

STATEMENT OF CASE TO DESIGNATE THE AMERICAN PROUD BOYS AS A TERRORIST ENTITY

PURPOSE

1. This paper sets out the case demonstrating that The American Proud Boys (“The Proud Boys”, ‘APB’) meet the statutory criteria for designation as a terrorist entity within New Zealand pursuant to the Terrorism Suppression Act 2002 (TSA).

STRUCTURE OF THIS PAPER

2. This paper details various aspects of APB, including its background and history; ideology and objectives; links to other groups; organisation and structure; and weapons, tactics and capabilities, before detailing a case study of an attack which meets the definition of a terrorist act under the TSA.
3. The discussion preceding the case study provides background about the situation in the United States of America and about the APBs which helps inform the analysis of one case study below. The events detailed in the case study represent APB leadership in, and guidance of, a mob attack that has been analysed as meeting the definition of a “terrorist act” under s 5 of the TSA. It provides the basis for the paper’s conclusion that APB meets the legal criteria for designation as a terrorist entity under the TSA.

STATUTORY CRITERIA FOR THIS DESIGNATION UNDER THE TSA

4. The Prime Minister has the power under the TSA to designate individuals or groups as terrorist entities. Section 22 provides that the Prime Minister may designate an entity as a terrorist entity if the Prime Minister believes on reasonable grounds that the entity has knowingly carried out, or has knowingly participated in the carrying out of, one or more terrorist acts.
5. A terrorist act is defined in s 5 of the TSA. A number of different acts fall within this definition. The s 5 criteria relevant to this paper are those which deem an act to be a terrorist act if that act:
 - 5.1 Is carried out for the purpose of advancing an ideological, political, or religious cause; and
 - 5.2 Is intended to either:
 - 5.2.1 intimidate a population; or
 - 5.2.2 coerce or force a government or an international organisation to do or abstain from doing any act; and
 - 5.3 Is intended to cause:
 - 5.3.1 the death of, or serious bodily injury to, one or more persons; or
 - 5.3.2 the destruction of or serious damage to property of great value or importance, if likely to cause death or serious bodily injury to one or more persons; and

- 5.4 Is not an act that occurs in a situation of armed conflict and which is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.
6. The fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person is carrying out an act with any of the purposes or intentions set out in paragraphs 5.1 to 5.3 above.

Credibility of sources

7. This paper has been prepared using open or unclassified sources that have a reputation for careful and unbiased reporting. These include The New York Times, the Australian Broadcasting Company, The Guardian, New York Review of Books, Rolling Stone Magazine, Newsweek, The New Statesmen, The Washington Post, Reuters, NBC News, BBC News, CBC News (Canada), SBS News (Australia), National Public Radio (USA), The New Republic, The Wall Street Journal, The Atlantic, CNN, Forbes, ProPublica, and Politico.
8. A range of think tanks were referred to including the Anti-Discrimination League, Southern Poverty Law Centre, International Centre for Counter-Terrorism, Combatting Terrorism Centre, Program on Extremism (George Washington University), NZ Herald, and The San Diego Union-Tribune.
9. A range of regional news sources were also referred to including BuzzFeed News, Vox, Oregon Public Broadcasting, Wisconsin Watch, USA Today, Oregon Live, Forward, Global News, The Conversation, VICE News, Huffpost, Willamette Week, The Seattle Times, and Raw Story.
10. Other sources utilised include Taki's Magazine, Yeah Nah Pasaran, TTBook, Hatewatch, The Proud Boys Magazine, Daily Beast, The Outline, YouTube, and Twitter.

Establishment of The American Proud Boys

11. The APB were publicly announced for the first time in September 2016 on *Taki Magazine*,¹ a 'far right wing' publication.² In an article attributed to APB founder Gavin McInnes the APB were described as "Western chauvinists who refuse to apologize for creating the modern world", and claimed that the nascent movement had membership in multiple US locations, Canada, Australia, and other locations.
12. As explained in the *Ideology and Objectives* section, the APB deliberately deploy a tactic called crypto-fascism. This tactic overlays methods to disguise extremism and increase the appeal of a group to 'mainstream' or 'normal' people, and to prevent unwanted attention from authorities. For example the current Chairman of the APB, Enrique Tarrio, self-identified as Afro-Cuban. Having a non-white Chairman is commonly used by the APB as a foil against accusations of white supremacy. However, when this mask has dropped the APB are easily recognisable as ideologically fascist. The architect of the APBs' use of this tactic was Gavin McInnes.

Gavin McInnes

13. McInnes was born in the United Kingdom and raised in Canada. A co-founder of VICE magazine, McInnes moved to the US in 2001 to work in the company, but resigned to pursue a career in online media in 2008 citing “creative differences.”³
14. The growth of the APB was spurred by McInnes’ prolific exploitation of social media to draw attention to both himself and the group, the construction of an ‘Antifa’ (anti-fascist activist) strawman around which to rally self-described ‘patriots’, and direct advocacy of vigilante violence against the Antifa and Black Lives Matter protestors active in US cities during the Trump Administration.
15. As outlined in *Weapons, Tactics and Capability* (below), the deliberate use of violence against ideological opponents, and in service of ideological objectives has been a key characteristic of the APBs since its founding by McInnes. As early as 2016 on the *Gavin McInnes Show* McInnes warned his perceived political enemies, “We will kill you. That’s the Proud Boys in a nutshell. We will kill you. We look nice, we seem soft, we have ‘boys’ in our name but... we will assassinate you”, and in 2017 stated, “we need more violence from the Trump people, Trump supporters...”⁴
16. McInnes is a skilled communicator and is recognised by expert commentators and critics as frequently using obfuscation, humour, and irony to present “popular white nationalist tropes”,⁵ which aligns closely with crypto-fascist behaviour (See *Ideology and Objectives* below). Some examples of McInnes’ exhibiting plausible deniability are as follows:
 - 16.1 When announcing the establishment of the APB McInnes stated that the APB would meet, drink, fight, and “[read] aloud from Pat Buchanan’s *Death of the West*.”⁶ However, *The Death of the West* is an explicitly anti-immigration diatribe,⁷ and foreshadows The Great Replacement Theory and other ‘white genocide’ conspiracy theories that have been used to justify numerous terrorist attacks.
 - 16.2 McInnes is known to have a *Skrewdriver* tattoo.⁸ Skrewdriver is a neo-Nazi punk band and is strongly linked to the 1990s skinhead neo-Nazi movement that produced extremist groups such as Combat 18, Blood & Honour, the Hammerskins, and others.
 - 16.3 When being interviewed by a ‘white nationalist’ podcast McInnes was prompted to say the ‘14 Words’,⁹ a white supremacist slogan popularised by a US neo-Nazi.¹⁰ McInnes strategically replaced the word ‘white’ with ‘Western’ in his reply.
 - 16.4 McInnes gave a speech at a conservative, Republican, Manhattan club in 2018.¹¹ McInnes’ attended dressed as right-wing ultra-nationalist Otoya Yamaguchi, who in 1960 assassinated the chairman of the Japanese Social Party on live TV, and had previously praised Yamaguchi, calling him a “fucking badass” on a podcast the day before his speech.¹² McInnes re-enacted the assassination before beginning his speech, and told the audience, “Never let evil take hold”, a reference to a then-popular meme circulating on extremist right-wing and fascist social media.¹³

17. Individually, each of these examples do not indicate an adherence to fascism, and to an untrained observer they might appear innocuous. However, in combination they demonstrate McInnes' ideological fascism (and by extension that of the APB he created).

Ideology and Objectives

18. In public, APB leadership requires members to acknowledge and adhere to 'western chauvinism', they actively encourage veneration of 'traditional roles' for women (i.e. 'the housewife'), and they are politically 'conservative'. As demonstrated below, the APB have adopted an extremist combination of these positions that is ideologically grounded in fascism.¹⁴
19. Fascism is an ideology that is difficult to specifically define, and tends to slip between a number of ideological talking points as suits the purposes of an adherent or group. Experts have however identified a number of core tenets or characteristics that typical provide definition to fascist movements or groups.¹⁵ These can include ethno-nationalism (the belief that a nation-state can only be inhabited by 'natives' of a country or place), authoritarianism and the veneration of the dictator or strongman, forcible suppression of opposition and dissent (i.e. opposition to democratic participation), the application of staunch rules regarding traditional gender roles, and the rejection of modernity (which is viewed as depraved or weak).
20. In contrast to other extremist groups currently active in the US, and consistent with 'slippery' nature of fascism, the APB do not have a single ideological framework or reference point.¹⁶ Instead, they deploy a mosaic of overlapping ideological components intended to obscure the group's fascism and thereby increase their appeal to a broader audience of American men.¹⁷ This tactic, whereby an extremist group or individual deliberately obfuscates their fascist worldview in order to evade and/or minimise detection by 'normal' people and authorities, to minimise the severity of the repercussions of a group's actions, and to provide plausible deniability to members, is called crypto-fascism.¹⁸
21. The adoption of crypto-fascism by the APB is consistent with a late 2010's debate within the US-based extremist right wing regarding the 'optics' (i.e. public perception) of the nascent movement.¹⁹ Consequently the deployment of plausible deniability regarding white nationalism is key a tactic utilised by modern US-based extremist groups. For example, groups such as the APB or Patriot Prayer (a closely allied group) will accept non-white members, which is intended to indicate that the group are not white nationalists or racists.
22. McInnes' utilisation of cryptic references to fascism and extremism is mirrored within the wider APB membership. APBs will for example readily display subtle nods to fascism and authoritarianism, for example by wearing "Pinochet did nothing wrong" and "Make Socialists Afraid of Rotary Aircraft Again" t-shirts at rallies (a reference to the Pinochet regime killing civilians by throwing them from helicopters),²⁰ and displaying the white power 'OK' symbol.
23. Despite the obfuscation inherent in their crypto-fascism, the fascist underpinnings of the group are evident in the following components of their ideology.

The cult of the warrior and hyper-masculinity, including veneration of Donald Trump.

24. The APB uphold violence against opponents as an acceptable solution to solving political disputes (see *Weapons, Tactics, and Capability* below), and lionise members who successfully harm ideological opponents (especially ‘antifa’).
25. During the Trump Presidency (2016-2020) APB both communicated and demonstrated sustained loyalty to their own ‘strongman’ stereotype of the President, and were vocal and trenchant supporters of his administration (red baseball caps sporting ‘Make American Great Again’ have since 2016 been frequently worn by APBs as a complement to their black and yellow livery).
26. This devotion was cemented by the then-President recognising the APB during a pre-election Presidential candidate debate (see *History of APB operations* below). While devotion to Trump is not a type of extremism, for the APB it has driven other behaviours and was key to APB’s acceleration of the violence on 6 January 2021 (see *Case Study One* below).

Reactionary rejection of modernity, i.e. opposing modern liberal democratic values.

27. APB leadership readily embrace and are unified in being directly and deliberately opposed to the liberalisation of US society, the diversification of the US population, and their fear of a demonised political ‘Left’. The APB see themselves as defending an idealised perception of ‘The West’ and ‘Western’ values, but are in practice railing against liberal values and the diversification of US society and the political classes.²¹
28. This reactionary political position allows the APB to characterise and target ‘outsiders’ as the enemies of the US. More importantly, and as was demonstrated on 6 January 2021, this provides justification for the APBs’ widespread political violence against those they perceive as ideological opponents and targets.

The appeal to middle-class and/or ‘traditional values’ (i.e. assigning women to household roles)

29. The role of the ‘traditional’ housewife is often valorised by fascist groups, as it harkens an idealised past.²² Consequently, and aligned with their rejection of modernity, the APB were required by McInnes to “venerate the housewife”.²³
30. In practice however the APB exhibit deep-seated misogyny, with women banned from the group but allowed to perform domestic roles as housewives.²⁴
31. Consistent with this misogyny, the APB have been vocally opposed to Democrat Nancy Pelosi. In 2018 for example they aggressively protested her attendance at a Democrat rally in Florida,²⁵ with heckling including calling her “piece of shit” and “fucking communist”.

Hyper-nationalism in the form of ‘Western chauvinism’, itself a mask for white nationalism.

32. White nationalism (also called white ethno-nationalism) is an ideology which argues that ‘white people’ should be the dominant cultural and political group – the nation – in a nation-state. Despite commonly voicing among various white nationalist tropes, and the APBs being closely linked to several white nationalist and/or supremacist groups

(see *Links to Other Groups* below), McInnes has repeatedly stated that the APBs are ‘western chauvinists’ and not white nationalists.

33. Despite the rhetorical and optical smokescreens put up by APB leadership, many members of the APBs lack McInnes’ rhetorical skill and are therefore more open about their adherence to white nationalism, extreme racism, anti-Semitism, and Islamophobia.²⁶ It is for example common to see members (including current APB Chairman Enrique Tarrío) flashing the ‘OK’ hand-sign representing and signalling ‘white power’.

Links to Other Groups

34. The APB have a well-established pattern of periodic cooperation with other far-right and/or white supremacist groups including the Oath Keepers, the ‘Three Percenters’ (also known as the 3%ers), and Patriot Prayer.

Patriot Prayer

35. Patriot Prayer are a far-right wing activist group from the Pacific Northwest of the US. The group was formed in 2016 by dedicated Donald Trump supporter Joey Gibson,²⁷ was a vocal proponent for the former President during his tenure, and has been alleged to be primarily driven by opposition to a mythologised ‘antifa’.
36. Patriot Prayer are known to have closely cooperated with the APB in Portland. There is a pattern of instrumental ‘intermingling’ between Patriot Prayer and the APB in the city,²⁸ with joint membership between the groups being common,²⁹ and both groups sharing a common far right wing ideological basis.³⁰
37. During the US summer of 2020 Patriot Prayer and the APB Frequently rallied in opposition to Black Lives Matter and similar social justice protests. The two groups tended to conduct vigilantism alongside like-minded ‘patriot’ and/or militia groups such as the Oath Keepers or various Three Percenter militias,³¹ usually presenting themselves as attempting to ‘restore law and order’ during social justice demonstrations via the use of street violence.

The Oath Keepers

38. The Oath Keepers are an anti-government far-right wing militia with a specific focus on recruiting current and former military, law enforcement, and similarly-trained personnel,³² who vow to support the oaths they took on joining law enforcement or the military.
39. In the led-up to the Attack on the US Capitol Building Oath Keeper leader Kelly Meggs claimed in social media communication on 19 December 2020 to have “organised an alliance between Oath Keepers, Florida 3%ers, and Proud Boys... We have decided to work together and shut this [expletive]... down”.³³ A week later Meggs repeated that he had “orchestrated a plan [for 6th January 2021] with the proud boys”.³⁴

The Three Percenters

40. The Three Percenters (also called the '3%ers' and 'III%ers') is a term applied to a variety of groups. In general terms the Three Percenter movement opposes government of almost all levels (like the Oath Keepers it formed during the expansion of the US militia movement after the election of Barack Obama),³⁵ is anti-gun control, and is prone to adhering to various conspiracy theories. Explicit connection between Three Percenters and the APB have not been identified, but indications are that groups within the movement will cooperate with APBs over shared objectives, for example the attack on the US Capitol Building.³⁶
41. In June 2021 Canada named the Three Percenters as a terrorist entity, citing the 6 January 2021 attack on the US Capitol Building.³⁷

Fraternal Order of Alt-Knights

42. The Fraternal Order of Alt-Knights (FOAK) was accepted as the 'tactical defence arm' of the APB for a period after 2017.³⁸ FOAK was founded by Kyle Chapman (note, not the New Zealand citizen and member of the National Front) after experiencing street fighting with counter-protestors, and was argued by Chapman to provide 'protection' to far-right wing individuals from left-leaning counter-protestors. FOAK was associated with a range of more explicitly extremist groups and recruited from the staunchly racist skinhead group the Vinlanders Social Club, and the white nationalist Wotan Network.³⁹
43. After a video emerged of Chapman fighting 'antifa' became popular online he was interviewed by McInnes on 'The Gavin McInnes Show'. McInnes approved a partnership with Chapman and FOAK, and individuals were able to be members of both groups.⁴⁰ For example, current APB Chairman Enrique Tarrío was pictured wearing a FOAK patch at the deadly and infamous 'Unite the Right' rally in Charlottesville, 2018.⁴¹ FOAK parted ways with the APB in 2020 when Chapman made a bid against Tarrío for the APB chairmanship.⁴²

Organisation and Structure

44. The American Proud Boys are centrally organised around a 'national chairman', originally Gavin McInnes, now Tarrío, and led by a group known as the 'Elders'.⁴³ In 2018 a set of APB 'bylaws' was published, and was found to inadvertently contain the names of the 'initial eight members of the Elders Chapter' formed after McInnes stepped down as Chairman (see *History of APB Operations*, below).⁴⁴ This group included Enrique Tarrío and 'Rufio Panman' (an alias of APB leader Ethan Nordean).
45. Individually autonomous regional groups are organised into chapters with presidents, and are thought to serve as recruitment grounds for more senior members.⁴⁵ Experts have estimated that by 2020 the group may have had several thousand members spread across the US, with unlinked but ideologically affiliated chapters in Australia, Canada, and Israel.⁴⁶ APB chapters and regional groupings within the US tend to have their own character, are usually defined by the external groups from which the APB have drawn membership, and will often be motivated by previously-existing issues. For example, in the Pacific Northwest, Florida, and New York, APB chapters are actively involved in

street-fighting, while those in Michigan are regarded to be more like traditional far-right militia groups.⁴⁷

46. Black and yellow are primary marker colours for the APB, with members wearing Fred Perry polo shirts in black and yellow as a uniform until the range was cancelled by the company. Likewise, a yellow rooster or 'APB' encompassed by laurels on a black background is a commonplace symbol displayed by members.
47. APBs are known to frequently use two phrases to distinguish themselves both on and offline including: 'uhuru' (a co-opted Swahili word meaning 'freedom'), and the intended threat 'Fuck Around and Find Out' (frequently abbreviated to FAFO). While demonstrating group members will commonly chant "fuck Antifa, fuck Antifa" and "Whose streets? Our streets!".
48. There are four levels of membership in the APB, with each representing an increased level of commitment to the group, and there is a requirement for members to escalate their use of violence in order to advance.⁴⁸
 - 48.1 The first level is to publicly state "I am a proud Western chauvinist, I refuse to apologize for creating the modern world", which is often videoed and posted to social media.
 - 48.2 The second level is a hazing ritual wherein a member is 'beaten up' by other members while attempting to recall and recite the names of five breakfast cereals. Information to date suggests that these beatings are currently more symbolic than harmful. Members at this level are also expected to limit masturbation and concentrate any sexual energies on becoming married and fathering children.
 - 48.3 The third level is to get a APB tattoo. Reported examples include "Proud Boy", "Uhuru", and "POYB" ('proud of your boy').
 - 48.4 Accession to the fourth level is granted for committing an act of potentially criminal violence against an ideological target. This typically involves street brawls or similar types of violence that are used to intimidate and/or suppress protestors or groups opposed to APB objectives. APB leadership will frequently deny that violence is rewarded with 'fourth level' status, but 'secure' online conversations within APB groups revealed by journalists make common reference to the acquisition of this level through ideologically-driven violence.
49. Social media is a major mode for communication between and within the APB hierarchy and membership. The APBs initially used commonly-accepted platforms such as Facebook, Twitter, and Instagram, but as their extremist views and penchant for violence became increasingly well-recognised their access to these platforms was restricted, and they were forced to migrate to 'free speech' hosts more accepting of extremism such as Telegram and Parler.

Proud Boys in other countries

50. In addition to the 'core' Proud Boys chapters operating in the United States of America, Proud Boys organisation has also been observed in Canada and Australia. While these

chapters adhere to Proud Boys ideology, they are considered to be separate entities to the American Proud Boys. This is because while Tarrío and other current leaders of the APB have influence in the American chapters, no credible direct link or coordination between chapters in Canada, Australia, or elsewhere has been observed.

Weapons, Tactics and Capability

51. A key feature of APB activity known to appeal to members is the deliberate impression the group promotes of taking direct action against perceived threats to white nationalism (and the supremacy of whites in the US). In 2017 McInnes claimed that the APB were deliberately fighting anti-fascist activists, welcomed members who also wanted to act, stated that “fighting solves everything”,⁴⁹ “You’re not a man until you’ve had the crap beaten out of you [and] beaten the crap out of someone”,⁵⁰ and “I cannot recommend violence enough. It is a really effective way to solve problems”.⁵¹ This willingness to use violence to achieve political goals has heavily characterised the APB and the members they have attracted (see *History of APB Operations*, below).
52. To date, the APBs have not been observed using lethal force, i.e. firearms, during their routine instigation of violence against ideological opponents. Inter-personal physical violence is however extremely common.⁵² This practice was deliberately established by McInnes while Chairman. For example, an APB being interviewed by an online conspiracist about his violent ‘counter-protest’ action referenced McInnes stating “Like Gavin McInnes says, violence isn’t great, but justified violence is amazing”.⁵³
53. APB tactics are typically characterised by appearance in numbers at target events and the subsequent instigation of violence such as brawling (see *History of APB Operations*, below). Weapons deployed during these actions are typically non-lethal and can include ‘bear mace’ (an extremely strong type of pepper spray), clubs, and/or paintball guns.
54. While to a casual observer APB operations may appear to be demonstrations by a politically-motivated but un-orchestrated mob, the APBs will usually put a large amount of planning into their activities. Ex-military APB leader Joseph Biggs is quoted as saying:

*When we set out to do an event, we go, OK, what is our main objective? That’s the first thing we discuss. We take three months to plan an event. It’s like, you’re literally planning to go into a combat zone. It’s not just like, “Hey man, we’re going to D.C., we’re going to Portland.” It’s like, “Alright, we’re going to Portland. I need satellite imagery. I need to talk to people on the ground. I need them to scout out these alleyways ... when we have an escape route, we have four or five ways in and out, in case police close things off or whatever.”*⁵⁴
55. The premeditated violence witnessed at rallies and ‘protests’ is usually celebrated by members,⁵⁵ with members who enact notable harm against others being rewarded with online accolades and special nicknames, for example ‘Based Stickman’ (Kyle Chapman) was widely praised on social media after severely beating an individual at a protest with a wooden pole,⁵⁶ and ‘Based Spartan’ became a social media icon after he wore a ‘Spartan’ costume while attacking protestors. This type of violence is also incentivised by APB leadership, who valorise the use of force against opponents both real and imagined, and award exclusive ‘4th Tier’ membership to APB who do so.⁵⁷
56. The APB are largely self-funding, with members making regular contributions to the group. This contribution is reported to be perhaps \$US20 per month. In order to

support themselves different members have established Limited Liability Companies they use to provide regular income,⁵⁸ and which sell goods as diverse as APB merchandise, dietary supplements, and ‘sporting goods’.

57. When specific funds have been required APB leadership has requested donations via social media,⁵⁹ as occurred immediately prior to the assault on the US Capitol Building (see *Case Study One*), and as occurred after Tarrío’s arrest on 4 January 2021 (see *Case Study One* \$US113,000 was reportedly raised for his defence.⁶⁰ Tarrío opted to defend himself, and later pled guilty).⁶¹

History of APB Operations

58. Prior to the assault on the US Capitol Building (see *Case Study One*), the APB had primarily engaged in political and interpersonal intimidation, with a special emphasis on premeditated street brawling and ‘rallies’.⁶² One researcher claims that the APB engaged in approximately 135 events of various descriptions between 2016 and early 2021.⁶³ Several examples of violence at rallies are provided below.
59. The emphasis on intimidation for political ends is reflected in methods used during ‘protest’ and/or street actions. For example, Portland, Oregon has been repetitively targeted due to its reputation as a relatively liberal ‘haven’ for political activists unpopular with the APB (i.e. a mythologised and demonised “Antifa”). On 17 August 2020 for example the APB rallied in Portland with the express intention of forcing the city to spend money on law enforcement and prevent “potential chaos” (700 police officers are reported to have been deployed to manage the rally).⁶⁴ Regarding the rally Tarrío reportedly stated, “We want [the city] to waste \$2 million and we’ll do it again in two months.”⁶⁵ A press release from the APB further stated, “The gathering was never about bringing carnage or violence to the city of Portland, it was about financially crippling the progressive hotbed until they take action against antifa”. Other reports state that the presence of APB and Patriot Prayer members in Portland may have cost local businesses up to \$US3 million in foregone revenue due to citizens avoiding the central city.⁶⁶
60. Since the group’s establishment the APB have repeatedly used the rallies and protests of other groups as a means to intervene in public events and raise the profile of the APB.⁶⁷ To this end topical subjects such as the Black Lives Matter protests, the election of public representatives (especially Donald Trump), and popular opposition to Islam and Muslim people provide a backdrop against which APB gather to conversely ‘wave the flag’ for the group or incite violence against ideological opponents.
61. The primary, and hugely mythologised opponent of the APB is ‘antifa’, or ‘anti-fascist activists’ (usually shortened to ‘anti-fascists’). Anti-fascist activism has been present in various cities worldwide since approximately the end of the Second World War, but for APB it has taken on a significantly enlarged, symbolic role representative of ‘illegitimate’ opposition to APB values, and aligns with their admiration of former President Donald Trump (the Trump Administration was the subject of numerous protests between 2016 and 2020, which the APB considered an affront to law and order).

From establishment, to Charlottesville, to McInnes’ resignation

62. As stated, the APB have an established history of using street rallies and social media to both intimidate perceived opponents and recruit young men via the demonstration of violence:
- 62.1 On 15 July 2018, convinced that a small town called Islamberg, NY, was an ‘Islamic Training Ground’,⁶⁸ the APB organised a ‘rally for national security’ that saw approximately 50 “patriots” including APB, the Oath Keepers, and Three Percenters travel to Islamberg and demonstrate.⁶⁹ The rally was uneventful, but deliberately targeted Islamberg due to misinformation widely circulated on APB and other right-wing media.
 - 62.2 APB Jason Kessler was the organiser of the infamous ‘Unite the Right’ rally in Charlottesville, Virginia on 11 and 12 August 2017. The rally is widely recognised at the first instance where members of the US extremist right wing openly congregated as a show of force,⁷⁰ and resulted in the death of a woman when a car driven by a member of one attending extremist group drove a vehicle into a crowd of counter-protestors. McInnes had opposed attendance at the rally by APB members, and subsequently disavowed Kessler,⁷¹ but members including Tarrío are recorded as attending.
 - 62.3 In June 2018, Ethan Nordean gained notoriety at a Portland, Oregon APB rally by one-punching a counter-protestor.⁷² Video of the incident went viral on social media, was hailed by McInnes as “a turning point in our war against antifa”, and was used as a recruitment tool for the APB. Prospective membership is reported to have jumped by 70% over the next 30 days (an increase of 820 potential members).⁷³
 - 62.4 On 12 October 2018 a group of APBs initiated an attack on protestors outside the Metropolitan Republican Club in Manhattan, New York.⁷⁴ While the APBs had initially blamed anti-fascist activists for the clash, video surveillance and footage taken by a journalist clearly shows a group of men later confirmed to be APB moving along a street before one yells ‘go’, and an assault begins.⁷⁵ Up to ten APBs were charged with assault and rioting,⁷⁶ and two were eventually sentenced to prison for the attack.⁷⁷
63. APB members will also use direct intimidation of others in order to protect the reputation of the group and/or the status of members:
- 63.1 In May 2018 a Pennsylvania man named Vic Berger was confronted at home by APB Leader Kenneth Lizardo.⁷⁸ Berger had posted a satirical video to Twitter making fun of Gavin McInnes. The APB were allegedly outraged, and called on members to ‘doxx’ the Pennsylvania man and “...show them there are consequences”.⁷⁹ Lizardo responded to the incitement and visited the Berger household on behalf of the APB, demanding that Berger stop making videos “hurting the Proud Boys”. Berger immediately reported the threatening behaviour to local police.
 - 63.2 Also in 2018 Jason Lee Van Dyke, the former lawyer for the APB, deployed local members of the APB to monitor Thomas Retzlaff.⁸⁰ Retzlaff was a rival of Dyke, in addition to making threats to kill Retzlaff Dyke had instructed members of the APB to “do[...] surveillance”.⁸¹

Enrique Tarrío becomes chairman, and APB violence continues

64. In November 2018, during controversy surrounding McInnes' extremist right wing role-play at a Conservative club in New York, violence enacted by APBs outside the Club, and the (short-lived) classification of the APB by the FBI as an extremist group,⁸² McInnes resigned his position as Chairman.
65. After McInnes' resignation the chair of the APB was briefly held by Jason Lee Van Dyke before taken up by Afro-Cuban Floridian Enrique Tarrío. Before assuming the APB chair Tarrío had been Florida state director of the lobby group 'Latinos for Trump'.⁸³ Under Tarrío's chairmanship the pattern of APB political violence continued to escalate, including the following:
 - 65.1 Exposed social media chat logs show that in February and March 2019 APB members and supporters discussed and planned the use of violence against political adversaries in Providence, RI.⁸⁴ While the rally did not occur, the APB were looking for a "win" against counter-protestors after the 7 October 2018 clashes and recent charging of ten APB for the Manhattan attack,⁸⁵ and discussed methods for 'baiting' their opponents in order that the APB could claim violence was enacted in self-defence. In the chats the APB, including Lizardo fantasized about the weapons they would like to use against opponents, made a threat to kill a well-known antifascist activist ("This mother fucker needs to meet a 7mm [Magnum rifle] from about 500 yards"), discussed tactics, and discussed previous altercations with 'antifa'.⁸⁶ Participating in the chat, then-APB Kyle Chapman (leader of FOAK) clearly stated that the members should only ever talk in terms of self-defence when writing on social media, saying "I could be liable for what happens in Providence. So please stop making it easy for these people to prosecute us by putting threats of violence in writing that can be used against us later."⁸⁷
 - 65.2 On 17 August 2019 an estimated 500 members of right-wing groups including the APB (led by Joseph Biggs), Patriot Prayer, Three Percenters and the American Guard rallied in Portland Oregon.⁸⁸ As stated above, this rally was deliberately held in order to coerce local government to "take direct and meaningful action" against 'antifa'.⁸⁹

Recognition by President Trump, the 'Stop the Steal' movement, and the Assault on the US Capitol Building

66. On 29 September 2020 President Trump was debating Democratic Party presidential candidate and former Vice-President Joe Biden. During the debate Trump was asked by the moderator to disavow white supremacy by asking white supremacist groups to stand down.⁹⁰ After prompting the moderator for a name Trump was provided with "the Proud Boys" by Biden, at which point Trump pivoted to discussing 'Antifa', stated "Proud Boys, stand back and stand by...", and insisted that left-wing activism was the cause of contemporary unrest in US cities.
67. Whether deliberate or not on the part of Trump, this apparent acknowledgement electrified APB members,⁹¹ with the APB Telegram channel immediately posting "Standing down and standing by sir",⁹² Florida APB Leader Joseph Randall Biggs posted "standing by" and indicated that he considered the President to have "basically said to go fuck [Antifa] up",⁹³ one prominent member stating his happiness at the

recognition, and some supporters immediately starting to advertise “Proud Boys Standing By” t-shirts and hoodies.⁹⁴ Another member posted to social media that he interpreted Trump’s comment as a call to be prepared, and “he can call on us to essentially ‘let loose the dogs of war.’”⁹⁵ Talking to the Washington Post, Tarrío stated that the APB were “synonymous with standing against domestic terrorism... it gives me joy that America sees that we are... willing to stand back and do something about domestic terrorism...” (this reference to ‘domestic terrorism’ almost certainly referred to the Black Lives Matter protests that occurred almost daily in US cities throughout the northern hemisphere summer of 2020).⁹⁶

68. Between 29 September 2020 and 6 January 2021 the APB participated in a number of ‘Stop the Steal’ and pro-Trump protests. These protests were conducted widely across the US, and were premised on a conspiracy that the US Presidential elections involved corruption and vote-rigging in favour of Joseph Biden. This conspiracy theory galvanised the APB, and the group’s leadership actively participated in several violent rallies before the 6 January 2021 Stop the Steal rally in Washington, DC (see *Case Study One*). Two examples are:

68.1 On 14 November 2020 the APB attended the ‘Million MAGA March’ in Washington, D.C.⁹⁷ The march was organised to protest Donald Trump’s election loss and was attended by thousands of Trump supporters including “Three Percenters, Proud Boys and Oath Keepers”.⁹⁸ At the conclusion of the march and as night fell skirmishes between Trump supporters and counter-protestors resulted in violence, at least one stabbing, and up to 24 arrests.

68.2 On 12 December 2020 APBs journeyed to Washington D.C. to demonstrate against the 2020 Presidential Election results as part of the ‘December Demonstration’ and ‘Stop the Steal’ movement.⁹⁹ Reports state that ‘three dozen’ people were arrested in a night of unrest linked to ‘white nationalist’ groups moving around in the city drinking heavily and explicitly looking for opportunities to provoke fights. Local police estimated that as many as 700 APB and supporters were active in the streets, with 4 stabbings associated with the protests (the political affiliation of the victims is indeterminate, although one was APB leader Jeremy Bertino),¹⁰⁰ and 8 police officers being injured while attempting to keep APB and counter-protestors separate. In addition, four churches were vandalised,¹⁰¹ ‘Black Lives Matters’ banners and signs were torn from buildings, and at least one set on fire.¹⁰² Tarrío was subsequently charged in connection with the latter incident.

69. The APB have continued to rally since the assault on the Capitol Building on 6 January. One journalistic source counted 20 public appearances by the APB in 13 US cities between 6 January and 24 June 2021, with at least 6 descending into violence.¹⁰³

Case Study One: Assault on the US Capitol Building, 6 January 2021

Facts

70. On 6 January 2021 the US Capitol Building (‘the Building’) in Washington D.C. was assaulted and breached by a large mob as elected representatives attempted to certify the election of Joseph Biden as President of the US (referred to below as ‘the event’). Several people died during the event, including; one who was shot by law enforcement

as she attempted to climb over a barricade erected to protect elected representatives hiding in the Building, a woman who suffered a heart attack and was trampled before she could be provided with medical attention, and a police officer who died of unspecified medical complications two days after being assaulted with extremely powerful pepper-spray.¹⁰⁴

71. In addition to either preventing or halting the certification of the presidential election, numerous references were made by enraged Stop the Steal crowd members to ‘arresting’, harming, or killing then Vice President Mike Pence,¹⁰⁵ Speaker of the House Nancy Pelosi and Democratic Caucus Leader Chuck Schumer.
72. The large crowds that eventually conducted the assault on the Building were primarily attracted to Washington D.C. by an interest group calling themselves ‘Stop the Steal’, and were openly calling for the storming of the Building on social media both before the event and on the day.¹⁰⁶ Stop the Steal was led by well-known far-right activists and conspiracy theorists including Nick Fuentes and Alex Jones, was publicised by “Trump ally” and First Degree APB Roger Stone,¹⁰⁷ and was at least partially coordinated by White House officials.¹⁰⁸
73. Analysis of the event has identified three general categories of participants within this mob: ‘Militant Networks’ represented by groups such as the APB or Oathkeepers, ‘Organised Clusters’ of family or other socially-attached individuals, and ‘Inspired Believers’ thought to have been mobilised by political and other rhetoric regarding the validity of the election results.¹⁰⁹
74. A key characteristic of the militant networks attending the event was the use of hierarchical organization and chains of command. Leaders of APB and other militant groups encouraged members to attend the event, coordinated members during the assault, and in advance of the event specifically stated an intent to conduct violence.¹¹⁰
75. As outlined below, the APB repetitively stated their intention to weaponise, utilise, and enable the anger of the crowds expected at the Stop the Steal rally to compel elected representatives to halt the certification of the 2020 Presidential vote results. While several militia groups attended, at key points during the event it was APBs who incited crowds, APBs coordinated attacks on law enforcement protecting the Building, and APBs who instrumentally led non-members into positions where they could break into the Building and threaten US elected representatives.

APB Leadership’s preparation immediately prior to the event

76. In December 2020 APB leadership created a small subgroup within the APB called the ‘Ministry of Self Defence’ made up of Tarrío, Ethan Nordean, Joseph Biggs, and Philadelphia APB leader Zachary Rehl.¹¹¹ This group devised plans for bringing APBs to the Capitol, coordination of non-members, and tactical preparations (such as not wearing APB livery during the event).¹¹² These leaders of the APB contacted members via their own hierarchical networks and encouraged them to attend the event, and APB presence at the event was formally announced on 19 December 2020.¹¹³ In addition:

- 76.1 On 27 December 2020 Nordean posted to his Parler page, “Anyone looking to help us with safety/protective gear, or communications equipment it would be much appreciated...”¹¹⁴
- 76.2 On 29 December 2020 Tarrío announced via social media that APB livery was not to be worn.¹¹⁵ It should be noted that during the event many APB opted to wear fluorescent orange to distinguish one another, including orange beanies, strips of orange tape, and other ‘insignia’.
- 76.3 On 3 January 2021, Tarrío stated on Telegram, “What if we invade it?” to his 7,000 followers.¹¹⁶ The first reply to the post was “January 6th is D day in America [sic]”. In this and other chats compiled by journalists the APB membership repeatedly discussed invading the Capitol on Parler, Gab, and Telegram, invoking Trump’s claims that the election was stolen.¹¹⁷
- 76.4 On 4 January, while attempting to enter Washington D.C. Tarrío was arrested in relation to the burning of a BLM banner in the city on 12 December 2020. During the arrest he was found to be in possession of two high-capacity magazines emblazoned with APB insignia. Possession of these items in Washington D.C. is a felony, and on his release Tarrío was ordered to stay away from the city.¹¹⁸ Leadership of forthcoming APB activity in Washington D.C. was passed to Nordean, who was given “war powers” (i.e. specific organising power in relation to the 6th January event).¹¹⁹
- 76.5 The arrest of Tarrío by Washington D.C. police may be taken as a provocation by APB leadership.¹²⁰ On 4 January 2021 Nordean posted a video to Parler captioned, “Let them remember the day they decided to make war with us”, and “It is apparent now more than ever, that if you are a patriot, you will be targeted and they will come after you, funny thing is that they don’t realize is, is we are coming for them... You’ve chosen your side, black and yellow teamed with red, white and blue against everyone else.”¹²¹
- 76.6 Also on 4 January Nordean shared a link to a podcast in which he and another APB discuss APB plans for 6 January.¹²² In this podcast they claim to be “soldiers of the right wing”, “We are in a war”, that “they will bring back that original spirit of 1776...”, reiterated the conspiracy that the election was stolen, and stated “We’re coming back. We’re coming to D.C. and were going to take this country back.”¹²³
- 76.7 On 5 January two new groups called ‘Boots on the Ground’ and ‘New MOSD’ were created on an encrypted channel.¹²⁴ ‘New MOSD’ was created after Tarrío’s arrest on 4 January and the surrender of his mobile device to law enforcement.¹²⁵ This channel was used to discuss breaking APB attendees into tactical teams, and assigning frequencies to teams for use on Baofeng-brand ‘walkie-talkie’ radios.¹²⁶
77. On 6 January and prior to the attack occurring, users of a chat group used by the APB leadership made two specific threats. The first threatened the destruction or serious damage to Washington D.C. posting, “I want to see thousands of normies [i.e. everyday people] burn that city to ash today”. The second threatened death or serious harm, with

a user reply to the above with, “I will settle with seeing them smash some pigs [i.e. police] to dust.”¹²⁷ Both of these threats were enabled and borne out by APB actions.

78. Over sixty users participated in the Boots on the Ground channel, which instructed members to meet at the Washington Monument at 10 a.m. on 6 January 2021 – this monument is approximately 500m distant from the location of the Stop the Steal rally, and 2km to the west of the Building.¹²⁸ At 8.28 p.m. on 5 January the channel was used to post, ““Everyone needs to meet at the Washington Monument at 10am tomorrow morning! Do not be late! Do not wear colors! Details will be laid out at the pre meeting! Come out as a patriot!”.”¹²⁹
79. At 9.09 p.m. on 5 January the Boots on the Ground channel was used to post, “Stand by for the shared baofeng channel and shared zello channel, no Colors, be decentralized and use good judgment until further orders, Rufio [i.e. Nordean] is in charge, cops are the primary threat, don't get caught by them or BLM, don't get drunk until off the street.”¹³⁰
80. At 9.17 p.m. Biggs posted to the New MOSD channel, “We just had a meeting with [sic] a lot of guys. Info should be coming out”, followed by “Just spoke with Tarrío”.¹³¹ At 9.20 p.m. Biggs posted, “We have a plan. I’m with Rufio” to which Charles Donohoe (a APB leader from North Carolina) responded, “What’s the plan so I can pass it to the MOSD guys”.¹³²

Timeline of the Assault on the Building, 6 January 2021

81. The US Capitol Building is aligned north to south, and has approaches from both the east and west. As detailed below, the APB led an assault on the western approach to the Building, and were able to successfully breach a window just after 2 p.m. on 6 January. The eastern side of the building was breached at a later time. The sequence of the breach of the western approach is as follows.
82. At 6.37 a.m. on 6 January Donohoe posted to the New MOSD channel, “Are we gonna do a commanders briefing before the 10 a.m.?”¹³³ At 8.30 a.m. Donohoe led a group of 15 to the Washington Monument,¹³⁴ and by 10 a.m. a group of APB had assembled.
83. Shortly after 10 a.m. the group of about 100 APB is led by Nordean, Biggs, and Rehl to the Peace Monument (a statue approximately 175m to the west of the Building). During the march the group chants, “Who’s streets? Our streets”, “Fuck Antifa”, and “USA! USA!”.¹³⁵ Both Biggs and Nordean can be seen on video recordings wearing walkie-talkies.¹³⁶ On the approach to the Building Washington State APB Daniel Scott (also known as ‘Milkshake’) is scolded by APB leaders including Nordean for having pre-emptively shouted “storm the capital!”.¹³⁷
84. Former President Trump begins to give a speech to a large assembled crowd at The Ellipse, a large oval lawn approximately 2.3km west of the Building, around 12 p.m.¹³⁸ Erected on the lawn among the crowd was a gallows, and members of the crowd were at various times heard to shout ‘Hang Mike Pence’,¹³⁹ with threats also levelled against Nancy Pelosi, and Senate Minority Leader Chuck Schumer.¹⁴⁰ This speech concludes at approximately 1.10 p.m.

85. At 12.45 p.m. a crowd including Biggs, Donohoe, Rehl, and Scott have arrived at the Peace Monument. Nearby is a perimeter fence put in place to guard the north-western walkway to the Building.¹⁴¹ Behind the fence is a barricade guarded by a small number of Capitol Police, and marked with signs clearly indicating that the area was closed to the public.
86. Meanwhile, some of the crowd is beginning to make its way towards the Building from the Stop the Steal rally. Compiled video footage of this crowd captures individuals shouting phrases such as “We’re gonna storm the fucking Capitol”,¹⁴² and urging others to travel the 2km to towards the building at the conclusion of a speech then being given by former President Trump.
87. While the majority of the crowd is still distant at the Stop the Steal rally, video footage taken at 12.50 p.m. clearly shows a group of APB and other individuals gathered in front of the parameter fence guarding the north-western walkway to the Capitol. A APB named Ryan Samsel is called over by and talks to Biggs.¹⁴³ Almost immediately thereafter, Samsel crosses the initial perimeter fence, approaches the barricade staffed by Capitol City Police, and immediately becomes confrontational.¹⁴⁴ Samsel is joined by others who have climbed over the perimeter fence, and the group assaults the barricade line. This causes an officer to fall and hit her head and lose consciousness for a short time. Samsel is reported to have lifted the officer off the ground and said, “We don’t have to hurt you, why are you standing in our way?”¹⁴⁵
88. At 12.53 p.m. this barricade was forcibly breached by the remainder of the crowd accompanying Samsel and the APBs.¹⁴⁶ Immediately thereafter an emboldened crowd breaches another nearby barricade, and hundreds of people climb over fences to enter the Capitol grounds from the west.¹⁴⁷ Capitol Police officers were unable to reform their defensive cordon after this breach, and were forced to fall back 150m to a cordon at the base of steps at the western approach to the Building. A video recording of the APBs and supporters running towards the Building has an unknown commentator shouting, “They’re rushing the Capitol brother. The Proud Boys are rushing the Capitoll!”¹⁴⁸
89. At 1 p.m. a joint session of the Senate and Congress of the United States convened in order to certify the election of Joseph Biden. During this time the majority of people who would eventually gather outside the Building were still in attendance at a rally being held by former President Trump, and those breaching the perimeter fencing and police barricades are members of the APB, other militant networks, and a mix of other motivated individuals.
90. With the initial barricades breached, the crowd advanced closer to a new defensive cordon of Capitol Police at the base of the western approach to the building, and APB members can be seen in video recordings advancing among and rallying the crowd (APB members are either recognisable, i.e. Nordean and others, or were wearing orange beanies and/or orange stripes on their clothing). By 12.59 p.m. this crowd forces the Capitol Police higher up the steps of the Building, and melees are occurring between crowd members and officers.¹⁴⁹ Nordean, Biggs, Rehl, and APB William Pepe are clearly seen at the front of the crowd with a large group of APB,¹⁵⁰ and APB William Crestman is seen shouting incitement such as, “Who’s house is it?!” , “Do you want your house back?!” , and “Take it!”.¹⁵¹ Pepe is recorded shouting angrily into a camera, “This is what we came for yeah!”¹⁵²

91. By 1.30 p.m. a protracted melee has been occurring on the western side of the Building between law enforcement (the Capitol Police have been reinforced by the Metropolitan Police Force) and an expanding crowd, with multiple police injuries.¹⁵³ The crowd on the eastern side however has remained behind police barricades. Consistent with APB intentions to attack the Building from different approaches, a large group from the western side marches around the Building, and through barricades to the north-east of the Building. This emboldens the eastern crowd, and it surges past the small number of police towards the Building.¹⁵⁴ Police are unable to halt this crowd, which starts to smash windows and the glass of doors on the eastern side of the Building and at 1.50 p.m. the Washington D.C. Police declared a riot.¹⁵⁵ However, the building is not yet breached.
92. While the crowd surges on the eastern side, several APB are recorded identifying that an entrance to a set of scaffolded stairs on the western side would allow the crowd access to a higher, less secure point in the building.¹⁵⁶ Crestman is recorded directing APB members to “Grab a brother and head [indeterminate]”.¹⁵⁷ An order is issued via megaphone to “take the stairs”. APB Scott (aka ‘Milkshake’) is central to the front line of individuals who assault officers protecting this entrance, and with APB Dominic Pezzola, Pepe, and Donohoe is among a crowd that then continue to fight police as they advance upwards,¹⁵⁸ and lead the mob as they melee up the staircase until the police are once again forced to fall back.¹⁵⁹ The remainder of the crowd then surges forward up this pathway and onto the higher level of the Building.
93. Once on the higher level of the building Pezzola, earlier clearly recorded wearing an earpiece to a communication device,¹⁶⁰ uses a riot shield taken from a police officer to smash windows on this level,¹⁶¹ and the Building is breached for the first time at 2.13 p.m by APB associate Robert Geiswein (carrying a baseball bat, wearing body armour, and displaying an orange fluorescent strip on his helmet to signal his association with the APB) and another man.¹⁶² At the same time Mike Pence is evacuated from the Senate floor by the Secret Service to an initial secure location.¹⁶³ The initial group to enter the building through this breach is led by Biggs, who is recorded commenting to an observer, “This is awesome”.¹⁶⁴ At 2.19 p.m. the Boots on the Ground channel posted, “We just stormed the capitol”.¹⁶⁵

Actions inside the Building

94. The initial breach of the Building results in the crowd heading northwards towards the Senate Chambers. The Senate is also immediately called into recess and Senators attempt to evacuate via two staircases from the top to lower floor of the Building. The vanguard of this mob, who are actively seeking Mike Pence and/or Nancy Pelosi, is heading towards these staircases when intercepted by a Capitol City police officer,¹⁶⁶ and can be heard shouting “Where are they counting the votes?”. Behind the crowd Senators are escaping, and the police officer draws them up another staircase to protect the Senators and aides.
95. The vanguard, including Pezzola and Geiswein,¹⁶⁷ is lured towards police reinforcements and are held in an upper level atrium. Enraged, the group began demanding the police bring Vice President Mike Pence out to them.¹⁶⁸ While this is occurring, key leaders are evacuated from the House of Representative (at the southern side of the Building). In video of interaction between the vanguard and Capitol Police Pezzola is clearly seen leaving the atrium.¹⁶⁹ After this time Pezzola posted a short video

- to social media in which he stated, “Victory smoke in the Capitol, boys. This is fucking awesome. I knew we could take this motherfucker over [if we] just tried hard enough.”¹⁷⁰
96. By 2.24 p.m. the crowd has entered the central rotunda of the Building and is surging towards the chambers of the House of Representatives as Mike Pence and his family are being further evacuated to a more secure location. At 2.25 p.m. this crowd assists others on the eastern side of the building to open doors and the building is breached for the second time.¹⁷¹ Members of the crowd breaching the Building through this entrance begin chanting, “Hang Mike Pence!”¹⁷² Biggs is recorded entered the building with APBs for a second time through this entrance, which indicates that he has moved to the opposite side of the building after his initial breach.¹⁷³
 97. At this time staffers and aides in other, unprotected parts of the Building are barricading doors to offices to keep out the crowd. Staff members of Nancy Pelosi lock themselves in a conference room behind two doors.¹⁷⁴ Within 12 minutes of these doors being locked crowd members are observed chanting, “Nancy, Nancy”, one clearly shouting “Here we come Nancy! Are you in there you fucking bitch?”, and others are ransacking her offices.¹⁷⁵ At least one unidentified individual is wearing the distinct orange colour worn by APBs. Pelosi’s staff members record the crowd pounding on doors searching for her and breaking through the first (but not second) door into the room in which they were hiding.
 98. At 2.30 p.m. Congress is still in session, but is called into recess and emergency procedures begin to be implemented.¹⁷⁶ Meanwhile as many as one hundred people are being held at bay outside the chambers demanding entry, with at least one person yelling, “We came this far, whaddya say?”, with another replying “Drag ‘em out!”, and another yelling, “Tell fucking Pelosi we’re coming for her!” APB Gabriel Garcia participates, and is observed shouting to Pelosi, “Nancy come out and play!”¹⁷⁷ This crowd overwhelms police, and are shortly pushing against the barricaded doors of the chambers.¹⁷⁸
 99. While this crowd is held at bay, members of the House of Representatives are being evacuated to the rear of the chambers. This halts the certification of the election results, which did not resume until 8 p.m.¹⁷⁹ Part of the crowd from the barricaded front doors move around the chambers to the rear, where they are again held back by police. At this time a woman attempting to climb over a barricade and through a smashed window to approach the Representatives is shot and killed by police.¹⁸⁰
 100. By the time the lower floor of the House of Representatives was being cleared, in the upper balconies Members were ‘sheltering in place’ by hiding between rows of seats, and were told to remove any identification that could distinguish them as lawmakers.¹⁸¹ A representative described the scene, stating that law enforcement was expecting a breach of Congress, and had guns pointed ready at the chamber doors, while another stated “It’s not good to be around terrified colleagues, with guns drawn toward people who have a barricade ... people crying. Not what you want to see.”¹⁸²
 101. At the opposite end of the building the crowd has occupied the Senate, and while some chant “Treason, treason”, others rifle through paperwork, pose for photos, and leave a note for Mike Pence stating, “It’s only a matter of time, justice is coming”.¹⁸³

Aftermath of the Attack

102. The Metropolitan Police cleared the exterior upper level of the eastern side of the Building by 4 p.m. However, by this time the Building is breached at multiple points, and the interior is not entirely cleared until riot police in heavy gear and the US national guard arrives to clear the Building.¹⁸⁴
103. Damage to the Building is estimated at \$US1.5m, including the ransacking of house Speaker Nancy Pelosi's office.¹⁸⁵ Specific damage included "broken windows and doors, graffiti, and residue of various pepper sprays, tear gas, and fire extinguishers".¹⁸⁶ Over the day an estimated 150 law enforcement officers were injured.
104. At an unspecified time after the event a US Federal Bureau of Investigations witness reported having spoken with Pezzola and others.¹⁸⁷ The witness stated that Pezzola "bragged about breaking the windows to the Capitol and entering the building".¹⁸⁸ In addition, Pezzola and others talked about their actions on 6 January and stated, "anyone they got their hands on they would have killed, including Nancy Pelosi."¹⁸⁹ The witness further stated that "members of this group, which included [Pezzola] said that they would have killed... Mike Pence if given the chance."¹⁹⁰ Members of this group stated that they either possessed or had access to firearms, also stating their intention to return to Washington D.C. on 20 January 2021 and kill every "m-fer" (i.e. relevant elected official) they could find.¹⁹¹
105. Nordean, Biggs, Rehl, and Donohoe celebrated the after the event through social media. Rehl posted 'I'm proud as fuck what we accomplished yesterday...', and Donohoe posted "We stormed the capitol unarmed" and "We took it over unarmed".¹⁹² An official APB Telegram channel stated, "For several hours, our collective strength had politicians in Washington in absolute terror. The treacherous pawns (cops) were also terrified..."¹⁹³
106. Also after the event Nicholas Ochs and Nicholas DeCarlo, two APB who had been inside and defaced the Building with the words "Murder the Media",¹⁹⁴ posted video of themselves walking through Washington D.C.¹⁹⁵ Ochs is recorded saying, "we have some good news... on the television the headline reads that Congress stopped the vote when we stormed the Capitol", to which DeCarlo replies, "We did it."
107. On 8 January Nordean posted a picture to social media of himself smiling at a camera during the march to the Capitol Building captioned 'violent extremist'.¹⁹⁶ On the same day he posted a photo to Parler of a Capitol Police officer pepper spraying a person, and captioned it including the statement, "if you feel bad for the police, you are part of the problem."¹⁹⁷
108. Nordean, Biggs, Rehl, and Donohoe are among the APB currently facing charges including criminal conspiracy for their actions coordinating and participating in the event.¹⁹⁸
109. In the aftermath of the attack journalists present during the breach of the Building have reported ongoing trauma, with some refusing to re-enter the Building, and others seeking therapy.¹⁹⁹

Summary of key facts

110. Prior to the 6 January event, APB members:
- 110.1 repeatedly stated their intention to weaponise, utilise and enable the anger of the ‘Stop the Steal’ movement to halt the certification of the presidential vote results;
 - 110.2 encouraged members to attend the ‘Stop the Steal’ event and specifically stated an intention to conduct violence; and
 - 110.3 discussed online the things they hoped non-APB members would do at the event (including burning the city down and killing police).
111. During the event, APB members:
- 111.1 coordinated non-lethal attacks on security and law enforcement protecting the Capitol and led non-Proud Boys members into positions where they could threaten, and potentially harm or kill, US elected representatives; and
 - 111.2 appear to have been part of a crowd demanding Police bring Mike Pence to them and in which members of that crowd chanted “Hang Mike Pence” while moving through the building looking for him.
112. Following the event, a witness for the FBI gave evidence that APB members said they would have killed anyone they got their hands on, including Nancy Pelosi and Mike Pence.

The act meets the TSA criteria for designation

113. APB’s involvement in the violent attack on the Building is consistent with the definition of a terrorist act under s 5 of the TSA. Actions and statements by APB members both before and during the attack (summarised at paragraphs [110]-[112] above) demonstrate an intention to cause the death or serious bodily injury to people (including political figures) within the Building (s 5(3)(a) TSA).
114. APB’s extreme right-wing ideology is founded on racist and fascist principles. APB engaged in the attack on the Building for the purpose of obstructing and preventing the proper functioning of democratic government and in opposition to what PB perceives as liberalisation and diversification of US society. This act was therefore carried out with the purpose of advancing APB’s ideological/political cause and with the ultimate intention of unduly compelling or forcing a government to do or abstain from any act (s 5(2)(b) TSA). The circumstances of the attack also distinguish it from protected protest, advocacy or dissent (s 5(5) TSA).

LAW OF ARMED CONFLICT**The law of armed conflict exception**

115. Section 5(4) of the TSA provides that an act does not constitute a terrorist act for the purposes of the TSA if two conditions are met. The first condition is that there must be a situation of armed conflict in the area and at the time of the act. Secondly, the act

must accord with the law of armed conflict. If one of these conditions is not met, the exemption does not apply.

116. The acts depicted in the case study can properly be categorised as terrorist acts. The activities or operations of APB have not been undertaken in a location or at a time of recognised armed conflict. Consequently, the acts do not meet the exemption in section 5(4) of the TSA. Should there be any contention on this point, which is highly unlikely, the exemption would still not apply. This is because the acts have not occurred in accordance with the applicable rules of international law; specifically, the targeting of civilians and civilian objects.

- ¹ (15/09/2016) Gavin McInnes, "Introducing: The Proud Boys", *Taki's Magazine*, accessed via https://www.takimag.com/article/introducing_the_proud_boys_gavin_mcinnes/ on 20/05/2021.
- ² Taki Magazine has been described by the ADL as a far right wing publication. See "Alt Right: A Primer on the New White Supremacy", *ADL*, accessed via <https://www.adl.org/resources/backgrounders/alt-right-a-primer-on-the-new-white-supremacy> on 14/06/2021.
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