# **FINAL REPORT**

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# Investigative and Prosecutorial Strategies for Mitigating Pathways to Radicalization: Creation of a Federal Terrorism Court Record Repository

Awardee

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## **Background**

#### **About This Report**

The data collection and analysis for this report was funded by the National Institute of Justice's domestic terrorism and radicalization research portfolio (Award Number 2018-ZA-CX-0003). This project builds on previous research conducted by the Terrorism Research Center (TRC) using American Terrorism Study data, including several previously funded NIJ projects.

For more information about NIJ's efforts to promote the study and prevention of radicalization and terrorism, see <a href="https://nij.ojp.gov/topics/crimes/domestic-radicalization-and-terrorism">https://nij.ojp.gov/topics/crimes/domestic-radicalization-and-terrorism</a>.

#### **About the Terrorism Research Center**

The Terrorism Research Center (TRC), housed in the Department of Sociology and Criminology at the University of Arkansas, is a non-partisan research organization that aims to use the tools of social science and data analytics to promote safer communities, inform evidence-based policies, and train the next generation of researchers and law enforcement professionals.

TRC research areas include terrorism, extremism, bias and hate crimes, human trafficking, and geospatial data analytics. In 2020, the TRC introduced the Crime and Security Data Analytics Lab (CASDAL) to promote multidisciplinary research projects relating to crime and security issues, as well as research partnerships and student resources.

To learn more about the TRC, visit our website at terrorismresearch.uark.edu.







#### INTRODUCTION

#### **Background**

Criminal justice actors including those from state fusion centers, FBI field offices, and United States Attorneys' Offices rely on multiple forms of information to provide intelligence to those responsible for investigating and prosecuting cases of terrorism and domestic extremism. Federal court documents are one consistent source of information that can serve as a record of past governmental efforts to mitigate radicalization processes and respond to terrorism and violent extremism in the U.S. More specifically, these documents could provide a wealth of information on patterns, trends, criminal networks, defense strategies, and law enforcement and prosecutorial strategies utilized in prior cases. Being able to efficiently access this type of information has become increasingly critical, especially following spikes in federal terrorism-related cases after the 9/11 terrorist attacks and, more recently, following the January 6<sup>th</sup> Capitol Riots.

Unfortunately, gaining access to court documents associated with terrorism-related cases could be a challenge, let alone sifting through the information contained within the documents if obtained. Defendants federally indicted in terrorism-related cases may face a wide range of criminal charges associated with USC Title 18, Chapter 113B. These charges include, but are not limited to, providing material support to terrorists or foreign terrorist organizations. In addition, there remains no specific federal statute for prosecuting cases of domestic violent extremism committed by individuals and groups not associated with foreign terrorist organizations. In effect, identifying court documents for cases involving a range of federal (terrorism-related) crimes is not always straightforward.

#### TERRORISM RESEARCH CENTER

As is the case for other federal court cases, terrorism and domestic violent extremism case files are retained at U.S. District Courts until any appeals are completed when the files are then transferred to appropriate regional archives. For many years, individuals were allowed to access older cases held at regional archives by appointment. Recent changes in policy concerning the archives, however, now preclude this type of access. The time-consuming nature of accessing case files at regional archives has become prohibitive not only for funded researchers, but also for government investigators and prosecutors. In addition, accessing federal court records online, such as through the PACER (Public Access to Court Electronic Records) system, has limitations. A particular challenge is accessing older criminal case documents that were filed before November 2004, when the PACER system was widely implemented. Gathering information from the pay-by-page PACER system may also be cost prohibitive for some individuals and organizations.

#### The American Terrorism Study (ATS)

Over the last 35 years, the American Terrorism Study (ATS) has become an important alternative source of information on federal terrorism and domestic violent extremism cases, amassing over one million pages of documents for cases occurring from the 1980s to present-day. Beginning in 1987, and with assistance from what was then the FBI's Terrorism Research and Analysis Center, the American Terrorism Study (ATS) began collecting court case documents on persons indicted for "terrorism or terrorism-related activities" as designated by the FBI. Cases in the ATS database come from official federal law enforcement or U.S. government lists of terrorism and terrorism-related indictments. Court documents on approximately 1,500 cases and over 2,800 indictees have been collected over the years as a

part of several federally funded ATS projects,<sup>1</sup> making it the longest-running terrorism project in the U.S.

The ATS includes federal court documents that were collected in-person or by mail from U.S. District Courts and regional archives from around the country, as well as court documents that have been primarily purchased through the PACER (Public Access to Court Electronic Records) system. Combined, the ATS currently maintains one of the most comprehensive sets of federal court documents associated with terrorism-related cases since the late 1980s spanning terrorism and domestic violent extremism defendants across the ideological spectrum, including those affiliated with the extreme far-right, extreme far-left and ecoterrorism, and radical Islamic terrorism. Based on these documents, the ATS includes data on legal outcomes (e.g., conviction patterns, sentence length, criminal statutes) and defendant characteristics (e.g., demographics, personal background, and incident characteristics).

Data extracted from these court documents have been used to study numerous topics from environmental terrorism<sup>2</sup> to risk factors<sup>3</sup> and the prosecution and sentencing of terrorists

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<sup>&</sup>lt;sup>1</sup>"Pre-Incident Indicators of Terrorist Activities: The Identification of Behavioral, Geographic, and Temporal Patterns of Preparatory Behavior." NIJ Award # 2003-DT-CX -0003; "Geospatial Analysis of Terrorist Activities, NIJ Award #2005-IJ-CX-0200; "Identity and Framing Theory, Precursor Activity, and the Radicalization Process, NIJ Award #2012-ZA-BX-0003; "Terrorism in Time and Space, NIJ Award # 2006-IJCX-0026; Sequencing Terrorists' Precursor Activities, NIJ Award #2013-ZA-BX-0001.

<sup>&</sup>lt;sup>2</sup> Smith, Brent, and Kelly Damphousse. 2009. "Patterns of Precursor Behaviors in the Life Span of a U.S. Environmental Terrorist Group." *Criminology & Public Policy* 8 (November): 475-496.; Gruenewald, J., Allison-Gruenewald, K., & Klein, B. (2015). Assessing the attractiveness and vulnerability of eco-terrorism targets. *Studies in Conflict & Terrorism*, 38(6), 433-455.

<sup>&</sup>lt;sup>3</sup> Klein, B.R., Gruenewald, J., & Smith, B.L. (2017). Opportunity, group structure, temporal patterns, and successful outcomes of far-right terrorism incidents in the United States. *Crime & Delinquency*, *63*(10), 1224-1249.

and violent extremists in U.S. federal courts.<sup>4</sup> Importantly, ATS data are routinely sought after by criminal justice practitioners wanting to learn more about some aspect of criminal justice responses to terrorism and violent extremism in the U.S. Recent examples include:

- a federal judge's office seeking data on the average sentence of persons between the ages of 18-25 convicted of material support for terrorism,
- an FBI special agent requesting information on whether a particular count had ever been used in a terrorism case (and if so, how many times, and what were the count outcomes),
- a U.S. Attorney's office looking for information on prior cases in which Sovereign
  Citizens had filed motions regarding the "constitutionality of our authority based on the
  admiralty flag," and
- a NIJ researcher seeking names of females federally indicted on terrorism-related charges since 1990.

We were able to successfully provide responses and assistance to all of these, and numerous other, requests. However, many agencies are not aware that we retain these documents, nor would the ATS be able to respond to each request if it became public knowledge of their compiled existence. In effect, there was a need to create a more user-friendly method of accessing this information.

#### **Project Goals**

To compensate for limitations in access to data on terrorism and domestic violent extremism, a simple-to-use, password-protected web portal known as the ATS Court Record

<sup>&</sup>lt;sup>4</sup> Jackson, S., Ratcliff, K., & Gruenewald, J. (2021). Gender and criminal justice responses to terrorism in the United States. Available online first in *Crime & Delinquency*. <a href="https://doi.org/10.1177%2F00111287211047535">https://doi.org/10.1177%2F00111287211047535</a>

Smith, B., & Damphousse, K. (1996). Punishing political offenders: The effect of political motive on federal sentencing decisions. *Criminology*, *34*(3). 289–321.

Repository, or ATSCORR, was created. ATSCORR allows intelligence analysts, federal prosecutors, FBI investigators, state fusion centers, and NIJ-funded researchers examining radicalization in the U.S. to have access to the decades of court records compiled by the ATS. In addition to the actual documents, the portal provides basic data and statistics on, for example, count utilization (e.g., conviction, acquittal, etc.) and patterns of terrorist conduct. The structure of ATSCORR also identifies links between case documents, successful utilization of counts or combination of counts, the verbiage used in indictments, and unique motions filed in each case.

The primary objectives for the project included: 1) identifying, collecting, and coding data from existing and new cases included in the ATS, 2) soliciting feedback from potential endusers and other stakeholders, 3) building a web-based platform connected to relevant aspects of the ATS database, and 4) integrating a map function to view relevant case-related information more efficiently.

#### **DEVELOPMENT SUMMARY**

This section contains an overview of the work performed toward the objectives, the information available for each data type in ATSCORR (i.e., court cases, defendants, and counts), general descriptive conviction statistics, and general navigation of the site. Existing cases and associated coding in the ATS database were reviewed by project staff and evaluated for inclusion in ATSCORR. In total, TRC students and staff reviewed over 1,500 court cases and associated coding and case documents. From these, the project team loaded 956 cases into the ATSCORR portal by time of submission of this final report. Approximately 400 additional court cases have been marked for future inclusion, pending finalization of court proceedings or collection and organization of case documents. These 956 cases are linked to 1,627 defendants and more than 9,000 individual criminal counts available for analysis in ATSCORR, and connected to tens of thousands of pages of federal court records totaling roughly 15GB worth of court records. These data are accurate as of submission of this final report, however, data and documents in ATSCORR are subject to change based on subsequent case progress.



956 Cases



**1,627** Defendants §

9,202

#### **Site Design and Functionality**

At the beginning of the project period, project staff reviewed core American Terrorism Study (ATS) legal variables for inclusion. Detailed lists of court case, defendant, and count variables can be found beginning on page 12 of this report. Once variables were finalized and a preliminary version of the portal included several hundred cases, the project team invited potential end-users to "beta test" the portal and provide feedback on its utility and usability. Beta testers and other early ATSCORR registrants include individuals affiliated with the Department of Homeland Security, Department of Justice National Security Division, Federal Bureau of Investigation, Arkansas State Fusion Center, National Counterterrorism Center, the Texas Department of Public Safety, and the United States Military.

Early registrants were asked to complete a Qualtrics survey after spending time on the site, though many respondents preferred to send feedback via e-mail, virtual and in-person meetings, or by phone rather than fill out the survey. In addition to feedback concerning the general utility of the data and documents on the site, the project team also requested input regarding any technical issues. The ATSCORR site now includes an integrated Qualtrics survey under a "Contact" menu item to gather feedback, serve as a point of contact, and allow users to suggest cases or materials for future inclusion in a convenient manner that does not require soliciting a separate response from end-users, and will inform evolution of the platform under future projects.

Based on suggestions provided during conversations and from the feedback survey, the project team identified and addressed three key areas of improvement to ATSCoRR development, including:

- more detailed information about the project, ATS database, and project team;
- additional filtering options, specifically including data related to court cases involving attacks against critical infrastructure; and
- 3. mitigating issues with site registration.

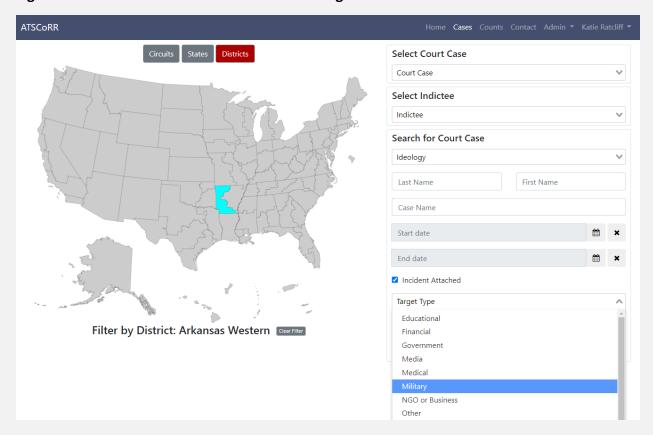
The recommendations pertaining to project information and login issues were addressed by redesigning the ATSCORR home page and login interface (see Figure 1 on page 9). Due to security measures and server settings necessitated by many end-users, the project team troubleshooted access issues and adapted login and registration information to remove future roadblocks based on incoming e-mail security settings. The home page now includes an easily visible and accessible link to request access to ATSCORR. Users are prompted to list their affiliation and contact information, and that request is automatically forwarded to TRC personnel who review the user's supplied credentials. This has thus far been completed on a case-by-case basis while the portal has been in development. Users with an official government or law enforcement affiliated e-mail address are automatically approved. Other cases are reviewed based on the qualifications enumerated in the project proposal, such as NIJ-funded researchers.

The home page also includes background on the project, a link to the User Guide (a draft of which is attached to this report as Appendix A) and a link to the TRC website, which has been updated with an ATSCoRR project page (terrorismresearch.uark.edu/ATSCoRR). The ATSCoRR

Figure 1. ATSCoRR Log-in Screen



Figure 2. Home Court Case and Indictee Filter Page



project page will be formally released to the public upon release of the final report from NIJ and finalization of the accompanying preliminary dataset available at NACJD. From the TRC website, both users and the public will be able to access associated documentation, including Use Case exemplars (Appendix B), and ATS Research Products focused on legal outcomes (Appendix C).

Once registered and logged in, users can immediately begin searching for cases, defendants, and criminal counts. To navigate to the case and indictee search function, users can click on the "Cases" menu tab in the top right-hand corner. This will open the case search screen and allow users to navigate directly to, or search for, specific court cases or defendants (Figure 2). Specific cases and individuals can be selected from the first two drop down menus (Select Court Case and Select Indictee). There are several ways to filter and search, including a map-based filtering feature. Filters in ATSCORR are reciprocal – in other words, if a user selects a certain district, state, or region, the list of cases and defendants that appear in the Select Court Case and Select Defendant lists will also be filtered by that choice.

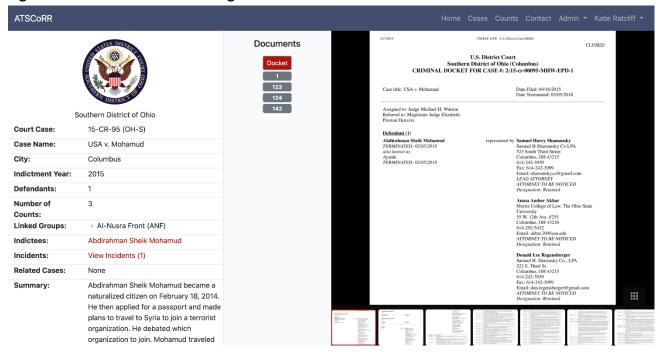
In addition to filtering by place (based on court location), users can apply conditions based on ideological category, indictment date, and whether the court case has an associated failed, foiled, or completed plot. This feature was added during development based on enduser feedback. Once a user clicks the "Incident Included" option, they can also select a target type based on Infrastructure categories and whether the associated incident involved violence against persons, property, or both. Clicking the "Search" button will return a list of all ATSCORR cases that meet the user's search criteria, and selecting a specific court case will open a Court Case Overview page (Figure 3).

#### **Court Cases**

The left-hand side of the Court Case overview page contains information about the court case (see Table 1 for list of variables). The case overview also includes hyperlinks (appearing in red text) to view indictee pages (see description of Indictee Overview screen on page 14) and any incidents linked to the case. If a user clicks on "View Incidents," they will see any failed, foiled, or completed plots linked to the court case in the ATS database with a brief description and target/infrastructure category information. Users can also navigate directly to overviews for related cases, if applicable. The brief narrative case summaries attached to each court case also include background information about offenders and plots, including preparatory activities and general timelines of each case. These case summaries are, on average, less than 150 words and are useful for quick references of case events.

The right-hand side of the court case overview screen displays associated case documents. Most cases in ATSCORR contain an official case Docket, which serves as a timeline of the case and descriptor of case filings. Where possible, documents are named corresponding to their docket entry. Some cases, particularly older cases that predate PACER, do not have appropriately labeled dockets or the docket does not exist. In those cases, a draft Docket was created, or individual documents were labeled (e.g., "Indictment"). PDFs of case documents are automatically scanned hourly and uploaded as images into ATSCORR. To ensure case documents are up to date, project personnel wait until the case has closed, which means that all defendants have reached final disposition or the case status has remained stagnant for several years (such as in fugitive cases or those awaiting unlikely extradition) before adding it to ATSCORR. As such, several cases identified and partially collected during the project period will

**Figure 3. Court Case Overview Page** 



**Table 1: Court Case Details** 

Court Case	Codes the unique court case number assigned by the court, e.g. "01-CR-428 (CA)"
Case Name	Codes the parties involved in the case as indicated by the court, e.g. "USA v. Jones, et al"
City	U.S. city the court case occurs in
Indictment Year	Year of the first indictment in the case, or information if no indictment
Defendants	Number of persons indicted in the court case
Number of Counts	Number of criminal counts in the "live" indictment in the court case (e.g. if there is a superseding indictment, this number and other coding reflects the charges in the indictment the case actually proceeds from)
Linked Groups	Groups or movements affiliated with the court case – a group is linked in the ATS if one or more persons indicted in the case was a member of, supporter of, acted on behalf of the group, or has activity and ideological indicators consistent with that of the group
Indictees	Lists the persons indicted in the court case – clicking a name will bring you to that person's indictee information page
Incidents	Any incidents – clicking View Incidents will open a dialogue box displaying a brief description of the incident and target information
Related Cases	Lists court cases considered linked, most often by indictees associated with the same group or cell or incidents
Summary	Gives a brief summary of the court case

be finalized and added to ATSCoRR in the future once the case has closed (e.g., cases involving defendants connected to the January 6th Capitol Siege, cases have been delayed by the COVID-19 pandemic, etc.).

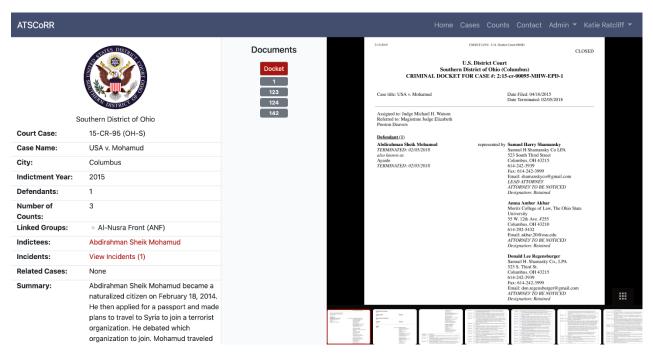
#### **Indictees**

If a user selects a specific defendant (indictee) from the home page or clicks on an indictee link from the court case overview page, they will be directed to information on that specific individual (Figure 4). Again, basic information about the case is included on the left-hand side of the screen (see Table 2). On the opposite side of the screen, users can view an individual defendant's charges and specific outcomes or click a link that routes users back to an overview of the attached court case. Clicking on a red USC number will navigate to a Count Overview page with general conviction statistics regarding that specific criminal statute.

#### Counts

Counts data is integrated in ATSCoRR in two ways: via indictee overview pages, and as a separate function to find cases by count outcome. From the indictee overview page, users can click on a specific count to go directly to conviction statistics for that statute. Alternatively, users can select the "Counts" menu tab and conduct a search for cases and offenders based on geographical, ideological, and temporal (indictment date) filters that contain a specific statute of interest. Additionally, based on early feedback from end users, the presentation of count statistics was simplified from multiple charts to one chart that users can interact with to filter a corresponding cases and offenders list (see Figure 5). Clicking on any count outcome, for example, will display only cases in which that statue resulted in that case outcome.

**Figure 4. Indictee Overview Page** 



**Table 2: Indictee Details** 

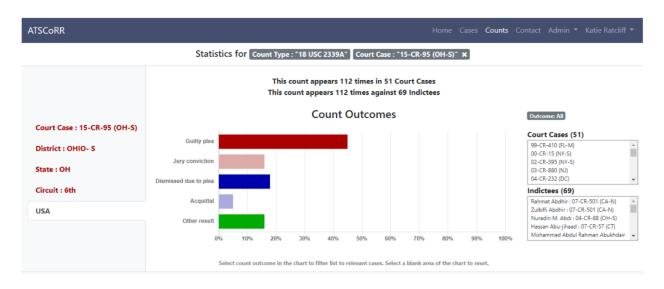
Variable Name	Description
Aliases	Known aliases used by the defendant, particularly
	those listed in the court case
Gender	Gender of the defendant
Citizen	Country or countries of citizenship associated with the defendant (as best can be determined) at the time of indictment
Citizen Type	U.S. citizenship status of the defendant
Arrest Date	Date of arrest on charges for defendant
Age Arrest	Defendant's age at time of arrest on charges
<b>Indictment Date</b>	Date of the original indictment against the defendant in the case
Judgment Date	Date of the judgment against the defendant in the case
Case Outcome	Case result for the defendant
Sentence	Defendant's sentence, if applicable
Linked Groups	Groups linked to the defendant in the case
Related Cases	Lists court cases considered linked, most often by defendants associated with the same group or cell or incidents
Related Indictees	Lists other defendants considered linked, most often by defendants associated with the same group or cell or incidents
Counts	Each defendant page lists the counts against that defendant, and the outcome of that count. Only counts from the "live" indictment are listed. Each count lists the criminal code section and chapter, the result of the count, and the sentence (if applicable). Users can click on any USC code to view associated statistics and find other cases with that charge.

Additionally, users can adjust the geographic filters and view the result of the statute across the United States and down to the court case level. This allows users to see the statute's effectiveness at multiple levels, and to easily navigate to cases and defendants of interest.

At the suggestion of individuals in the Department of Justice National Security Division, ATS counts are presented based on the "main" or "lead" count referenced in the indictment. Indictments will often reference multiple statutes or sections of the criminal code, with one statute most capturing the nature of the charge. In ATSCORR, for example, an indictment may reference a conspiracy charge (18 USC 371) and a material support of terrorism charge (18 USC 2339B), but the count statistics will be relevant to the material support charge rather than just conspiracy.

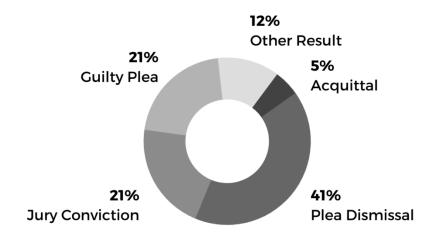
A de-identified version of ATSCoRR count conviction statistics dataset (which includes filter variables that can be applied to count statistic searches, including ideological category, indictment date, main count, and chapter) will be available via the National Archive of Criminal Justice Data (NACJD) and will be linked via the Terrorism Research Center (TRC) website upon approval and release by NACJD.

**Figure 5. Count Conviction Statistics Page** 



#### **Conviction Statistics**

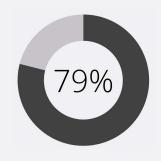
for the 9,202 individual criminal counts in ATSCoRR



#### 5 Most Common USC Chapters

- Monetary Transactions
- Explosive Materials
- Mail Fraud
- Terrorism
- Firearms

#### **Charges Filed Post-9/11 Attacks**



#### PRACTICAL APPLICATIONS

In this section, several examples of ATSCoRR uses are highlighted and suggestions for addition utility in the future. In addition, a draft Use Case document containing specific narratives of these examples has been attached to this final report as Appendix B.

#### **Prosecutorial Strategy**

Success in criminal cases, from a persecutorial standpoint, is most easily measured in conviction rates. Terrorism cases are often complex, and thus, pose several challenges in this regard. The affidavits, charging documents, motions, orders, plea agreements and memorandum available in ATSCORR provide examples of navigating such applications in a format that allows prosecutors to evaluate the strategies and charges that have "worked" in the past and those that have not, resulting in dismissals or acquittals. For example, one of the resultant charges from the siege of the US Capitol Building was Seditious Conspiracy - a relatively rare statute that has seen mixed success, and the prosecution of which can be complex.

#### **Defendant Behavior**

Previous ATS research has shown that, separate from the unique challenge of trying a potentially politically charged case, terrorist defendants themselves behave differently from their conventional criminal counterparts in

federal court. For example, terrorism-related defendants tend to plead guilty less often than most other defendants, and there is a greater chance they will use their case as an opportunity to espouse their beliefs or paint themselves in a way that fosters galvanization of their affiliated movement. These behaviors are exemplified by members of the so-called "Sovereign Citizen" movement. Adherents of the movement are particularly disruptive in court, and ATSCORR contains numerous examples of not only these filings that prosecutors may encounter, but also the judicial system's response to such motions.

#### Case Law

In some instances, higher court rulings may present opportunities to appeal terrorism-related convictions adjudicated in lower courts. For example, Supreme Court case rulings Johnson v. U.S. (2015) and Sessions v. Dimaya (2018) have maintained that some language of federal statutes [i.e., 18 U.S.C. §16(b)] is unconstitutionally vague, including for key concepts like risk and physical force of predicate crimes of violence, and when language is not necessarily based on specific case facts. Such rulings have had direct impact on terrorism-related cases, as similar language has been used in federal statutes to mandate sentence enhancements for terrorists in possession of a firearm who did not commit acts of ideologically motivated violence [i.e., 18 U.S.C. §924(c)]. The informational materials included in the ATSCORR can be valuable resources

for stakeholders wishing to learn which terrorism-related cases may be affected by court cases like Sessions v. Dimaya (2018).

#### **Secondary Research**

Over the last several decades, ATS personnel have collected and coded variables from thousands of pages of federal court records. While these data are broad and have led to numerous funded projects and published reports, the information drawn from these federal court records and coded into the ATSCORR are by no means exhaustive and there remains a wealth of information concerning radicalization, investigation, and prosecutorial strategies within the case documents. ATSCORR removes access barriers, such as navigating the PACER system and case identification, and centralizes these cases in a single location. As such, ATSCORR can be used by analysts to derive original research and analysis, as is often required by federal agencies for the development of intelligence products.

#### **Future Development**

In the future, there could be ways to increase the amount of data made available, the accessibility, and the functionality of the ATSCORR dependent upon the availability of additional resources. First, the ATSCORR would ideally continue to be updated with new terrorism-related federal court documents as more recent cases close. Quantitative trends and patterns would automatically be updated based on the information provided by the new cases. Additional resources would also make it possible to expand the scope of cases included on the web platform. For example, adding types of state-level violent extremism cases would present opportunities to comparatively examine criminal justice responses to multiple forms of terrorism and violent extremism in the U.S.

Second, in addition to increasing content, there may be future opportunities to increase the accessibility of the ATSCORR. Currently, the ATSCORR is only available to law enforcement, intelligence analysts, and researchers who are funded by NIJ. It could be possible, however, to create an alternate, public-facing version of the ATSCORR with fewer access restrictions. A future public-facing version of the ATSCORR may also be funded by nominal user fees.

Third, and finally, the ATSCoRR should continue to evolve in functionality based on the needs of end-users. While one of the core principles of the ATSCoRR was to create a web platform that is simple-to-use with little required training, alternative ways to filter and analyze data may be desired in the future. In addition, users may benefit from the inclusion of other forms of data, such as links to publicly available U.S. Attorney briefs and published works relevant to specific court cases.