



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

Governor Greg Abbott
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March 26, 2021

Re: Unlawful Militia Activity and Enforcement Recommendations

Dear Governor Abbott:

I am writing to follow up on our previous letter, sent on January 20, 2021, regarding the urgent threat posed by unlawful militias in Texas. I am the Executive Director of Georgetown University Law Center's Institute for Constitutional Advocacy and Protection (ICAP), which has developed expertise in strategies to address the dangers of unauthorized private paramilitary activity as the result of successful litigation brought after the Unite the Right rally in Charlottesville, Virginia, in 2017.¹

Emerging information about the insurrection at the U.S. Capitol on January 6 demonstrates the threat associated with militia conduct. Recent reports of paramilitary training in your state only heighten that threat. We urge you and law enforcement officials in Texas to take action to address illegal paramilitary activity using the state's existing laws and to consider new legislation that would further bolster these protections.

I. Background

A. The Recent Attack on the U.S. Capitol in Washington, D.C.

Unauthorized private militia groups present a significant threat to public safety, as evidenced by the violent attack on the U.S. Capitol on January 6, 2021. Some of those who have been indicted appear to be associated with self-styled private militia groups.² These groups were particularly

¹ ICAP has developed several resources that may be useful, including a 50-state catalog of anti-militia and anti-paramilitary-activity laws and a toolkit for constitutional protest. See ICAP, *Prohibiting Private Armies at Public Rallies: A Catalog of Relevant State Constitutional and Statutory Provisions* (Sept. 2020) [hereinafter ICAP 50-State Catalog], <https://perma.cc/XFG3-D67T>; ICAP, *Protests & Public Safety: A Guide for Cities & Citizens* [hereinafter ICAP Constitutional Protest Guide], <https://constitutionalprotestguide.org/>. We have also published guidance for law enforcement on protecting First Amendment rights, <https://perma.cc/GHT2-5QWP>, and responding to paramilitary activity, <https://perma.cc/ZPV7-TBFV>.

² See, e.g., Devlin Barrett et al., *DOJ Seeks to Build Large Conspiracy Case Against Oath Keepers for Jan. 6 Riot*, Wash. Post, Mar. 12, 2021, <https://perma.cc/T9L4-E7FW> ("The Oath Keepers is the most high-profile self-styled militia group in the country. . . . Twelve alleged Oath Keepers members or associates have already been arrested on charges related to the Jan. 6 riot."); Kevin Johnson & Dinah Voyles Pulver, *Feds Expect to Charge at Least 100 More over Capitol Riot, Pursuing Broad Conspiracy*, USA Today, Mar. 12, 2021, <https://perma.cc/8GD8-4KF4> (reporting that "a number of people charged have affiliations with extremist groups," including the Proud Boys, Oath Keepers, and Three Percenters); NPR Staff, *The Capitol*

dangerous as the January 6 protests escalated to violence, because they were able to act in coordination. “Oftentimes seen donning tactical equipment and a variety of insignias and logos of armed groups,” individuals in “organized militant networks” were “often the tip of the spear, forcing their way past the U.S. Capitol police barricades, assaulting police, smashing windows, and directing rioters to the offices of Members of Congress.”³ And while on the ground, they “used various means of communication, including military-style hand signals, walkie-talkies and digital two-way radios, and social media.”⁴ Indeed, federal prosecutors have alleged that a leader of one of the groups helped carry out a plan to “break into the building from as many points as possible” and “overwhelm police barricades and breach the Capitol.”⁵

Nearly three dozen Texans have been charged in connection with the attack on the U.S. Capitol thus far, and far-right activist Ali Alexander (Ali Akbar)—one of the main organizers of the #StopTheSteal rally that preceded the attack—hails from Texas as well.⁶ Notably, several of the Texans facing charges are alleged to have ties to private militia groups.

For example, Guy Reffitt, of Wylie, is allegedly affiliated with both the Texas Freedom Force, which the FBI has described as a “militia extremist group,” and the Three Percenters, a group of anti-government extremists who are also part of the militia movement.⁷ Reffitt is alleged to have been a

Siege: The Arrested and Their Stories, NPR, <https://www.npr.org/2021/02/09/965472049/the-capitol-siege-the-arrested-and-their-stories> (last updated Mar. 19, 2021) (same).

³ George Washington Univ. Program on Extremism, “This Is Our House!?: A Preliminary Assessment of the Capitol Hill Siege Participants 19 (Mar. 2021) [hereinafter GW Report], <https://perma.cc/FG3V-F5QH>.

⁴ *Id.*

⁵ Spencer S. Hsu, *U.S. Alleges Proud Boys Planned to Break into Capitol on Jan. 6 from Many Different Points*, Wash. Post, Mar. 2, 2021, <https://perma.cc/T64H-TNCJ> (describing how the leader allegedly positioned members “at an entrance to the Capitol grounds that was guarded by only a handful of Capitol Police officers” and “spread[] out others to different locations to avoid triggering police interest,” all while “carrying encrypted two-way Chinese-made Baofeng radios and wearing military-style gear”).

⁶ Lucio Vasquez et al., *Update: At Least 31 Texans Face Charges in the Wake of the U.S. Capitol Siege*, Houston Public Media, <https://www.houstonpublicmedia.org/articles/news/criminal-justice/2021/01/15/389491/several-texans-charged-for-storming-us-capitol/> (last updated Mar. 24, 2021); Sierra Juarez & Peter Holley, *Who Were the Texans Who Traveled to the Capitol to Challenge the Election Results?*, Tex. Monthly, Jan. 22, 2021, <https://www.texasmonthly.com/politics/capitol-mob-texans/>; Rachel Axon et al., *Capitol Riot Arrests, See Who’s Been Charged Across the U.S.*, USA Today, <https://www.usatoday.com/storytelling/capitol-riot-mob-arrests/> (last updated Mar. 25, 2021). Currently, Texans make up nearly ten percent of those who have been federally charged. See *Capitol Hill Siege*, George Washington Univ. Program on Extremism, <https://extremism.gwu.edu/Capitol-Hill-Cases> (last visited Mar. 25, 2021) (“As of March 18, 321 individuals have been charged in federal court for crimes related to the Capitol Hill siege. Of those charged . . . [t]he largest numbers came from Florida (31), Pennsylvania (30), and Texas (30).”).

⁷ Aff. in Supp. of Criminal Compl. & Arrest Warrant ¶¶ 16, 18, 28, *United States v. Reffitt*, Nos. 21-mj-19 & 21-cr-32 (D.D.C. Jan. 16, 2021) [hereinafter Reffitt Affidavit], <https://perma.cc/V5RR-Z4A4>; Dominic Anthony Walsh, *The FBI Calls It an ‘Extremist Militia.’ What Exactly Is ‘This Is Texas Freedom Force?’*, Tex. Public Radio, Feb. 1, 2021, <https://perma.cc/BW9C-YVGB>; *Three Percenters*, Anti-Defamation League (ADL), <https://www.adl.org/resources/backgrounders/three-percenters> (last visited Mar. 16, 2021); Josh Hafner, *Three Percenters: What Is the Gun-Toting Group? And What Do Its Supporters Want?*, USA Today, Mar. 1, 2018, <https://perma.cc/Q2MX-DD4X>; see also Mike Levine, *GOP Representative’s Husband Distances Himself from Militia Group After Jan 6. Photos Surface*, ABC News, Feb. 26, 2021, <https://perma.cc/KC9W-NBER> (quoting U.S. Capitol charging documents that describe the Three Percenters as “a domestic militia that advocates for resistance to the U.S. federal government policy it considers to infringe on personal, local, and gun ownership rights”). The Three Percenters base their name on the false claim that only three percent of American colonizers fought in the revolutionary war against the British. Wash. Post Staff, *Identifying Far-Right Symbols that Appeared at the U.S. Capitol Riot*, Wash. Post, <https://perma.cc/LRU5-23A6> (last updated Jan. 15, 2021). The term “is less indicative of membership in a single overarching group than it is representative of a common belief in the notion that a small [dedicated] force can

leader in the January 6 attack. According to prosecutors, he “was at the front of the first group of rioters to challenge a police line that was trying to secure the U.S. Capitol building” and “led a group of rioters up the Capitol steps,” where they confronted law enforcement.⁸ In ordering Reffitt detained prior to trial, a judge recently emphasized that Reffitt not only “came armed and ready for battle” on Capitol grounds with body armor, a helmet, a firearm, and plastic flex-cuffs, but also apparently planned for violence before and after the event in encrypted communications with other members of the Texas Three Percenters group, for which he said he conducts vetting and intelligence.⁹ Following the January 6 attack, Reffitt allegedly threatened his children to conceal his participation¹⁰ and sought to recruit “members to the Texas Three Percenters by telling them he had created a new security business,” TTP Security Services LLC, in order to “circumvent gun laws and obtain high-grade weapons and ammunition available to law enforcement.”¹¹ “This has only just begun and will not end until we The People of The Republic have won our country back,” Reffitt wrote on January 13.¹² “We had thousands of weapons and fired no rounds yet showed numbers. The next time we will not be so cordial.”¹³

The social media activity of another Texan who allegedly stormed the Capitol also suggests potential ties to the Three Percenters as well as the Oath Keepers, an anti-government paramilitary organization focused on recruiting current and former military and law enforcement members.¹⁴ Larry Brock, an Air Force veteran from Grapevine, allegedly entered the Capitol, and ultimately the Senate floor, with a military helmet, tactical vest, and zip ties.¹⁵ In the lead-up to January 6, prosecutors claim that he made multiple threatening statements on Facebook. On December 24, 2020, he posted that he had purchased body armor and a helmet “for the civil war that is coming.” On January 1, 2021, he wrote: “I suspect that is what will happen on the 6th. The castle will be stormed. The question is

overthrow a government if armed and prepared.” Gov’t Mem. in Supp. of Pretrial Detention 4 n.1, *United States v. Reffitt*, No. 21-cr-32 (D.D.C. Mar. 13, 2021) [hereinafter Reffitt Detention Memo].

⁸ Reffitt Detention Memo, *supra* note 7, at 1–2.

⁹ Spencer S. Hsu, *Texas Three Percenters Member Charged in Jan. 6 Riot Set Up Security Company to Circumvent Gun Laws, Obtain High-Grade Weapons*, U.S. *Alleges*, Wash. Post, Mar. 16, 2021, <https://perma.cc/QW23-98PA>.

¹⁰ Reffitt Affidavit, *supra* note 7, ¶ 25; *see also* Alberto Luperon, ‘Traitors Get Shot’: Texas Man Allegedly Threatened His Kids to Keep Them Quiet About His Involvement in D.C. Insurrection, Law & Crime, Jan. 26, 2021, <https://perma.cc/76DB-PFQR>.

¹¹ Hsu, *supra* note 9; *see also* Reffitt Detention Memo, *supra* note 7, at 13 (quoting January 9, 2021, message in which Reffitt told two recruits about his “security business” plan and that “the fight has only just begun”).

¹² Reffitt Detention Memo, *supra* note 7, at 12.

¹³ *Id.*

¹⁴ *See* Adam Goldman et al., *Investigators Eye Right-Wing Militias at Capitol Riot*, N.Y. Times, Jan. 18, 2021, <https://perma.cc/26AV-KMSV>; *see also* Ex. 10, Gov’t Mot. for Pretrial Detention, *United States v. Brock*, No. 4:21-mj-17 (N.D. Tex. Jan. 11, 2021) [hereinafter Exs. to Brock Detention Mot.], <https://perma.cc/K877-EQN2> (quoting Facebook post from December 30, 2020, stating in relevant part: “We are now under occupation by a hostile force. . . . Against all enemies foreign and domestic #OathKeeper #2A #III%”); GW Report, *supra* note 3, at 20 (“[T]he Oath Keepers and the Three Percenters . . . operate as umbrella organizations for dozens of militias throughout the country. Ideologically, [they] both . . . promote ‘resistance’ against the U.S. federal government, which they view as a tyrannical, illegitimate entity that encroaches on Americans’ Constitutional rights (particularly those related to the 2nd Amendment).”); *Oath Keepers*, ADL, <https://www.adl.org/Backgrounders/OathKeepers> (last visited Mar. 17, 2021) (“The Oath Keepers aim much of their propaganda at military and police, reminding them that they swore an oath to defend the Constitution ‘from all enemies, foreign and domestic[.]’”). Notably, in early December 2020, Oath Keepers leader Stewart Rhodes spoke at a Stop the Steal rally hosted by the Texas GOP. Atlantic Council’s DFRLab, *#StopTheSteal: Timeline of Social Media and Extremist Activities Leading to 1/6 Insurrection*, Just Security, Feb. 10, 2021, <https://perma.cc/7BZX-DPN8>.

¹⁵ NPR Staff, *supra* note 2; Aff. in Supp. of Criminal Compl. & Arrest Warrant ¶¶ 12, 15, *United States v. Brock*, Nos. 21-mj-23 & 21-cr-140 (D.D.C. Jan. 9, 2021), <https://perma.cc/H6E8-BUVY>.

what then?” On January 6: “Patriots on the Capitol,” “Patriots storming,” and “Men with guns need to shoot there [sic] way in.”¹⁶

Nicholas DeCarlo of Burleson is reported to be affiliated with the Proud Boys, an extremist organization that espouses white nationalist sentiments, promotes messages of hate, and actively encourages its members to engage in street violence.¹⁷ He was photographed on January 6 posing in front of a door inside the Capitol that had the words “MURDER THE MEDIA” carved into it, while wearing a shirt and hat with a Murder the Media News logo.¹⁸ He and the self-proclaimed founder of the Proud Boys’ Honolulu chapter have been indicted on numerous charges, including conspiracy to obstruct Congress’s certification of the results of the 2020 presidential election.¹⁹

B. The Threat Posed by Unauthorized Private Militia Groups & Recent Activity in Texas

Sadly, the attack on the U.S. Capitol on January 6 was not an isolated incident of militia activity. The Office of the Director of National Intelligence recently warned that militia violent extremists present one of the “most lethal” domestic violent extremist threats nationwide—a threat that “will almost certainly continue to be elevated throughout 2021.”²⁰ Unauthorized private militia groups and affiliated individuals have repeatedly engaged in their own demonstrations or attended demonstrations purporting to protect persons and property. Private militia groups have shown up at racial justice- and election-related demonstrations in Texas and have engaged in violence against those with whom they disagree.²¹ They also have engaged in armed, coordinated action against public health measures undertaken in response to the coronavirus pandemic.²² Absent a serious response to this kind of dangerous activity, the potential remains for future clashes between militia groups and law enforcement or other demonstrators, resulting in the chilling of constitutionally protected speech and assembly, the destruction of property, and violence.

¹⁶ See Exs. to Brock Detention Mot., *supra* note 14; NPR Staff, *supra* note 2.

¹⁷ See generally *Proud Boys*, S. Poverty L. Ctr., <https://www.splcenter.org/fighting-hate/extremist-files/group/proud-boys> (last visited Mar. 13, 2021); *Proud Boys*, ADL, <https://www.adl.org/proudboys> (last visited Mar. 13, 2021); Atlantic Council’s DFRLab, *supra* note 14.

¹⁸ CBSDFW.com Staff, *North Texan Nicholas DeCarlo Arrested for Alleged Actions During Capitol Riot*, CBS (Jan. 26, 2021), <https://dfw.cbslocal.com/2021/01/26/texan-nicholas-decarlo-arrested-capitol-riot/>; Jennifer Valentino-DeVries et al., *A Small Group of Militants’ Outsized Role in the Capitol Attack*, N.Y. Times, Feb. 21, 2021, <https://perma.cc/L7L7-HUX8>; Criminal Compl. & Statement of Facts, *United States v. DeCarlo*, No. 1:21-cr-73 (D.D.C. Jan. 19, 2021); see also GW Report, *supra* note 3, at 25 (“The Proud Boys currently charged come from individual chapters in a dozen states, including . . . Texas[.]”).

¹⁹ Press Release, U.S. Dep’t of Justice, *Texas Man, Self-Proclaimed Leader of Honolulu Proud Boys Now Indicted by a Federal Grand Jury for Conspiracy to Obstruct Congress* (Feb. 3, 2021), <https://perma.cc/GT9C-SYUV>.

²⁰ Office of the Director of National Intelligence, *Domestic Violent Extremism Poses Heightened Threat in 2021* 2 (Mar. 1, 2021), <https://perma.cc/3W7H-KE6U>.

²¹ See, e.g., Eric Griffey, *A Weatherford, Texas Protest Turned Violent*, Spectrum News, July 29, 2020, <https://perma.cc/5DTR-4FXV> (In July 2020, “hundreds of counterprotesters” descended on a protest against a Confederate monument in Weatherford, Texas, including one who set up “a sniper’s nest” on top of a truck and squatted “with his rifle aimed at the group of 50 or so protesters.”); see also Tim Craig, *U.S. Political Divide Becomes Increasingly Violent, Rattling Activists and Police*, Wash. Post, Aug. 27, 2020, <https://perma.cc/2PZH-NSJG> (describing armed counterprotesters carrying military-style rifles at a demonstration and voter registration drive).

²² “Protesters armed with modern semiautomatic rifles lined up across the sidewalk, some displaying white supremacist and extremist militia symbols,” while guarding a bar operating in violation of state health orders. Bud Kennedy, *Open Texas’ Stunts Get Publicity for Gun Activists—and Put Pressure on Gov. Abbott*, Fort Worth Star-Telegram, May 16, 2020, <https://www.star-telegram.com/opinion/bud-kennedy/article242784711.html#storylink=cpy>; see also Will Sommer, *Anti-Lockdown Protesters Are Now Facing Down Cops Outside of Bars*, Daily Beast, May 7, 2020, <https://perma.cc/85XW-CA8A> (describing one gun activist’s calls to “outnumber the police” and oppose the state’s health orders in a YouTube video).

In anticipation of such events, paramilitary organizations frequently conduct field training and firearms exercises. For example, the Texas Minutemen militia recently held field training exercises (FTX). The group purports to “preserve the life, liberty, and property of all law-abiding citizens through the preparation, training, and support of” an unauthorized private militia “outside the jurisdiction of government.”²³ An event page for the field trainings states: “Attendance for FTX ALPHA is considered mandatory for Unit Leadership and expected for Unit Membership, according to the Event Attendance Guidelines set forth by the Unit S.O.P. We will be introducing the structure, outline, and mission plan for the unit. We will go over our Unit S.O.P. (standard operating procedures) as well as the expectations and requirements for unit members.”²⁴ The event description also “[e]stimated round expenditure will be no more than 50 Rounds Pistol and 50 Rounds Rifle.”²⁵ A similar training event held on February 27, 2021, includes a list of “[r]equired items and gear for FTX Bravo,” including “Multicam Dress Uniform and Multicam Cap w/ proper patch placement,” “[p]rimary rifle with sling - minimum of 4 rifle magazines,” “[s]econdary pistol with holster - minimum of 2 magazines,” and “[b]elt or plate carrier mounted bladed weapon,” in addition to a radio, first aid kit, and “[a]ny load bearing equipment you own and would utilize [sic] in a ‘real world’ scenario. I.E. - Plate carrier, vest, or chest rig.”²⁶

These examples highlight the imminent risk posed by unlawful militia activity, and research by the Atlantic Council’s Digital Forensic Research Lab (DFRLab) indicates that such activity likely continues to be planned on encrypted and private messaging channels. Thus, absent concerted efforts to curtail militia training and operations, the public’s safety remains in danger.

II. Legal Framework & Recommendations

We call upon you to utilize existing Texas constitutional provisions and statutes that restrict militia conduct. As we noted in our January 20, 2021, letter, the Texas Constitution forbids private military units from operating outside state authority. *See* Tex. Const. art. I, § 24 (“The military shall at all times be subordinate to the civil authority.”). Texas’s Constitution further vests the governor with the “power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.” Tex. Const. art. IV, § 7. Texas is also one of 29 states that prohibit groups of people from organizing as private military units without the authorization of the state government,²⁷ banning individuals from “associat[ing] as a military company or organization or parad[ing] in public with firearms in a municipality of the state.” Tex. Gov’t Code § 437.208(a).²⁸

The U.S. Supreme Court has twice made clear that such laws are consistent with the Second Amendment, which “does not prevent the prohibition of private paramilitary organizations.”²⁹ Texas courts have similarly guarded against militia activity. In enjoining the Ku Klux Klan and its militia

²³ Minutemen Initiative WTX Desert Unit, Who We Are, <https://www.wtxdesertunit.com/> (last visited Mar. 2, 2021).

²⁴ Minutemen Initiative WTX Desert Unit, January - FTX ALPHA, <https://www.wtxdesertunit.com/event-details-registration/january-ftx-alpha> (last visited Mar. 2, 2021) (invitation for event on Jan. 9, 2021).

²⁵ *Id.*

²⁶ Minutemen Initiative WTX Desert Unit, February - FTX BRAVO, <https://www.wtxdesertunit.com/event-details-registration/february-ftx-bravo> (last visited Mar. 2, 2021) (invitation for event on Feb. 27, 2021).

²⁷ *See* ICAP 50-State Catalog, *supra* note 1.

²⁸ There are exceptions for “the regularly organized Texas military forces, the armed forces of the United States, or the active militia of another state,” and for “students in an educational institution at which military science is a prescribed part of the course of instruction.” Tex. Gov’t Code § 437.208(a)–(b).

²⁹ *District of Columbia v. Heller*, 554 U.S. 570, 621 (2008) (citing *Presser v. Illinois*, 116 U.S. 252 (1886)).

wing, the Texas Emergency Reserve, from engaging in unlawful paramilitary activities in *Vietnamese Fishermen's Association v. Knights of the Ku Klux Klan*, the court explained that “[m]ilitary organizations are dangerous wherever they exist, because of their interference with the functioning of a democratic society and because of their inconsistency with the State’s needs in operating its militia.”³⁰

Other provisions in Texas law may also be applicable against militia activity. For example, Texas’s statute against impersonating a public servant may be properly applied to militia conduct when members “knowingly purport[] to exercise, without legal authority, any function of a public servant or of a public office.” Tex. Penal Code § 37.11. The provision also bars any individual from “impersonat[ing] a public servant with intent to induce another to submit to the person’s pretended official authority or to rely on the person’s pretended official acts.” *Id.* Additionally, weapons offenses or enhanced charges, such as aggravated assault, may apply to armed militia misconduct. *See, e.g.*, Tex. Penal Code § 22.02 (defining aggravated assault as the “use[] or exhibit[ion] [of] a deadly weapon during the commission of an assault”).

In addition, we continue to urge Texas officials to pass new legislation that could fill gaps within the existing legal framework, such as by enacting anti-paramilitary-activity and domestic-terrorism statutes to curtail militarized conduct. For instance, Texas could adopt a statute that criminalizes paramilitary activity, joining 25 states that currently make it illegal for individuals to teach, demonstrate, instruct, train, or practice in the use of firearms, explosives, or techniques capable of causing injury or death, knowing and intending that they be used in or in furtherance of a civil disorder.³¹ Moreover, a law that criminalizes domestic terrorism would directly address the serious harms to public safety and security.³² Criminal acts that are “dangerous to human life” and “appear to be intended” to (a) “intimidate or coerce a civilian population,” (b) “influence the policy of a government by intimidation or coercion,” or (c) “affect the conduct of a government by mass destruction, assassination, or kidnapping” constitute domestic terrorism.³³ The Texas Department of Public Safety has concluded that “[d]omestic terrorism poses a persistent and varied threat to the State of Texas,” as the state has witnessed “previous or current activity associated with” “racially motivated, anti-government, and single issue” domestic terrorism.³⁴ Texas should join 25 fellow states and the District of Columbia, which either criminalize domestic terrorism or impose a sentencing enhancement for acts of terrorism.³⁵

Texas officials should also consider amending the state’s statutes preempting local firearms regulations. *See* Tex. Local Gov’t Code § 229.001(a) (preempting municipalities from regulating the

³⁰ 543 F. Supp. 198, 218 (S.D. Tex. 1982) (issuing injunction that prevented the group from operating as a private military unit or engaging in operations intended to intimidate and coerce the plaintiffs from operating their fishing businesses). The statute at issue in the case was largely the same as the current version.

³¹ *See* ICAP 50-State Catalog, *supra* note 1, at 6; *see also, e.g.*, Va. Code. Ann. § 18.2-433.1 (defining “civil disorder” for purposes of state paramilitary statute, § 18.2-433.2, as “any public disturbance within the United States or any territorial possessions thereof involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual”).

³² Texas already criminalizes the making of terroristic threats. *See* Tex. Penal Code § 22.07 (prohibiting “threat[s] to commit any offense involving violence to any person or property” with one of a series of enumerated terroristic intents).

³³ 18 U.S.C. § 2331(5).

³⁴ Tex. Dep’t of Public Safety, Texas Domestic Terrorism Threat Assessment 9, 23–24 (Jan. 2020), <https://perma.cc/93MW-KUHT>.

³⁵ *See* ICAP Constitutional Protest Guide, *supra* note 1, at ch. II(A)(2) (listing state domestic-terrorism statutes, including La. Stat. § 14:128.1 and Ga. Code § 16-11-220, but noting that predicate crimes and intent requirements vary by jurisdiction).

“possession, wearing, [or] carrying . . . of firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories”); *see also* Tex. Local Gov’t Code § 235.023, 236.002 (applying similar rules to counties). Although these statutes contain certain exceptions, the exceptions for regulating the carrying of firearms in public parks; public meetings of governmental bodies; political rallies, parades, and meetings; and school, college, and athletic events should not be limited to persons who are not licensed to carry a handgun.³⁶ Other states have recognized the public safety necessity for prohibiting firearms and other weapons at events that frequently are contentious and at which acts of violence have occurred.³⁷ Furthermore, we urge Texas officials to consider banning firearms and other weapons in the State Capitol building.³⁸

Finally, we continue to urge you to ensure that robust enforcement mechanisms are expanded, such as by authorizing the direct enforcement of the state’s anti-militia law by the Attorney General. Even though the Attorney General may assist in the prosecution of criminal cases upon “the request of a district attorney, criminal district attorney, or county attorney,” Tex. Gov’t Code § 402.028,³⁹ permitting state actors to directly intervene when local law enforcement is unable or unwilling to do so would enhance the efficacy of these provisions and further the community safety goals of these public safety laws.⁴⁰

Adding a civil enforcement provision to Texas’s existing anti-militia law, enforceable by the state Attorney General, would also provide an important public safety tool in lieu of criminal prosecution. Modification of the state’s public nuisance provision to allow for state Attorney General enforcement, even without the request of a local prosecutor, could also enhance the state’s capacity

³⁶ Under current law, municipalities retain the authority to regulate, among other things, (1) “the carrying of a firearm or air gun by a person other than a person licensed to carry a handgun under Subchapter H, Chapter 411, of the Government Code, at a (A) public park; (B) public meeting of a municipality, county, or other governmental body; (C) political rally, parade, or official political meeting; or (D) nonfirearms-related school, college, or professional athletic event,” Tex. Local Gov’t Code § 229.001(b)(6), and (2) the carrying of a firearm by a person who *is* so licensed, in accordance with Section 411.209, Government Code, *id.* § 229.001(b)(7); *see* Tex. Gov’t Code § 411.209(a) (banning state agencies and political subdivisions from taking any action that “states or implies that a license holder who is [lawfully] carrying a handgun . . . is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited” from doing so under “Section 46.03 or 46.035 [of the] Penal Code, or other law”); Tex. Penal Code § 46.03 (prohibiting a person, including a licensee, from carrying firearms and other prohibited weapons, including handguns, in certain locations); *id.* § 46.035 (same with respect to handguns in other specified locations). Counties’ regulatory authority is somewhat broader. *See* Tex. Local Gov’t Code § 236.002(c)(3) (containing provision similar to § 229.001(b)(7) regarding the carrying of handguns by licensees, but not § 229.001(b)(6)); *see, e.g.*, 1995 Tex. AG LEXIS 94 (explaining that while the legislature had “specifically taken away a municipality’s authority to prohibit or restrict the licensed carrying of a concealed handgun in a public park” in the predecessor to § 229.001(b)(6), there was no such restriction on counties’ police power).

³⁷ *See, e.g.*, Md. Crim. Law Code § 4-209(b) (allowing localities to regulate firearms possession in or within 100 yards of “a park, church, school, public building, and other place[s] of public assembly”). Virginia enacted a similar amendment to its firearms-regulation preemption statute last year. *See* S.B. 35, 2020 Gen. Assemb., Reconvened Sess. (Va. 2020), *available at* <https://perma.cc/ERC8-3DER> (amending and reenacting §§ 15.2-915 and 15.2-915.5 of the Code of Virginia and repealing § 15.2-915.1 of the Code of Virginia).

³⁸ *Compare with* Location Restrictions, Giffords L. Ctr., <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/location-restrictions/> (last visited Mar. 22, 2021) (listing state laws that prohibit concealed and/or open carry on state Capitol grounds).

³⁹ *Compare with* N.J. Stat. Ann. § 52:17B-98 (recognizing “Attorney General as chief law enforcement officer of the State”).

⁴⁰ *Compare with* Tex. Gov’t Code §§ 402.0231, 402.038, 402.035 (establishing the Corporate Integrity Unit, Transnational and Organized Crime Division, and Human Trafficking Prevention Task Force, respectively).

to protect public welfare from ongoing private militia activity that often takes place in multiple areas across the state.⁴¹

III. Conclusion

ICAP is available as a resource and partner in your efforts to protect against the threat posed by unauthorized militia activity in Texas. We have also formed a coalition of national law firms that have committed to providing pro bono assistance to state and local jurisdictions seeking to prevent unsanctioned paramilitary activity while protecting constitutional rights. Please do not hesitate to contact us if we can be of assistance.

Sincerely,

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⁴¹ See Tex. Health & Safety Code § 341.012 (“If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the prosecuting attorney who received the copy of the original notice. The prosecuting attorney: (1) shall immediately institute proceedings to abate the public health nuisance; or (2) request the attorney general to institute the proceedings or provide assistance in the prosecution of the proceedings, including participation as an assistant prosecutor when appointed by the prosecuting attorney.”).

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