES) Consider post "prostitution raid" interviews (e.g., belated outcry-type witnesses).
- (U//LES) Consider "John" information (e.g., plea bargaining or self-serving cooperation with law enforcement).
- (U//LES) Consider former victim complaints (e.g., following escape from subjects or completed payment of debt).
- (U//LES) Consider surveillance/pole cameras to identify safe houses, vehicles, victims, and subjects.

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- (U//LES) Contact and coordinate with all working group(s) or federal, state, or local task force components (e.g., Bureau of Immigration and Customs Enforcement [BICE]; Bureau of Alcohol, Tobacco, and Firearms, [BATF]; Alcohol and Beverage Control, Department of Labor; non-governmental organizations [NGO]; and victim witness coordinators).
- (U//LES) Assemble preliminary raid logistics (e.g., number of subjects; victims; and locations to be raided, secured, and searched).
- (U//LES) Coordinate with local AUSA and DOJ; consider use of the grand jury to lock in testimony.
- (U//LES) Prepare preliminary search/arrest warrants and anticipate legal challenges.
- (U//LES) Consider concerns regarding forfeiture and restitution matters.
- (U//LES) Consider the prosecution witness potential of those who may have consented to prostitution from the outset.
- (U//LES) Consider contact with, and travel to, source country (law enforcement) in order to verify fraudulent documents, seek out fugitives, and identify source country expert witnesses.
- (U//LES) Contact the appropriate local law enforcement agency and request copies of any investigative documents relevant to the incident, location, or individuals who are subjects of the CR investigation. Local law enforcement can be of valuable assistance during the course of a human trafficking investigation.

**4.16.4. (U) Conducting a FACE Act Investigation**

- (U//LES) Identify the nature of any threats, intimidation, and physical violence perpetrated against the victim.
- (U//LES) Advise the responsible head or appropriate official of the facility that an FBI investigation has been initiated.
- (U//LES) Determine whether the facility has incurred any loss or any current or future revenues or expenses as a result of the incident.
- (U//LES) Identify any individuals who were scheduled for an appointment on the day of the FACE violation(s) but did not keep their appointments.
- (U//LES) Contact the appropriate local law enforcement agency and request copies of any investigative documents relevant to the incident, location, or individuals who are subjects of the CR investigation. Local law enforcement can be of valuable assistance during the course of a FACE Act investigation.

**4.17. (U) Liaison Contacts (See the "Retention and Sharing of Information" section of the DIQG)**

(U) Liaison contacts represent an integral part of any investigative program. These contacts are very important in the Civil Rights Program. Effective liaison contacts are vital to explain the FBI's role in CR investigations to the organizations representing the segments of society most likely affected. Many of these recommendations are obvious and are most likely already included within the contacts being currently maintained by FBI CRPs. Some recommended contacts, such

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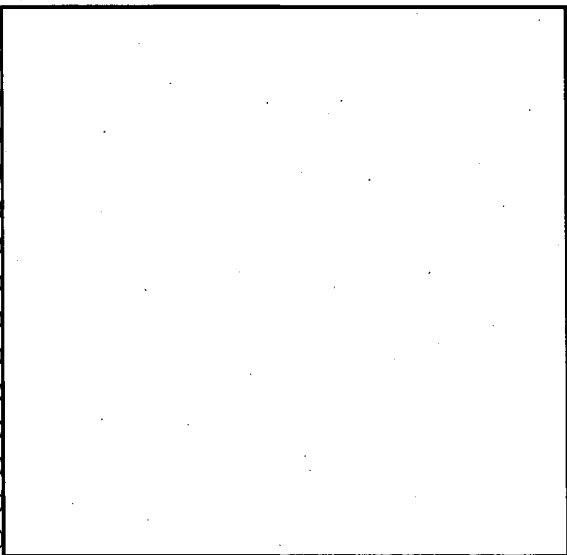
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as those associated with HT matters, may not be so obvious because of the types of victims targeted in HT matters, and the fact that this is often a hidden crime Liaison contacts that have knowledge of the HT crime problem, as well as the trust of potential victims, can be of immeasurable assistance to the FBI. Listed below are some recommended CR-related liaison organizations. The list contains recommendations only, and is not meant to preclude FBI FOs from aggressively seeking out lesser-known local liaison contacts that could enhance their individual CRPs.

(U) The following list has been broken down into recommended contacts for each FBI CR subprogram. Many of the recommended contacts are established, nationally-known organizations; however, the FO should note that some of the recommended contacts, particularly some of those associated with HT matters, are not as established and sometimes change or fall out of favor. Often, HT related contacts or NGOs tend to be specific to a particular region. The NGOs listed within this PG are proven entities that have provided quality service to the FBI and exceptional assistance to HT crime victims. The following are some recommended CR-related liaison organizations:

**(U) Hate Crime**

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- (U)
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**(U) Color of Law**

- (U)
- (U)
- (U)



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• FACE Act:

- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]
- (U//FOUO) [REDACTED]

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**4.18. (U) Guidance to Establish an Effective Civil Rights Program**

(U//FOUO) CRU has established specific criteria used when evaluating all aspects of FO CRPs. These measures are also used by the CRU when providing documentation regarding SAC performance reviews, FO SAPRs, and in preparation for a Performance Enhancement Initiative. In order for an FO to have an effective and efficient (E/E) CRP, it must aggressively perform the following:

- (U//FOUO) Identify priority matters by conducting a review of the CRP threat within an FO's domain. Such a review must be conducted every two to three years and must include sufficient and comprehensive information concerning the division's entire territory, such as the area's demographic composition; identification of minority and immigrant populations; labor industries that are susceptible to HT violations; and a listing of all law enforcement agencies and correctional institutions.
- (U//FOUO) Ensure that the FO's CRP goals and objectives address the established FBI national strategies.
- (U//FOUO) Develop and continuously improve the civil rights intelligence base. This must include the following:
  - (U//FOUO) Engage in liaison with law enforcement agencies, civil rights advocacy groups, NGOs, community groups, and other minority organizations.
  - (U//FOUO) Monitor local/regional media to identify potential civil rights cases.
  - (U//FOUO) Engage in outreach efforts with community leaders to increase awareness about the FBI's CRP.
  - (U//FOUO) Make aggressive efforts in developing CHSs to support investigative efforts.
  - (U//FOUO) Coordinate with the FO's FIG.
- (U//FOUO) Initiate and investigate allegations of civil rights violations aggressively. This must include the following:
  - (U//FOUO) Cases that are initiated must be consistent with crime problems identified by the FO in addition to the FO's goals and objectives.
  - (U//FOUO) Investigations must be initiated, conducted, and completed promptly and according to the administrative and reporting requirements.
  - (U//FOUO) FOs must actively participate in civil rights-related task forces or working groups.
  - (U//FOUO) FOs must develop excellent working relationships with the USAO and with DOJ-CRD.

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- (U/FOUO) Implement a training program that is consistent with the crime problems identified through the program review and case initiations.
  - (U/FOUO) Sponsor an annual Civil Rights Training Conference for representatives of local law enforcement agencies, correctional facility personnel, civil rights advocacy groups, NGOs, and other community groups in the territory.
  - (U/FOUO) Provide training to local law enforcement entities regarding the identified crime problems.
  - (U/FOUO) Encourage personnel to attend training sponsored by the CRU or attend equivalent regional training.
- (U/FOUO) Consistently comply with all FBI and CRU reporting requirements.
  - (U/FOUO) Ensure that all CR cases are initiated by the completion and submission of FD-610s.
  - (U/FOUO) Maintain an active and frequent dialogue with DOJ-CRD regarding the disposition of pending cases.
- (U/FOUO) Ensure that program managers and coordinators establish and maintain appropriate liaison files and assessment files to document their respective divisions' efforts in managing DOJ referrals and complaints, liaison contacts, training, and intelligence base development.
- (U/FOUO) Ensure that FOs are utilizing their full complement of CR resources.

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**Appendix A: (U) Sources of Additional Information**

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(U) See the FBI Civil Rights Unit Intranet site for additional information.

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**Appendix B: (U) CRP Classifications and Federal Statutes**

SUBPROGRAM	CLASSIFICATION	FEDERAL STATUTE
<p><u>Hate Crimes - Racial or Religious Discrimination</u>  <i>Includes violence and hate crimes perpetrated by individuals and/or members of racial groups.</i></p> <p>Racial Discrimination - Force and/or Violence                      Racial Discrimination - No Force and/or Violence                      Voting Rights Violations</p>	<p>44A                      44B                      44C</p>	<p><u>Federally Protected Activities</u>                      18 U.S.C. § 245</p> <p><u>Conspiracy Against Rights</u>                      18 U.S.C. § 241</p>
<p><i>Damage and/or destruction of religious property.</i></p> <p>Religious Discrimination - Force and/or Violence                      Religious Discrimination - No Force and/or Violence</p>	<p>44D                      44E</p>	<p><u>Damage to Religious Property</u>                      18 U.S.C. § 247</p>
<p><i>Includes violence perpetrated against individuals based on their national origin, gender/gender identity, sexual orientation or disability.</i></p> <p>National Origin Discrimination                      Gender/Gender Identity Discrimination                      Sexual Orientation Discrimination                      Disability Discrimination                      Multiple Bias Discrimination</p>	<p>44F                      44G                      44H                      44I                      44J</p>	<p><u>Hate Crimes Prevention Act of 2009</u>                      18 U.S.C. § 249</p>
<p><i>Discrimination in the occupation, purchase, sale, rental and/or financing of housing on the basis of race, color, religion, sex, handicap, familial status, or national origin.</i></p> <p>Discrimination in Housing - Force and/or Violence                      Discrimination in Housing - No Force and/or Violence</p>	<p>177A                      177B</p>	<p><u>Criminal Interference with Right to Fair Housing</u>                      42 U.S.C. § 3631</p>
<p><u>Human Trafficking</u></p>	<p>50</p>	<p><u>Trafficking Victims Protection Act</u>                      18 U.S.C. § 1584                      18 U.S.C. §§ 1589 - 1594</p>

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SUBPROGRAM	CLASSIFICATION	FEDERAL STATUTE
<p><u>Color of Law/Law Enforcement Misconduct</u> <i>Includes physical abuse, the infliction of summary punishment and deprivation of rights through fabrication of evidence.</i></p> <p>Color of Law - Force and/or Violence Color of Law - No Force and/or Violence Color of Law - Force and/or Violence - Indian Country Color of Law - No Force and/or Violence - Indian Country Civil Rights of Institutionalized Persons</p>	<p>282A 282B 282C 282D 214</p>	<p><u>Color of Law</u> 18 U.S.C. § 242 <u>Conspiracy Against Rights</u> 18 U.S.C. § 241 <u>False Statements</u> 18 U.S.C. § 1001 <u>Obstruction of Justice</u> 18 U.S.C. § 1512 <u>Perjury Before a Federal Grand Jury</u> 18 U.S.C. § 1623</p>
<p><u>Freedom of Access to Clinic Entrances Act</u> <i>Bars conduct, including violence that would obstruct access to reproductive health facilities, or damage and/or destruction to these properties.</i></p> <p>FACE Act - Force and/or Intimidation FACE Act - Threat of Force and/or Intimidation FACE Act - Property Damage or Destruction FACE Act - Civil Action FACE Act - Partial Birth Abortion Ban</p>	<p>286A 286B 286C 286E 286F</p>	<p><u>FACE Act</u> 18 U.S.C. § 248 <u>Arson or Bombing</u> 18 U.S.C. § 844 <u>Threatening Communications (Mail)</u> 18 U.S.C. § 875 <u>Interstate Threats (E-mail/Telephone)</u> 18 U.S.C. § 876 <u>Use of Firearm During the Commission of a Federal Violation</u> 18 U.S.C. § 924 <u>Partial Birth Abortion Ban</u> 18 U.S.C. § 1531</p>



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**Appendix D: (U) Suggested Questions for FACE Assessments and  
Predicated Investigations**

A. (U) Victim/Witness Interviews: (Details of the incident)

1. (U//LES) [redacted]
2. (U//LES) [redacted]  
the protestors? [redacted]
3. (U//LES) [redacted]
4. (U//LES) [redacted]
5. (U//LES) [redacted]
6. (U//LES) [redacted]
7. (U//LES) [redacted]
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14. (U//LES) [redacted]
15. (U//LES) [redacted]
16. (U//LES) [redacted]
17. (U//LES) [redacted]
18. (U//LES) [redacted]
19. (U//LES) [redacted]
20. (U//LES) [redacted]

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A. Context:

1. (U//LES) [redacted]
2. (U//LES) [redacted]

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**Appendix E: (U) Statutes Associated with Civil Rights Investigations**

1. (U) 8 U.S.C. § 1324 - Smuggling Offenses

a. (U) Any person who:

(1) (U) Knowing that a person is an alien, brings or attempts to bring to the United States in any manner whatsoever such a person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien.

(2) (U) Knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law.

(3) (U) Knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such an alien in any place, including any building or any means of transportation.

(4) (U) Encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of the law.

(5) (U) Engages in any conspiracy to commit any of the preceding acts, or

(6) (U) Aids or abets the commission of any of the preceding acts.

(U) Shall be punished under the law as outlined in subparagraphs contained under this statute.

b. (U) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring into the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs, be fined in accordance with Title 18 or imprisoned not more than one year or both.

c. (U) Any person who, during any 12 month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens as described under the law, shall be fined under Title 18 or imprisoned for not more than five years, or both.

d. (U) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may increase by up to 10 years if,

(1) (U) The offense was part of an ongoing commercial organization or enterprise.

(2) (U) Aliens were transported in groups of 10 or more; or

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(3) (U) Aliens were transported in a manner that endangered their lives, or the aliens presented a life threatening health risk to people in the United States.

**2. (U) 8 U.S.C. § 1328 - Harboring for Prostitution**

(U) Section 1328 prohibits three kinds of sexual activities with respect to aliens:

- a. (U) Importing aliens for prostitution.
- b. (U) Holding aliens for prostitution.
- c. (U) Keeping, maintaining, controlling, supporting, employing, harboring aliens for prostitution.

(U) Each one of the above is a separate crime.

**3. (U) 18 U.S.C. § 241 - Conspiracy Against Rights**

(U) This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any inhabitant of any state, territory, or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, or because of his/her having exercised the same. It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder an individual's free exercise or enjoyment of any rights so secured. Among the rights secured from interference by private individuals by the courts, which have described them as basic substantive rights of federal citizenship, are the following:

- a. (U) The right to vote in a federal election.
- b. (U) The right of a voter in federal elections to have his/her ballot fairly counted.
- c. (U) The right to be free from violence while in federal custody.
- d. (U) The right to assemble and petition the federal government.
- e. (U) The right to testify in federal courts.
- f. (U) The right to inform a federal officer of a violation of federal law.
- g. (U) The right to furnish military supplies to the federal government for defense purposes.
- h. (U) The right to enforce a decree of a federal court by contempt proceedings.
- i. (U) The right of a federal officer not to be interfered with in the performance of his/her duties.
- j. (U) The right to be free to perform a duty imposed by the federal Constitution.
- k. (U) The right to travel freely from one state to another.

(U) In addition to the above rights, the United States Supreme Court in *United States v. Price*, 383 US 787 (1966), held that where state participation was involved in the conspiracy, § 241 covers those rights secured under the Fourteenth Amendment to the U.S. Constitution, which

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include protection against state action depriving any person of life, liberty, and property without due process of law.

(U) The elements of § 241 are:

- a. (U) Two or more persons must conspire.
- b. (U) The purpose of the conspiracy must be to injure, oppress, threaten, or intimidate one or more persons.
- c. (U) The conspiracy must be directed at the free exercise or enjoyment of a right secured or protected by the Constitution or laws of the United States.

**4. (U) 18 U.S.C. § 242 - Deprivation of Rights Under Color of Law**

(U) Whoever, under color of any law, statute, ordinance regulation, or custom, willfully subjects any inhabitant of any state, territory, or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his/her color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if bodily injury results, fined and/or imprisoned not more than ten years. If death results, the convicted individual shall be subject to imprisonment for any term of years or for life. The following elements apply to this statute:

- a. (U) A person must act under color of law to deprive any inhabitant of rights secured to the inhabitant by the Constitution (specifically in this violation - the right to be free from slavery and involuntary servitude),

(U) Three elements must be proven to establish a violation of § 242 as follows:

- a. (U) The subject must have been acting under color of law.
- b. (U) The subject must have acted willfully.
- c. (U) The subject must have deprived the victim of a right secured or protected by the Constitution or laws of the United States.

(U) In felony cases, the government must also prove that the subject's actions resulted in bodily injury to the victim, that a dangerous weapon, explosives, or fire were used, or that the crime resulted in death or involved a specifically enumerated dangerous felony.

**5. (U) 18 U.S.C. § 243 - Exclusion of Jurors on Account of Race or Color**

(U) This statute holds that no citizen possessing all other qualifications that are or may be prescribed by law shall be disqualified for service as grand or petit jurors in any court of the United States or any state because of race, color, or previous condition of servitude. It is also a crime for any officer or other person charged with any duty in the selection or summoning of jurors to exclude or fail to summon any citizen for such cause.

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**6. (U) 18 U.S.C. § 244 - Discrimination Against Persons Wearing Uniform of Armed Forces**

(U) This statute makes it a crime for anyone being a proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia or in any territory or possession of the United States to cause any person wearing the uniform of any of the armed forces of the United States to be discriminated against because of that uniform.

**7. (U) 18 U.S.C. § 245 - Federally Protected Activities**

- a. (U) This statute prohibits willful injury, intimidation, or interference (or attempt to do so) by force or threat of force of any person or class of persons because of their activity as:
  - 1) (U) A voter or person qualifying to vote; a candidate campaigning for elective office; a poll watcher; or an election official in any primary, special, or general election, which includes all local, state, and federal elections.
  - 2) (U) A participant in, or a person enjoying, any benefit, service, privilege, program, facility, or activity provided or administered by the United States.
  - 3) (U) An applicant for federal employment or an employee of the federal government.
  - 4) (U) A juror or prospective juror in a federal court.
  - 5) (U) A participant in, or a person enjoying, the benefits of any program or activity receiving federal financial assistance.
- b. (U) This statute prohibits willful injury, intimidation, or interference (or attempt to do so) by force or threat of force of any person because of race, color, religion, or national origin and because of his/her activity as:
  - 1) (U) A student or applicant for admission to any public school or public college.
  - 2) (U) A participant in, or a person enjoying, any benefit, service, privilege, program, facility, or activity provided or administered by a state or local government.
  - 3) (U) An applicant for private or state employment or a private or state employee; a member or applicant for membership in any labor organization or hiring hall; or an applicant for employment through any employment agency, labor organization, or hiring hall.
  - 4) (U) A juror or prospective juror in a state court.
  - 5) (U) A traveler or user of any facility of interstate commerce or common carrier<sup>2</sup>.

<sup>2</sup> (U//FOUO) According to the DOJ-CRD, based on statutory language, interpretive case law, and legislative history, it appears that streets and sidewalks fall comfortably within the context of the term "facility." Streets fit within the broad definition of the term "facility," meaning something that is built, constructed, or installed to facilitate some particular end or something that promotes ease of action. To that end, public streets are constructed to serve a particular function, as they are improvements to land that make it easier for people to get from one place to another

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- 6) (U) A patron of any public accommodation, including hotels, motels, restaurants, lunchrooms, bars, gas stations, theaters, arenas, amusement parks, or any other establishment that serves the public, and which is principally engaged in selling food or beverages for consumption on the premises.

(U) Section 245 prohibits interference by force, or threat of force, against any person because he/she is or has been, or in order to intimidate such person or any other person or class of persons from participating or affording others the opportunity or protection to participate or lawfully aiding or encouraging other persons to participate in any of the benefits or activities listed in items (a) and (b) above, without discrimination as to race, color, religion, or national origin.

- c. (U) Section 245 is applicable to any person or class of person, whether or not they acted under color of law. Section 245 specifically provides that no prosecution of any offense described therein shall be undertaken except, upon written certification of the Attorney General that prosecution by the United States is in the public interest and is necessary to secure substantial justice.
- d. (U) It must be noted that § 245 applies when force and/or violence is utilized within the context of the above statute. When a violation of § 245 occurs, criminal penalties attach. Those portions of the above-described statute applying to items (a)(2) and (3) and (b) (1), (2), (3), (5), and (6) are investigated as a violation of the Civil Rights Act of 1964, classification 173, when allegations are of a nonviolent and/or discriminatory nature.

(U) Violations of statutes which apply under the 173 classification carry civil rather than criminal penalties.

(U) The elements of a § 245 prosecution are as follows:

- a. (U) The subject must have used force or threats of force.
- b. (U) The subject must have injured, intimidated, interfered with, or attempted to injure, intimidate, or interfere with the victim.
- c. (U) The subject must have acted because of the victim's race (or other prohibited animus) and because the victim was enjoying one of the federally protected activities set forth in the statute.
- d. (U) The subject must have acted willfully.

(U) Although the government must prove that the subject acted with the dual motivation described in the third element above, the presence of other motives, such as anger or revenge, does not make the subject's actions any less a violation of the law.

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in a safe and orderly fashion. Streets are also administered by states or local governments. Difficulties arise from the necessary step of proving the subject's actions were not only motivated by the victim's use of the streets, but were also motivated by the subject's intent to prevent the victim from using the streets. For additional information, see the Streets Theory EC, dated 05/20/2005, located on the CRU Intranet site.



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(U) Certification requirement of 18 U.S.C. § 245: the statute requires that the Attorney General, Deputy Attorney General, Associate Attorney General, or a specially designated Assistant Attorney General certify that the prosecution is in the public interest and necessary to secure substantial justice. Therefore, before any indictment is obtained, the necessary certification must have been approved. Furthermore, the approval may not be delegated to anyone other than the above-specified individuals.

(U) Section 245 may also be used to protect persons who are affording other individuals the opportunity to participate in the protected activities (18 U.S.C. § 245(b)(4)(B)). For example, subjects who burned a cross in front of an auto body shop where black employees worked, in order to send a message to the black employees to leave town, were prosecuted both for interfering with the rights of the black employees to work where they chose, and for violating the rights of the white shop owners to employ persons without regard to race.

8. (U) 18 U.S.C. § 246 - Deprivation of Relief Benefits.

(U) Section 246 provides that no person shall directly or indirectly deprive, attempt to deprive, or threaten to deprive any person of any employment, position, work, compensation, or any other benefit provided for, or made possible in whole or in part by, any Act of Congress appropriating funds for work relief or relief purposes on account of political affiliation, race, color, sex, religion, or national origin.

9. (U) 18 U.S.C. § 247 - Damage to Religious Property

(U) Section 247 proscribes distinct types of conduct:

- a. (U) Subsection (a)(1) of the statute prohibits intentional defacement, damage, or destruction of any religious real property because of the religious character of that property, or attempts to do so.
- b. (U) Subsection (a)(2) of the statute prohibits intentional obstruction, by force or threat of force, of any person's free exercise of religious beliefs, or attempts to do so.
- c. (U) The circumstances referred to above require that the offense is in or affects interstate or foreign commerce.
- d. (U) Subsection (c) of the statute prohibits intentional defacement, damage, or destruction of any religious characteristics of any individual associated with that religious property, or attempts to do so.

(U) As used in this section, the term "religious real property" means any church, synagogue, mosque, religious cemetery, or other religious real property, including fixtures of religious objects contained within a place of religious worship.

(U) In addition to expressly prohibiting damage to religious real property that is motivated by race or religion, the amendments to § 247 substantially increased the maximum penalties and extended the statute of limitations to seven years.

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(U) To prove a violation of § 247(a), the government must show:

- a. (U) That the subject defaced, damaged, or destroyed religious real property.
- b. (U) That the subject acted as he/she did because of the religious character of the property.
- c. (U) That the subject acted intentionally.
- d. (U) That the offense is in or affects interstate commerce.

(U) To prove a violation of § 247(c), the government must show:

- a. (U) That the subject defaced, damaged, or destroyed religious real property.
- b. (U) That the subject acted intentionally.
- c. (U) That the subject acted as he/she did because of the race, color, or ethnic characteristics of any individual associated with that religious property.

(U) To prosecute incidents involving damage to religious property, and occurring prior to July 3, 1996, the government must prove the following elements:

- a. (U) That the subject damaged religious property.
- b. (U) That the subject acted intentionally.
- c. (U) That in committing the offense, the subject traveled in interstate or foreign commerce or used a facility of interstate or foreign commerce in interstate commerce.
- d. (U) That in the case of property damage, the loss resulting from the damage or defacement must be more than \$10,000.

(U) The amount of property damage required under the original version of this statute, combined with the requirement of the use of interstate commerce, made this statute difficult to charge. Under the original version of § 247, only one prosecution was ever brought, and it involved the use of force to obstruct persons in the free exercise of their religious beliefs. As is outlined above, the amended version eliminated the property damage amount requirement and modified the interstate commerce element for incidents motivated by religion or the intention to interfere with the free exercise of religious beliefs.

(U) Prosecutions for the use of force or threats of force to interfere with a person's free exercise of religious beliefs may be brought under either the original or amended version of § 247. To prove a violation of 18 U.S.C. § 247 in this manner, the government must prove that:

- a. (U) The subject used force or threat of force to obstruct a victim, in the free exercise of the victim's religious beliefs.
- b. (U) The subject acted intentionally.
- c. (U) That, in committing the offense, the subject traveled in interstate or foreign commerce or used a facility of interstate or foreign commerce in interstate commerce (for cases occurring prior to July 3, 1996).

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- d. (U) The offense is in or affects interstate commerce (for cases occurring on or after July 3, 1996).

(U) Additionally, before any prosecution may be brought under this statute, the original, or the amended version, the Attorney General or his/her designee must certify in writing that a prosecution by the United States is in the public interest to secure substantial justice.

**10. (U) 18 U.S.C. § 248 Freedom of Access to Clinic Entrances**

(U) Section 248(e) of the FACE Act, and its legislative history, define the various terms employed in the act. These terms outline what conduct is prohibited by the act. It is imperative that the investigator be familiar with these terms at the outset of any investigation involving potential violations of the FACE Act. By doing so, the investigator can assess whether the incident actually falls within the FACE Act and can then gather evidence necessary to prove a violation.

a. (U) Prohibited Methods

- 1) (U) "Force" as used in the act, includes physical assaults intended to injure or intimidate someone because that person is obtaining or providing reproductive health services. Some acts of vandalism could constitute prohibited force. For example, the tampering with an automobile of a physician who provides reproductive health services with the intent to cause an accident could constitute prohibited force. Butyric acid attacks, arson, and bombings of clinics also are examples of prohibited force.
- 2) (U) "Threat of force" includes threats of harm intended to injure, intimidate, or interfere with someone because that person is obtaining or providing reproductive health services.  

(U) Threats are covered by the act where it is reasonably foreseeable that the threat would be interpreted as a serious expression of an intention to inflict bodily harm.
- 3) (U) "Physical obstruction" means to render impassable ingress to, or egress from, a facility that provides reproductive health services. It also means to render passage to or from such a place unreasonably difficult or hazardous. For example, the FACE Act applies in situations where persons entering or exiting a statutorily protected place actually were able to enter and/or exit, but doing so was made unreasonably difficult or hazardous (including when required to climb over or around people chained to drums containing cement or immobilized vehicles placed very close to entrances and exits). Additional examples of "physical obstruction" include blockading or invading protected facilities, pouring glue into locks, chaining people and cars directly to entrances, and strewing nails on public roads leading to statutorily protected places.

b. (U) Prohibited Acts

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- 1) (U) The term "interfere with" means to restrict a person's freedom of movement. This could occur, for example, by means of a human barricade, cement poured in a driveway, or the blocking of a parking lot with a large object or roofing nails. However, the mere causing of psychological discomfort (e.g., by words or photographs) is not sufficient to constitute interference.
- 2) (U) The term "intimidate" means to place a person in reasonable apprehension of bodily harm to himself/herself or to another, including family members. Whether such an apprehension is "reasonable" depends on all of the facts and circumstances presented.

c. (U) Prohibited Motive

- (1) (U) "Reproductive health services," as used in the act, means reproductive health services provided in a hospital, clinic, physician's office, or other facility, and include medical, surgical, counseling, or referral services relating to pregnancy or the termination of a pregnancy. Protected facilities include facilities that offer only counseling about adoption and alternatives to abortion *and* facilities that offer abortions.

d. (U) Additional Protections

- 1) (U) Facilities covered by the act include hospitals, clinics, physicians' offices, or other locations that provide reproductive health services. This includes the building or structure in which the facility is located. Reproductive health services facilities that are located within large office buildings or shopping malls are protected under the act, regardless of whether they are freestanding structures or whether they include facilities that provide other services.

(U) A FACE Act violation requires proof that the subject intended to do the acts that are alleged as the basis of the violation and that the subject did not commit the acts at issue by accident, inadvertence, or mistake. The FACE Act, however, requires an additional proof: proof of the subject's motive for committing a particular act or attempting to commit a particular act. In other words, the FBI must prove why the subject committed a particular act.

(U) To be in violation of the FACE Act, the activity at issue must have been done to a person or place because that person or place was involved in obtaining or providing or attempting to obtain or provide reproductive health services.

(U) For example, a group of nurses who picket in front of a hospital that performs reproductive health services, whose picketing prevents patients from obtaining those services and physicians from providing those services, are not necessarily in violation of the statute. Whether they are or are not depends, in large part, on their motivation. If they are picketing because of a labor grievance, they lack the motive required for a FACE Act violation. If they are picketing because they are opposed to the hospital offering abortions, they have the motive necessary for a FACE Act violation.

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(U) In order to prove a violation of the FACE Act, the government must prove the elements exist as follows:

- a. (U) The subject used force, threat of force, or physical obstruction.
- b. (U) The subject intentionally injured, intimidated, or interfered with the victim.
- c. (U) The subject acted as he did because the victim was or had been providing or obtaining reproductive health services.

**11. (U) Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 - 18 U.S.C. § 249**

**(U) 18 U.S.C. § 249 (a)(1)**

1. (U) The subject of the investigation:
  - a. (U) Caused bodily injury.
  - b. (U) Attempted to cause bodily injury using fire, firearms, a dangerous weapon, or an explosive device.
2. (U) The subject acted because of the actual or perceived:
  - a. (U) Race of a person.
  - b. (U) Color of a person.
  - c. (U) Religion of a person.
  - d. (U) National origin of a person.
3. (U) The subject acted willfully.
4. (U) Maximum 10-year prison sentence, unless death (or attempt to kill) results from the offense, or the offense includes kidnapping, aggravated sexual abuse, or attempt to do either.

**(U) 18 U.S.C. § 249(a)(2)**

1. (U) The subject of the investigation:
  - a. (U) Caused bodily injury.
  - b. (U) Attempted to cause bodily injury using fire, firearms, a dangerous weapon, or an explosive device.
2. The subject acted because of the actual or perceived:
  - a. (U) Religion of a person.
  - b. (U) National origin of a person.
  - c. (U) Gender of a person.
  - d. (U) Sexual orientation of a person.

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- e. (U) Gender identity of a person.
  - f. (U) Disability of a person.
  - 3. (U) The subject acted willfully.
  - 4. (U) The offense was "in or affecting interstate commerce" because:
    - a. (U) The offense occurred during, or as the result of, travel of the subject or the victim across state lines or using a channel or facility of interstate or foreign commerce.
    - b. (U) The subject used a channel, facility, or instrumentality of interstate or foreign commerce in connection with the offense.
    - c. (U) A person employed a firearm; dangerous weapon; explosive or incendiary device; or other weapon that traveled in interstate or foreign commerce.
    - d. (U) The offense interfered with a victim's commercial or economic activity.
    - e. (U) The offense otherwise affected interstate or foreign commerce.
  - 5. (U) A maximum 10-year prison sentence, unless death (or attempt to kill) results from the offense, or the offense includes kidnapping, aggravated sexual abuse, or an attempts to do either.
- (U) 18 U.S.C. § 249(a)(3)
- 1. (U) The subject of the investigation:
    - a. (U) Caused bodily injury.
    - b. (U) Attempted to cause bodily injury using fire, firearms, a dangerous weapon, or an explosive device.
  - 2. (U) The subject acted because of the actual or perceived:
    - a. (U) Race of a person.
    - b. (U) Color of a person.
    - c. (U) Religion of a person.
    - d. (U) National origin of a person.
    - e. (U) Gender of a person
    - f. (U) Sexual orientation of a person.
    - g. (U) Gender identity of a person.
    - h. (U) Disability of a person.
  - 3. (U) The subject acted willfully.
  - 4. (U) The offense occurred within the special maritime and territorial jurisdiction of the

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(U) 18 U.S.C. § 249 (b)

(U) No prosecution of any § 249 offenses can take place unless the Attorney General or his designee certifies that the following:

- A. (U) The state does not have jurisdiction.
- B. (U) The state has requested that the federal government assume jurisdiction.
- C. (U) The verdict or sentence obtained pursuant to state charges left the federal interest in eradicating bias-motivated violence demonstratively unvindicated.
- D. (U) A prosecution by the United States is in the public interest and necessary to secure substantial justice.

(U) 18 U.S.C. § 249 (c) defines "bodily injury," "explosive or incendiary device," "firearm," "gender identity," and "state."

(U) 18 U.S.C. § 249 (d)

(U) Statute of limitations:

- a. (U) For offenses not resulting in death: seven years after the date on which the offense was committed.
- b. (U) For offenses resulting in death: no limitation.

11. (U) 18 U.S.C. § 844(h) - Federal Explosives Control Entrances

(U) Section 844(h)(1) can be used where a subject:

- a. (U) Used "fire or an explosive to commit any felony that may be prosecuted in a court of the United States."
- b. (U) Carried an explosive during the commission of any felony that may be prosecuted in a court of the United States.

(U) The mandatory minimum penalty for violations of § 844(h) was increased from five years to ten years by the Antiterrorism and Effective Death Penalty Act of 1996, which was passed on April 24, 1996. Violations of amended § 247 or § 241 are most likely to be used as the underlying felonies in church arson cases charging violations of § 844(h)(1).

12. (U) 18 U.S.C. § 894 - Collection of Extensions of Credit by Extortionate Means

(U) This statute indicates that it is a violation of the law if an individual knowingly participates in any way, or conspires to do so, in the use of extortionate means to:

- a. (U) Collect or attempt to collect any extension of credit.
- b. (U) Punish any person for the non-repayment thereof.

13. (U) 18 U.S.C. § 1001 - False Statement

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(U) Title 18 U.S.C. § 1001 serves as an additional statutory tool for addressing certain obstructive conduct. Section 1001 provides:

- a. (U) Except as otherwise provided, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully:
  - 1) (U) Falsifies, conceals, or covers up by any trick, scheme, or device a material fact shall be [punished].
  - 2) (U) Makes any materially false, fictitious, or fraudulent statement or representation shall be [punished].
  - 3) (U) Makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be [punished].

(U) The Supreme Court has held that § 1001 may be used to prosecute individuals who lie to the FBI during a criminal investigation. There is no requirement that the government prove that the subject knew that the matter was within the jurisdiction of the FBI or another federal agency.

(U) The plain language of § 1001 suggests that concealment must be by "trick, scheme, or device." Several circuits have determined that failing to disclose facts that one has a legal duty to disclose to the government constitutes an "affirmative act" bringing the nondisclosure under § 1001.

(U) Where a person is required by Bureau of Prisons regulations to document any use of force incident with an inmate, the government can show that the person had a legal duty to disclose his use of force, and therefore, his concealment of such constituted an affirmative act for purposes of prosecution under § 1001.

14. (U) 18 U.S.C. § 1201 - Kidnapping

(U) Whoever unlawfully seizes, confines, entices, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when:

- a. (U) The person is willfully transported in interstate or foreign commerce . . . [shall be guilty of an offense against the United States]. Section 1201(a)(1) prohibits seizing, confining, inveigling, decoying, kidnaping, abducting, or carrying away a victim for ransom, reward, or some other thing of value when, among other things, the victim is willfully transported in interstate or foreign commerce. Section 1201(a)(1) is, in many respects, similar to 18 U.S.C. § 1583 (Enticement into Slavery). Both allow prosecution when a person uses force or enticement to transport a victim from one place to another for prohibited purposes. In § 1583, the prohibited purpose is selling the victim into servitude or holding the victim as a slave. In § 1201, the prohibited purpose is to obtain anything of value to the subject, which might include obtaining the victim's labor or services.



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(U) Section 1201(a) also criminalizes kidnapping:

- a. (U) In the special maritime and territorial jurisdiction of the United States.
- b. (U) In the special aircraft jurisdiction of the United States.
- c. (U) Of foreign officials.
- d. (U) Of federal employees.

(U) To obtain a conviction for violating § 1201(a)(1), the government must prove the following elements:

- a. (U) The subject seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away the victim.
- b. (U) The subject held the victim for ransom, reward, or some other benefit.
- c. (U) The subject intentionally transported the victim across state or national boundaries.
- d. (U) The subject acted knowingly and willfully.

(U) To prove a charge under 18 U.S.C. § 1201, the government must prove four elements: The transportation in interstate commerce of a nonconsenting person who is held for ransom or reward or otherwise such acts being done knowingly and willfully.

**15. (U) 18 U.S.C. § 1203 - Hostage Taking**

(U) Title 18 U.S.C. § 1203 states in pertinent part:

- a. (U) Except as provided in the subsection below of this section, whoever, whether inside or outside, the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so, [shall be guilty of an offense against the United States].
- b. (U) It is not an offense under this section if the conduct required for the offense occurred outside the United States unless: (1) the offender or the person seized or detained is a national of the United States; (2) the offender is found in the United States; or (3) the governmental organization sought to be compelled is the government of the United States.

(U) It is not an offense under this section if the conduct required for the offense occurred inside the United States; each alleged offender and each person seized or detained are nationals of the United States; and each alleged offender is found in the United States, unless the governmental organization sought to be compelled is the government of the United States.

(U) Many trafficking cases involve aliens who have accrued a smuggling debt in exchange for transportation to the United States. If a subject has sought to extract payment of the debt from a third party, as opposed to the smuggled victim, and if either the subject or the victim is a foreign national, it may be appropriate to charge the offender with hostage taking.

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(U) Application of the Hostage Taking Act depends, in part, on the nationality of the offender and the victim. "If either the alleged offender or the victim is a non-national, the Hostage Taking Act applies; however, if both the alleged offender and the victim(s) are nationals of the United States (and the offense occurred in the United States and each alleged offender is found in the United States) then the Act is inapplicable, unless the alleged offender sought to compel the government of the United States to do or abstain from any act." Domestic hostage taking cases (in which the offenders and the victims are all United States nationals) are generally excluded from the Hostage Taking Act. The act applies "only to acts of kidnapping or hostage taking which have some international aspect or involve the United States government."

(U) To obtain a conviction for violating § 1203(a), the government must prove the following elements:

- a. (U) The subject seized or detained a victim.
- b. (U) The subject threatened to kill, injure, or continue to detain the victim.
- c. (U) The subject had the purpose of compelling a third person or governmental entity to act in some way or refrain from acting.
- d. (U) The victims or the subjects were foreign nationals or the subjects sought to compel the government of the United States to do or abstain from any act.

**16. (U) 18 U.S.C. § 1546 - Fraud and Misuse of Visas, Permits, and Other Documents**

(U) Title 18 U.S.C. § 1546 concerns fraud and misuse of visas, permits, and other documents. Section 1546 (a) prohibits "knowingly subscrib[ing] as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws." Subsection 1546(b) prohibits using a document which the subject knows was not obtained lawfully, see Section 1546(b)(1), a document which the subject knows is false, see Section 1546(b)(2), or a false attestation, see Section 1546(b)(3).

**17. (U) 18 U.S.C. § 1581 - Obstructing Enforcement**

- a. (U) Whoever holds or returns any person to a condition of peonage or arrests any person with the intent of placing him/her in, or returning him/her to, a condition of peonage.
- b. (U) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

**18. (U) 18 U.S.C. § 1582 - Vessels for Slave Trade**

(U) Whoever, whether as master, factor, or owner, builds, fits out, equips, loads, or otherwise prepares or sends away any vessel, in any port or place within the United States, or causes such vessel to sail from any such port or place for the purpose of procuring any person from any foreign kingdom or country to be transported and held, sold, or otherwise disposed of as a slave or held to service or labor, shall be fined under this title or imprisoned not more than seven years, or both.

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**19. (U) 18 U.S.C. § 1583 - Enticement into Slavery**

- a. (U) Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave.
- b. (U) Whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he/she may be made or held as a slave, or sent out of the country to be so made or held, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

(U) The elements of this statute are as follows:

- a. (U) A person must kidnap or carry away any other person.
- b. (U) A person must kidnap or carry away any other person with the intent to sell the individual into compulsory service or hold that person as a slave.
- c. (U) A person must induce another person to board a vessel or to go to any place.
- d. (U) A person must have the intent that the victim will be made or held as a slave or sent out of the country to be so held or made.
- e. (U) All actions listed above must be against the victim's will.

**20. (U) 18 U.S.C. § 1584 - Sale Into Involuntary Servitude**

(U) Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude any other person for any term, or brings within the United States any person so held, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

(U) The elements of this statute are as follows:

- a. (U) A person must knowingly and willfully hold in compulsory service or sell into compulsory service any other person against that person's will.
- b. (U) A person must knowingly and willfully bring into the United States any other person held in compulsory service.

(U) To obtain a conviction for violating § 1584, the government must prove the following elements:

- a. (U) The subject must have held the victim(s) to involuntary servitude through restraint, force, threats of force, or legal coercion.
- b. (U) Such holding must have been for a term (any period of time).
- c. (U) The subject must have acted knowingly and willfully.

**21. (U) 18 U.S.C. § 1585 Seizure, Detention, Transportation, or Sale of Slaves**

(U) Whoever, being a citizen or resident of the United States and a member of a crew or ship's company of any foreign vessel engage in slave trade, or whoever, being of the crew or ship's

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company of any vessel owned in whole or in part, or navigated for, or in behalf of, any citizen of the United States, lands from such vessel, and on any foreign shore seizes any person, with intent to make that person a slave, or decoys, or forcibly brings, carries, receives, confines, detains, or transports any person as a slave on board of such vessel, or on board of such vessel, offers or attempts to sell any such person as a slave, or on the high seas or anywhere on tide water, transfers or delivers to any other vessel any such person with intent to make such person a slave, or lands or delivers on shore from such vessel any person with intent to sell, or having previously sold, such person as a slave, shall be fined under this title or imprisoned not more than seven years, or both.

22. (U) 18 U.S.C. § 1586 - Service on Vessels in Slave Trade

(U) Whoever, being a citizen or resident of the United States, voluntarily serves on board of any vessel employed or made use of in the transportation of slaves from any foreign country or place to another, shall be fined under this title or imprisoned not more than two years, or both.

23. (U) 18 U.S.C. § 1587 - Seizure, Possession of Slaves Aboard a Vessel

(U) Whoever, being the captain, master, or commander of any vessel found in any river, port, bay, harbor, or on the high seas within the jurisdiction of the United States, or hovering off the coast thereof, and having on board any person for the purpose of selling such person as a slave, or with intent to land such person for such purpose, shall be fined under this title or imprisoned not more than four years, or both.

24. (U) 18 U.S.C. § 1588 - Transportation of Slaves from the United States

(U) Whoever, being the master or owner or person having charge of any vessel, receives on board any other person with the knowledge or intent that such person is to be carried from any place within the United States to any other place to be held or sold as a slave, or carries away from any place within the United States any such person with the intent that he may be so held or sold as a slave, shall be fined under this title or imprisoned not more than ten years, or both.

25. (U) 18 U.S.C. § 1589 - Forced Labor

(U) Whoever knowingly provides or obtains the labor or services of a person:

- a. (U) By threats of serious harm to, or physical restraint against, that person or another person.
- b. (U) By way of any scheme, plan, or pattern intended to cause the person to believe that if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.
- c. (U) By means of abuse or threatened abuse of law or the legal process, [shall be guilty of an offense against the United States].

(U) If death results from the violation of this section or if the violation includes kidnaping or an attempt to kidnap; aggravated sexual abuse or the attempt to commit aggravated sexual abuse; or an attempt to kill, the offender [shall be subject to higher criminal penalties].

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(U) Section 1589 was passed in response to the Supreme Court's decision that to prove a violation of the pre-Trafficking Victims Protection Act (TVPA) involuntary servitude statutes, the government must prove that the servitude was "enforced by the use or threatened use of physical or legal coercion."

(U) To obtain a conviction for violating § 1589, the government must prove the following elements (the TVPA's criminal provisions have not been tested in court, so the elements of the offenses can at this point only be set forth in reliance on the plain language of the respective sections):

- a. (U) The offender provided or obtained the labor or services of a person.
- b. (U) The offender did so in one of three prohibited manners:
  - 1) (U) Through threats of serious harm to, or physical restraint against, that person or another person.
  - 2) (U) Through a scheme, plan, or pattern intended to cause the person to believe that non-performance would result in serious harm to, or physical restraint against, that person or another person.
  - 3) (U) Through the abuse or threatened abuse of the law or legal process.
- c. (U) The offender acted knowingly.

**26. (U) 18 U.S.C. § 1590 - Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor**

(U) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be [guilty of an offense against the United States]. If death results from the violation of this section or if the violation includes kidnapping or an attempt to kidnap; aggravated sexual abuse or the attempt to commit aggravated sexual abuse; or an attempt to kill, the offender shall be subject to higher criminal penalties.

(U) To obtain a conviction for violating § 1590, the government must prove the following elements:

- a. (U) The offender did recruit, harbor, transport, provide, or obtain a person for labor or services.
- b. (U) The labor or services were to be obtained or maintained in violation of any provision of Title 18, Chapter 77.
- c. (U) The offender acted knowingly.

**27. (U) 18 U.S.C. § 1591 - Sex Trafficking of Children or by Force, Fraud, or Coercion**

(U) Whoever knowingly:

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- a. (U) In or affecting interstate commerce or foreign commerce, or within the territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, or obtains by any means a person.
- b. (U) Benefits financially or by receiving anything of value from participation in a venture which has engaged in an act described in violation of the above paragraph.
- c. (U) Knowing that force or fraud will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished under this statute.

(U) The trafficking conduct prohibited under the new statute is, in many ways, similar to that prohibited under the Mann Act. As a result, charging both the Mann Act and § 1591 for the same activity may trigger a multiplicity challenge (charging someone more than once for the same criminal conduct). This problem might be avoided however, by pairing a Mann Act charge under § 2421 or § 2423(a) (which do not require a showing of coercion) and § 1591 charge alleging fraud, force, or coercion. Furthermore, it must be noted that § 1591 is limited to trafficking involving a commercial sex act, which requires proof that the act was performed in exchange for something of value. Trafficking involving non-commercial sex acts may not be prosecuted under § 1591.

(U) To obtain a conviction for violating § 1591, the government must prove the following elements:

- a. (U) For § 1591(a)(1), that the subject knowingly did recruit, entice, harbor, transport, provide, or obtain a person for a commercial sex act.  
For § 1591(a)(2), that the subject benefited financially or received something of value by participating in a venture to recruit, entice, transport, provide, or obtain a person for a commercial sex act.
- b. (U) The subject's actions were "in or affecting interstate commerce."
- c. (U) The subject knew that the trafficked person's participation in the commercial sex act was, or was intended to be, caused by force, fraud, or coercion, or that the trafficked person was under 18 years of age.

**28. (U) 18 U.S.C. § 1592 - Unlawful Conduct with Respect to Documents in Furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude, or Forced Labor**

(U) Title 18 U.S.C. § 1592 provides in pertinent part:

- a. (U) Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document or any other actual or purported government identification document of another person:
  - 1) (U) In the course of a violation of § 1581, 1583, 1584, 1589, 1590, 1591, or 1594(a);
  - 2) (U) With intent to violate § 1581, 1583, 1584, 1589, 1590, or 1591;

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- 3) (U) To prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, [shall be guilty of an offense against the United States].
- b. (U) Subsection (a) does not apply to the conduct of a person who is, or has been, a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, if that conduct is caused by, or incident to, that trafficking.

(U) Section 1592 makes it illegal to seize documents in order to force others to work. By expanding its coverage to false documents as well as official documents, § 1592 recognizes that victims are often immobilized by the withholding of whatever documents they possess, even if the documents are forged or fraudulent. Section 1592 should expand the scope of federal trafficking statutes, to reach those who prey on the vulnerabilities of immigrant victims by controlling their papers.

(U) To obtain a conviction for violating § 1592(a)(1) & (2), the government must prove the following elements:

- a. (U) The subject did destroy, conceal, remove, confiscate, or possess an actual or purported passport, immigration document, or other government identification document of another person.
- b. (U) For a violation of § 1592(a)(1), that the destruction, concealment, removal, confiscation, or possession of the document occurred in the course of a violation of § 1581, 1583, 1584, 1589, 1590, 1591, or 1594(a).
- c. (U) For a violation of § 1592(a)(2), that the subject's destruction, concealment, removal, confiscation, or possession of the document occurred with the intent to violate § 1581, 1583, 1584, 1589, 1590, or 1591.
- d. (U) The subject acted knowingly.

(U) To obtain a conviction for violating § 1592(a)(3), the government must prove the following elements:

- a. (U) The subject did destroy, conceal, remove, confiscate, or possess an actual or purported passport, immigration document, or other government identification document of another person.
- b. (U) The subject acted so to maintain the labor or services of that person.
- c. (U) The person whose documents were destroyed, concealed, removed, confiscated, or possessed, was a victim of a severe form of trafficking, which requires proof that:
  - 1) (U) The victim was subjected to sex trafficking in which a commercial sex act was induced by force, fraud, or coercion.

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- 2) (U) The victim was subject to sex trafficking in which the victim was induced to perform a commercial sex act before reaching 18 years of age.
- 3) T(U) he victim was subject to the recruitment, harboring, transportation, provision, or obtaining of his or her labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

d. (U) The subject acted knowingly.

**(U) Destroy, Conceal, Remove, Confiscate, or Possess an Actual or Purported Passport, Immigration Document, or Other Government Identification Document of Another Person.**

(U) Each subsection of § 1592(a) requires that the government prove that the offender destroyed, concealed, removed, confiscated, or possessed immigration documents or similar government identification. The statute makes clear that such acts are criminalized, even if the documents are forged or if the subject merely "purports" that the documents are valid.

**(U) Document Confiscation During the Violation of Other Criminal Trafficking Laws.**

(U) Section 1592(a)(1) prohibits the confiscation of documents in the course of a violation of other criminal trafficking laws. An attempt to violate one of the other Chapter 77 offenses is a legally cognizable, separate offense. Section 1594(a), which criminalizes attempts to violate the other trafficking statutes, is included as one of the predicate statutes for a § 1592(a)(1) violation.

**(U) Document Confiscation with the Intent to Violate Other Criminal Trafficking Laws.**

(U) Section 1592(a)(2) penalizes the confiscation of documents with the intent to violate other criminal trafficking laws. This subsection may be helpful in getting pleas, especially with cooperating co-defendants. To establish "intent to violate," prosecutors must explore whether the subjects were counting on the victims to believe that the confiscation of the documents rendered them incapable of leaving the subjects' service, whether from fear of law enforcement or simply by leaving them stranded in the United States.

**(U) Document Confiscation in Connection with Severe Forms of Trafficking in Person(s).**

(U) Section 1592(a)(3) does not require showing that an individual violated or intended to violate another trafficking statute. To establish a violation of § 1592(a)(3), the government must prove both of the following: (1) the confiscation of a document was done in order to prevent or restrict the victim's liberty to move or travel, so as to maintain the labor or services of that person; and (2) the victim was a "victim of a severe form of trafficking."

(U) To establish that someone was a "victim of a severe form of trafficking," the government must prove that the person:

- a. (U) Was subject to sex trafficking through force, fraud, or coercion.
- b. (U) Was a minor who was trafficked for commercial sex.



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- c. (U) Was trafficked for labor or services through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(U) The term "involuntary servitude" is defined by statute to mean "any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process." Debt bondage is defined as "the status or condition of a debtor arising from a pledge by the debtor of his or her personal services, or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined."

(U) Forced labor, criminalized under § 1589, is not one of the forms of servitude which, under the express statutory language, allows a victim to qualify as a "victim of a severe form of trafficking in persons." Section 1592(a)(3) cross-references the definition of involuntary servitude used in the civil victim protection provisions.

29. (U) 18 U.S.C. § 1593 - Mandatory Restitution

- a. (U) Notwithstanding §§ 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter.
- b. (1) (U) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court under paragraph (3) of this subsection.
- (2) (U) An order of restitution under this section shall be issued and enforced in accordance with section 3664, in the same manner as an order under section 3633A.
- (3) (U) As used in this subsection, "full amount of the victim's losses" has the same meaning as provided in § 2259(b)(3), and shall in addition include the greater of the gross income or value to the defendant of the victim's services, or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (Title 29 U.S.C. § 201 et seq.)
- c. (U) The term "victim" means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the individual be named such representative or guardian.

30. (U) 18 U.S.C. § 1594 - General Provisions

- a. (U) Whoever attempts to violate Section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.

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- b. (U) The court, in imposing sentence of any person convicted of any violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provisions of State law, that such person shall forfeit to the United States--
  - 1) (U) Such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and
  - 2) (U) Any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.
- c. (1) (U) The following shall be subject to forfeiture to the United States and no property right shall exist in them:
  - (a) (U) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.
  - (b) (U) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.
- (2) (U) The provision of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.
- d. (U) Witness protection: Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection).

**31. (U) Title 18, U.S.C. § 2421 Mann Act - Transportation Generally**

(U) Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both. To obtain a conviction for violating Section 2421 of the Mann Act, the government must prove the following elements:

- a. (U) The defendant transported a person with the intent that the transported person engage in prostitution or some other sexual activity that is punishable as a criminal offense; and
- b. (U) The defendant knowingly transported the person across state or foreign borders.

**32. (U) 18 U.S.C. § 2422 - Coercion and Enticement**

(U) 18 U.S.C. § 2422 prohibits inducing or coercing a victim to travel in interstate commerce to engage in prostitution or other sexual activity punishable as a criminal offense. This section differs from § 2421 of the Mann Act because it applies where the subject does not directly transport the victim, but instead persuades her to travel across state or foreign borders to engage in prostitution and the victim travels "under her own steam." Section 2422 may be useful in situations where the victims responded to advertisements or recruitment efforts for employment opportunities in the United States. However, because the victims in involuntary servitude cases

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are almost always physically transported by the subjects or the subjects' agents, § 2421 often may be a more appropriate charge.

33. (U) 18 U.S.C. § 2423(a) - Transportation of Minors

- a. (U) Transportation with intent to engage in criminal sexual activity: A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory, or possession of the United States with intent that the individual engage in prostitution or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than five years and not more than 30 years.
- b. (U) Travel with intent to engage in illicit sexual conduct: A person who travels interstate commerce or travels into the United States or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.
- c. (U) Engaging in illicit sexual conduct in foreign places: Any United States citizen or alien admitted for permanent residence in the United States who travels in foreign commerce and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.
- d. (U) Ancillary offenses: Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person, knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct, shall be fined under this title, imprisoned not more than 30 years, or both.
- e. (U) If an individual attempts or conspires to violate subsections outlined above shall be punished in the same manner as a completed violation of that subsection.

34. (U) 18 U.S.C. § 2424 - Filing Factual Statement about Alien Individual

(U) Section 2424 requires brothel owners to register with the Commissioner of the Immigration and Naturalization Service (INS) if they are housing aliens in prostitution. Section 2424 "does not prohibit indulgence or commercial involvement in prostitution. It merely imposes a requirement of registration upon one who harbors an alien prostitute." However, as it is not common practice for owners of illicit establishments to notify the INS of either their existence or their employment of undocumented aliens, non-registration would be easy to establish in virtually every case.

35. (U) 42 U.S.C. § 1973i - Voting Rights Act of 1965

(U) Section 1973i provides that no person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote, nor shall they willfully fail or refuse to give effect to such person's vote. This section also prohibits intimidation of, or attempts to, intimidate persons

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for voting or urging or aiding others to vote. Alleged violations of this statute having racial aspects are handled under the 44 classification. They are to be captioned, "Civil Rights - Voting Laws." Other alleged violations of 42 U.S.C. § 1973 are handled under the 56 classification and are captioned, "Election Laws."

36. (U) 42 U.S.C. § 1973dd - Overseas Citizens Voting Rights Act of 1975

(U) This act applies to all federal elections held on or after January 1, 1976. It provides rights for citizens residing overseas to register and vote in the state where they were last domiciled. The act relates to any federal election, provided the voter meets all qualifications for voting in the state in which he/she was last domiciled.

37. (U) 42 U.S.C. § 1997 - Civil Rights of Institutionalized Persons Act

- a. (U) The statute grants to the Attorney General explicit authority to initiate civil actions designed to redress systematic deprivations of the constitutional rights of institutionalized persons. The definition of "institutions" includes mental hospitals, mental retardation facilities, jails, prisons, certain types of nursing homes, and juvenile detention centers.
- b. (U) In order for the Attorney General to initiate suits under the act, there must be "reasonable cause" to believe that there exists a "pattern or practice" of "egregious or flagrant" legal violations which deprive residents of institutions of the basic rights guaranteed by the Constitution or laws of the United States. Implementation of this act is the responsibility of the Civil Rights Division of the Department of Justice.
- c. (U) Of particular relevance to the FBI is section 4(a) (2) of the act. That provision authorizes the Attorney General to commence investigations of institutions for the purpose of determining whether legal violations have occurred. The law also requires the Attorney General to provide pertinent state officials with seven days' notice of the Attorney General's intent to commence such an investigation.

38. (U) 42 U.S.C. § 3604 - Discrimination in the Sale or Rental of Housing

- a. (U) This statute prohibits activity where the rationale for the individual's conduct is the alleged victim's race, color, religion, sex, familial status, or national origin as follows: (Note that handicap status is not covered under these two sections.)
  - 1) (U) Refusal to sell or rent a dwelling after a *bona fide* offer has been made; refusal to negotiate to sell or rent a dwelling; or otherwise make unavailable or deny a dwelling to any person.
  - 2) (U) Discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services (i.e., the use of a real estate broker) in connection therewith.

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- b. (U) The statute prohibits conduct, if the rationale for the individual's conduct is the alleged victim's race, color, religion, sex, familial status, handicap, or national origin. (Note that handicap status is covered by these sections.)
    - 1) (U) Marking, painting, publishing, or causing to be made, printed, or published any notice, statements, or advertisement regarding the sale or rental of a dwelling that indicates any preference, limitation, or discrimination, or an intention to make any such preference, limitation, or discrimination.
    - 2) (U) Representing to any person that a dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
    - 3) (U) The practice of "blockbusting" is inducing or attempting to induce for profit, any person to sell or rent any dwelling by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.
  - c. (U) Finally, the statute prohibits discrimination in sale or rental (and conditions thereof) to any buyer or renter because of the buyer/renter's handicap; the handicap of a person residing or intending to reside with the buyer/renter; and the handicap of an associate of the buyer/renter.
39. (U) 42 U.S.C. § 3605 - **Discrimination in Residential Real Estate-Related Transactions**
- a. (U) This statute makes it unlawful for any person or entity who is involved in a "residential real estate-related transaction" to discriminate in making available such a transaction or requiring terms or conditions of such a transaction on the basis of race, color, religion, sex, handicap, familial status, or national origin.
  - b. (U) "Residential real estate-related transaction" is defined as one of the following:
    - 1) (U) The making or purchasing of loans or providing other financial assistance for:
      - a. (U) Purchasing, constructing, improving, repairing or maintaining a dwelling.
      - b. (U) Conducting a financial transaction secured by residential real estate.
      - c. (U) Selling, brokering, or appraising of residential real property.
40. (U) 42 U.S.C. § 3606 - **Discrimination in the Provision of Brokerage Services**
- (U) This statute makes it unlawful to deny any person access to membership or participation in any multiple-listing service, real estate brokers' organization, or any other service, organization, or facility relating to the business of selling or renting dwellings because of that person's race, color, sex, religion, familial status, or national origin.
41. (U) 42 U.S.C. § 3617 - **Interference, Coercion, or Intimidation; Enforcement by Civil Action.**
- (U) This statute makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of (or on account of) his/her having exercised or having aided or

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encouraged any other person in the exercise or enjoyment of any housing rights enumerated in 42 U.S.C. §§ 3604-3606.

(U) This statute does not require the use of force or threat of force to find the conduct to be unlawful. However, enforcement of the statute is by civil action initiated by the Department of Justice or the Department of Housing and Urban Development (HUD), rather than criminal action.

**42. 42 U.S.C. § 3631 - Criminal Interference Violations - Bodily Injury, Death, Penalties**

(U) This statute makes it unlawful for any individual(s) by the use of force or threatened use of force, to injure, intimidate, or interfere with (or attempt to injure, intimidate, or interfere with) any person's housing rights because of that person's race, color, religion, sex, handicap, familial status, or national origin. Among those housing rights enumerated in the statute are:

- a. (U) The sale of a dwelling.
- b. (U) The purchase of a dwelling.
- c. (U) The renting of a dwelling.
- d. (U) The financing of a dwelling.
- e. (U) The occupation of a dwelling.
- f. (U) An individual contracting or negotiating for any of the rights enumerated above (a-f).
- g. (U) An individual applying for, or participating in, any service, organization, or facility relating to the sale or rental of dwellings.

(U) The statute also makes it unlawful by the use of force or threatened use of force, to injure, intimidate, or interfere with any person who is assisting an individual or class of persons in the exercise of their housing rights. Finally, the statute makes it unlawful by the use of force or the threatened use of force to injure, intimidate, or interfere with any citizen who is participating lawfully in speech or peaceful assembly, opposing any denial of an individual's opportunity to participate in any of the activities enumerated above. An individual convicted of violating this section shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and if bodily injury results, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, shall be subject to imprisonment for any term of years or for life. The important factor in applying this statute is that the individual must have either used force or threatened to use force.

(U) The elements of § 3631 violations are as follows:

- a. The subject used force or threat of force.
- b. The subject injured, intimidated, or interfered with (or attempted to injure, intimidate, or interfere with) the victim's right to purchase and occupy a dwelling.
- c. The subject acted as he/she did because of the [race] of one or more of the victims and because one or more of the victims was purchasing and about to occupy a dwelling.

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d. The subject acted willfully.

(U) A violation of § 3631 is a misdemeanor unless one of the following additional elements is proven. The subject's conduct (1) resulted in bodily injury or death; (2) included use, attempted use, or threatened use of a dangerous weapon, explosive, or fire; or 3) included acts or attempts of kidnaping, aggravated sexual abuse, or an attempt to kill.

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**Appendix F: (U) Contact Information**

Civil Rights Unit Personnel Directory

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**Appendix G: (U) Key Words and Acronyms**

**(U) Key Words**

(U) **Color of Law** - when an individual acts under the authority granted to him/her by the federal, state, or local government. Such acts are done outside the boundaries of their lawful authority.

(U) **Garrity Privilege** - while the state as an employer can compel or coerce an employee to cooperate in an investigation in order to take administrative action, according to the Fifth Amendment, a self-incriminating statement taken under those circumstances cannot later be used in criminal proceedings.

(U) **Nexus** - a link, a causal link, a connected group or series.

(U) **Talking Points** - highlights pertinent to a specific topic, division, or program.

**(U) Acronyms**

THIS TABLE IS UNCLASSIFIED	
ACS	Automated Case Support
AGG-Dom	Attorney General's Guidelines for Domestic Investigations
ASAC	Assistant Special Agent in Charge
AUSA	Assistant United States Attorney
BATF	Bureau of Alcohol, Tobacco, Firearms, and Explosives
BICE	Bureau of Immigration and Customs Enforcement
CFR	Code of Federal Regulations
CID	Criminal Investigative Division
CJIS	Criminal Justice Information Services
COL	Color of Law

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CR	Civil Rights
CRD	Civil Rights Division
CRIPA	Civil Rights of Institutionalized Persons Act
CRP	Civil Rights Program
CRU	Civil Rights Unit
DC	District of Columbia
DEA	Drug Enforcement Administration
DIOG	Domestic Investigations and Operations Guide
DOJ	Department of Justice
DOJ-PIS	Department of Justice - Public Integrity Section
DOJ-CRD	Department of Justice - Civil Rights Division
DT	Domestic Terrorism
DTO	Domestic Terrorist Organization
DTOU	Domestic Terrorist Organization Unit
DTP	Domestic Terrorism Program
E/E	Effective and Efficient
EC	Electronic Communication
FACE	Freedom of Access to Clinic Entrances Act
FBI	Federal Bureau of Investigation
FBIHQ	Federal Bureau of Investigation Headquarters
FIG	Field Intelligence Group
FL	Florida
FO	Field Offices

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FOUO	For Official Use Only
GA	Georgia
HC	Hate Crimes
HCSA	Hate Crimes Statistics Act of 1990
HT	Human Trafficking
HUD	Department of Housing and Urban Development
ICE	Immigration and Customs Enforcement
IL	Illinois
INS	Immigration and Naturalization Service
LES	Law Enforcement Sensitive
LHM	Letterhead Memorandum
MA	Massachusetts
MPA	Management Program Analyst
MPAT	Management Program Assistant
NGO	Non-Government Organization
NY	New York
OJP	Office of Justice Program
PAR	Performance Assessment Report

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PC/CRIU	Public Corruption /Civil Rights Intelligence Unit
PCU	Public Corruption Unit
PG	Policy Implementation Guide
PI	Preliminary Investigation
RA	Resident Agency
SA	Special Agent
SAC	Special Agent in Charge
SAPR	Semiannual Program Review
SIM	Sensitive Investigative Matter
SLS	Special Litigation Section
SSA	Supervisory Special Agent
TVPA	Trafficking Victims Protection Act
U	Unclassified
UC	Unit Chief
UCR	Uniform Crime Report
UR	Urgent Reports
USA	United States Attorneys
USAO	United States Attorneys Office
U.S.C.	United States Code
USCIS	United States Citizenship and Immigration Services
USMS	United States Marshals Service
USSS	United States Secret Service
VA	Virginia

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**Appendix H: (U) Superseded Documents**

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- **First Extension Request E.C. - 05/19/2005**
- **Second Extension Request E.C. - 05/19/2005**
- **Civil Rights Program Manual - 07/31/2007**
- **Civil Rights Program Reference Guide - 03/2006**
- **DOJ/Paralegal Investigator Initiative E.C. - 05/17/2006**
- **Reporting Requirements Policy Changes - 05/19/2005**
- **Civil Rights Program Performance Measures - 08/17/2005**

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