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Virtual Hatred: How Russia Tried to Start a Race War in the United States

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VIRTUAL HATRED:
HOW RUSSIA TRIED TO START A RACE WAR
IN THE UNITED STATES

*William J. Aceves**

During the 2016 U.S. presidential election, the Russian government engaged in a sophisticated strategy to influence the U.S. political system and manipulate American democracy. While most news reports have focused on the cyber-attacks aimed at Democratic Party leaders and possible contacts between Russian officials and the Trump presidential campaign, a more pernicious intervention took place. Throughout the campaign, Russian operatives created hundreds of fake personas on social media platforms and then posted thousands of advertisements and messages that sought to promote racial divisions in the United States. This was a coordinated propaganda effort. Some Facebook and Twitter posts denounced the Black Lives Matter movement and others condemned White nationalist groups. Some called for violence. To be clear, these were posts by fake personas created by Russian operatives. But their effects were real. The purpose of this strategy was to manipulate public opinion on racial issues and disrupt the political process. This Article examines Russia's actions and considers whether they violate the international prohibitions against racial discrimination and hate speech.

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INTRODUCTION

During the 2016 U.S. presidential election, the Russian government engaged in a sophisticated strategy designed to influence the U.S. political system and manipulate American democracy.¹ While most news reports have focused on the cyber-attacks aimed at Democratic Party leaders and possible contacts between Russian officials and the Trump presidential campaign, a more pernicious intervention took place.²

1. See generally KATHLEEN HALL JAMIESON, *CYBERWAR: HOW RUSSIAN HACKERS AND TROLLS HELPED ELECT A PRESIDENT* (2018); Theodore R. Johnson, *Fanning the Flames of America's Racial Tensions is as Russian as Vodka and Blini*, SLATE (Feb. 22, 2018), <https://slate.com/technology/2018/02/russias-online-election-meddling-involved-an-old-soviet-tactic-exploiting-u-s-race-relations.html>; Dave Lee, *Facebook Uncovers 'Russian-Funded' Misinformation Campaign*, BBC (Sept. 7, 2017), <https://www.bbc.com/news/technology-41182519>; Scott Shane & Mike Isaac, *Facebook to Turn Over Russian-Linked Ads to Congress*, N.Y. TIMES, Sept. 21, 2017, at A1; Issie Lapowsky, *How Russian Facebook Ads Divided and Targeted US Voters Before the 2016 Election*, WIRED (Apr. 16, 2018), <https://www.wired.com/story/russian-facebook-ads-targeted-us-voters-before-2016-election/>; Alexis C. Madrigal, *What, Exactly, Were Russians Trying to Do With Those Facebook Ads?*, THE ATLANTIC (Sept. 25, 2017), <https://www.theatlantic.com/technology/archive/2017/09/the-branching-possibilities-of-the-facebook-russian-ad-buy/541002/>; Olivia Solon & Sabrina Siddiqui, *Russia-Backed Facebook Posts 'Reached 126m Americans' During US Election*, THE GUARDIAN (Oct. 30, 2017), <https://www.theguardian.com/technology/2017/oct/30/facebook-russia-fake-accounts-126-million>.

2. See, e.g., Mary Louise Kelly, *How the Russia Story Began: "Russian Roulette,"* WASH. POST, Apr. 6, 2018; Eric Lipton et al., *Hacking the Democrats*, N.Y. TIMES, Dec. 13, 2016, at A1; Devlin Barrett & Damian Paletta, *FBI Suspects Russia in Hack of John Podesta Emails*, WALL STREET J., Oct. 12, 2016.

Throughout the campaign, Russian operatives created hundreds of fake personas on social media platforms and then posted thousands of advertisements and messages on important social and political issues, including the impending presidential election.³ These efforts used inaccurate and misleading information in a coordinated campaign to manipulate public opinion and disrupt the political process. Eventually, these posts were viewed by millions of Americans.⁴

Many of these posts addressed race and social justice issues.⁵ To maximize the divisiveness of these posts, Russian operatives often shared competing positions on these issues. Some Facebook, Instagram, and Twitter posts promoted solidarity among communities of color, including African American, Mexican American, and Native American groups.⁶ These posts also called for racial equality. Many highlighted police brutality toward minority groups. Some, however, called for disengagement from the political process. At the same time, Russian operatives released a different set of posts offering a profoundly different perspective on these issues. Some of these posts supported law enforcement and criticized those who questioned the integrity of police officers. Other posts de-

3. See generally Alexis C. Madrigal, *When is a Meme a Foreign-Influence Operation?*, THE ATLANTIC (Dec. 18, 2018), <https://www.theatlantic.com/technology/archive/2018/12/how-russian-operatives-targeted-black-americans/578437/>; Tom McCarthy, *How Russia Used Social Media to Divide Americans*, THE GUARDIAN (Oct. 14, 2017), <https://www.theguardian.com/us-news/2017/oct/14/russia-us-politics-social-media-facebook>.

4. The reach of the social media posts can be measured in several ways. See, e.g., TOW CTR. FOR DIG. JOURNALISM, COLUMBIA JOURNALISM SCH., *Research Director Jonathan Albright on Russian Ad Networks* (Oct. 10, 2017), <https://medium.com/tow-center/research-director-jonathan-albright-on-russian-ad-networks-c015e53d0d68>.

5. Alvin Chang, *When Russian Trolls Wanted to Divide America, They Knew What to Use: Race*, VOX (May 15, 2018), <https://www.vox.com/2018/5/15/17352456/russian-troll-facebook-race-social-science>; Chas Danner, *More Than Half of Russian Facebook Ads Focused on Race*, NEW YORK MAG. (May 12, 2018), <http://nymag.com/daily/intelligencer/2018/05/more-than-half-of-russian-facebook-ads-focused-on-race.html>; Adam Entous et al., *Russian Operatives Used Facebook Ads to Exploit America's Racial and Religious Divisions*, WASH. POST (Sept. 25, 2017), https://www.washingtonpost.com/business/technology/russian-operatives-used-facebook-ads-to-exploit-divisions-over-black-political-activism-and-muslims/2017/09/25/4a011242-a21b-11e7-ade1-76d061d56efa_story.html?noredirect=on&utm_term=.f18192956f80; Mike Issac & Scott Shane, *Russian Facebook Ads Masked Themselves in Gun Rights, Rainbows and Puppies*, N.Y. TIMES, Oct. 2, 2017, at B1.

6. See, e.g., Jessica Guynn, *Russian Facebook Ads Inflamed Hispanic Tensions Over Immigration After Trump Election*, USA TODAY (May 25, 2018), <https://www.usatoday.com/story/tech/2018/05/25/russian-facebook-ads-sought-inflame-hispanic-tensions-after-trump-election/635066002/>; Donnie O'Sullivan, *Newly Released Facebook Ads Show Russian Trolls Targeted Mexican Americans After Trump Election*, CNN TECH (May 10, 2018), <https://money.cnn.com/2018/05/10/technology/russian-facebook-ads-targeted-Mexican-Americans/index.html>.

nounced the Black Lives Matter movement and belittled social justice causes. Some were even more extreme and supported White nationalist groups with calls for violence. In addition to posts on race and social justice issues, Russian operatives also addressed other important and divisive issues, including immigration, LGBT rights, gun control, and religion.⁷ In sum, this was a social media campaign designed to promote racial tensions and undermine the social fabric of the United States.

Russia's social media campaign can be described as propaganda because it sought to covertly influence opinions and behavior in the United States.⁸ Propaganda involves "the communication of facts, fiction, argument, and suggestion, often with the purposeful suppression of inconsistent material, with the hope and intention of implanting in the minds of the 'target' audience certain prejudices, beliefs, or convictions . . ."⁹ Russia's actions can also be described as a sophisticated information operation.¹⁰ Such operations involve "[a]ctions taken by governments or organized non-state actors to distort domestic or foreign political sentiment, most frequently to achieve a strategic and/or geopolitical outcome."¹¹

7. The breadth of the Russian social media campaign is evidenced by the number of distinct issues that were targeted. Issues wholly unrelated to politics were targeted and competing views were offered. See, e.g., Katherine Kirk, *How Russia Sows Confusion in the U.S. Vaccine Debate*, FOREIGN POL'Y (Apr. 9, 2019), <https://foreignpolicy.com/2019/04/09/in-the-united-states-russian-trolls-are-peddling-measles-disinformation-on-twitter/>; Jessica Glenza, *Russian Trolls "Spreading Discord" over Vaccine Safety Online*, THE GUARDIAN (Aug. 23, 2018), <https://www.theguardian.com/society/2018/aug/23/russian-trolls-spread-vaccine-misinformation-on-twitter>.

8. See generally COMPUTATIONAL PROPAGANDA: POLITICAL PARTIES, POLITICIANS, AND POLITICAL MANIPULATION ON SOCIAL MEDIA (Samuel C. Woolley & Philip N. Howard eds., 2019); MICHAEL G. KEARNEY, THE PROHIBITION OF PROPAGANDA FOR WAR IN INTERNATIONAL LAW (2007); Elizabeth A. Downey, *A Historical Survey of the International Regulation of Propaganda*, 5 MICH. J. INT'L L. 341 (1984); Arthur Larson, *The Present Status of Propaganda in International Law*, 31 L. & CONTEMP. PROBS. 439 (1966); Manuel R. Garcia-Mora, *International Responsibility for Subversive Activities and Hostile Propaganda by Private Persons against Foreign States*, 35 IND. L.J. 306 (1960).

9. John B. Whitton, *Aggressive Propaganda*, in 1 INTERNATIONAL CRIMINAL LAW 239 (M. Cherif Bassiouni & Ved P. Nanda eds., 1974). See also L. JOHN MARTIN, INTERNATIONAL PROPAGANDA: ITS LEGAL AND DIPLOMATIC CONTROL (1958); FREDERICK E. LUMLEY, THE PROPAGANDA MENACE (1933).

10. There is a long history of using the press to manipulate public opinion, including with fake news. See, e.g., David Uberti, *The Real History of Fake News*, COLUM. JOURNALISM REV. (Dec. 15, 2016), https://www.cjr.org/special_report/fake_news_history.php. The internet and social media offer unique opportunities for these efforts and represent a new conflict zone. See generally SCOTT J. SHACKELFORD, MANAGING CYBER ATTACKS IN INTERNATIONAL LAW, BUSINESS, AND RELATIONS: IN SEARCH OF CYBER PEACE (2014).

11. FACEBOOK, INFORMATION OPERATIONS AND FACEBOOK 5 (Apr. 27, 2017) [hereinafter FACEBOOK INFORMATION OPERATIONS].

These operations use “false news, disinformation, or networks of fake accounts (false amplifiers)” to manipulate public opinion.¹² Commentators have referred to this behavior as information warfare.¹³ In the intelligence community, Russia’s social media campaign is identified as active measures, part of covert influence operations overseen by Russian intelligence agencies.¹⁴

As the scope of the Russian social media campaign became clear, the federal government responded by imposing sanctions on several Russian entities.¹⁵ In addition, the Justice Department filed criminal indictments against several organizations and individuals implicated in the social media campaign.¹⁶ Congress held hearings and proposed legislation to protect the electoral process.¹⁷ Social media companies purged the Russian accounts and pledged to prevent future intervention by foreign governments.¹⁸ This dynamic of Russian influence operations and corre-

12. *Id.*

13. See generally P.W. SINGER & EMERSON T. BROOKING, *LIKESWAR: THE WEAPONIZATION OF SOCIAL MEDIA* (2018); Herb Lin, *Developing Responses to Cyber-Enabled Information Warfare and Influence Operations*, *LAWFARE* (Sept. 6, 2018), <https://www.lawfareblog.com/developing-responses-cyber-enabled-information-warfare-and-influence-operations#>.

14. See generally *Disinformation: A Primer on Russian Active Measures and Influence Campaigns Before the S. Select Comm. on Intelligence*, 116th Cong. (2017) (statement of General Keith B. Alexander).

15. Exec. Order No. 13848, 83 Fed. Reg. 46843 (Sept. 12, 2018) (Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election). See generally Kristina Daugirdas & Julian Davis Mortenson, *Executive Branch Imposes Limited Russia-Related Sanctions after Statutory Deadlines*, 112 *AM. J. INT’L L.* 296 (2018); Peter Baker, *New Sanctions Put on Moscow Over 2016 Vote*, *N.Y. TIMES*, Mar. 15, 2018, at A1.

16. See, e.g., Deb Riechmann & Eric Tucker, *Russian Woman Charged in First 2018 Election Meddling Case*, *WASH. POST*, Oct. 19, 2018; Matt Apuzzo & Sharon LaFraniere, *Indictment Bares Russian Network to Twist 2016 Vote*, *N.Y. TIMES*, Feb. 16, 2018, at A1.

17. See Evelyn Douek, *Transatlantic Techlash Continues as U.K. and U.S. Lawmakers Release Proposals for Regulation*, *LAWFARE* (Aug. 8, 2018), <https://www.lawfareblog.com/transatlantic-techlash-continues-uk-and-us-lawmakers-release-proposals-regulation>; Derek Hawkins, *The Cybersecurity 202: Election Security Legislation May be Gaining Steam in Congress*, *WASH. POST*, July 12, 2018; see also *Election Interference: Ensuring Law Enforcement is Equipped to Target Those Seeking to Do Harm Before the S. Comm. on the Judiciary*, 115th Cong. (2018).

18. Facebook Staff, *How Are We Working to Protect Election Security on Facebook?*, *FACEBOOK*, <https://www.facebook.com/help/1991443604424859>; Elias Groll, *Zuckerberg: We’re in an “Arms Race” with Russia and AI Will Save Us*, *FOREIGN POL’Y* (Apr. 10, 2018), <https://foreignpolicy.com/2018/04/10/zuckerberg-facebook-were-in-an-arms-race-with-russia-but-ai-artificial-intelligence-will-save-us/>.

sponding U.S. response continued through the 2018 elections and into 2019.¹⁹

While Russia's propaganda campaign implicates U.S. law, it also raises important questions under international law.²⁰ Foreign intervention in domestic affairs affects state sovereignty.²¹ It may affect the right of self-determination.²² Several human rights norms may also be implicated, including freedom of thought, the right to hold opinions without interference, to take part in the conduct of public affairs, and to participate freely in the electoral process. In addition, human rights law prohibits racial discrimination as well as any advocacy that incites hostility or violence based on race.²³ To date, however, the United States has not framed Russia's social media campaign as a violation of international law and has taken no action in the international arena. Even the human rights community has yet to address this issue in any meaningful way.²⁴

19. See generally Joshua Geltzer & Jake Sullivan, *How to Prevent the Next Election Disaster*, POLITICO (Jan. 22, 2019), <https://www.politico.com/magazine/story/2019/01/22/prevent-election-disaster-224032>.

20. This Article takes the position that Russia is directly responsible for the social media campaign under established principles of state responsibility. See William J. Aceves, *Suing Russia: How Americans Can Fight Back against Russia's Campaign to Promote Racial Discrimination and Hatred in the United States* (unpublished manuscript) (on file with author). See also Ashley C. Nicolas, *Taming the Trolls: The Need for an International Legal Framework to Regulate State Use of Disinformation on Social Media*, 107 GEO. L. J. ONLINE 36 (2018). See generally OFFICE DIR. NAT'L INTELLIGENCE, *A GUIDE TO CYBER ATTRIBUTION* (2018), https://www.dni.gov/files/CTIIC/documents/ODNI_A_Guide_to_Cyber_Attribution.pdf.

21. Michael N. Schmitt, *Grey Zones in the International Law of Cyberspace*, 42 YALE J. INT'L L. 1 (2017).

22. Jens David Ohlin, *Did Russian Cyber Interference in the 2016 Election Violate International Law?*, 95 TEX. L. REV. 1579 (2017).

23. See *infra* Pt. II.

24. See, e.g., HUMAN RIGHTS FIRST, *HELSINKI SUMMIT: A REVIEW OF VLADIMIR PUTIN'S RECORD OF HUMAN RIGHTS VIOLATIONS AND ATTACKS ON DEMOCRATIC INSTITUTIONS* (2018), <https://www.humanrightsfirst.org/sites/default/files/factsheet-Putin-July-2018.pdf>. At least one human rights entity has focused on the U.S. response to the Russian social media campaign. The U.N. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression issued a statement expressing concern about the U.S. response when the U.S. intelligence community revealed details on the Russian campaign. Letter from David Kaye, U.N. Special Rapporteur on the Promotion & Prot. of the Right to Freedom of Op. & Expression, to Theodore Allegra, Minister Counselor, Deputy Permanent Representative of the U.S. (Feb. 2, 2018), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23629>. While the Special Rapporteur noted that "governments clearly have a legitimate interest in countering foreign interference with electoral processes," it expressed concern that the U.S. response affected the rights of journalists under the ICCPR. *Id.* at 2.

This Article examines Russia's social media campaign and considers whether it violated the international prohibitions against racial discrimination and hate speech.²⁵ Part I offers a brief review of Russian intervention in American politics and focuses on Russia's social media campaign surrounding the 2016 presidential election. Because these efforts sought to promote racial divisions in the United States, they implicate international human rights law. Accordingly, Part II examines the prohibition against racial discrimination, which is codified in several human rights treaties. It also addresses the corollary prohibition against hate speech under human rights law. Part III then considers whether Russia's actions violate the prohibitions against racial discrimination and hate speech.

Racism has existed for centuries in the United States, and it remains an endemic feature in this country. Accordingly, foreign assistance is not necessary to perpetuate its presence.²⁶ The United States must take direct responsibility for its long history of racism and the continuing marginalization of minority groups. At the same time, foreign intervention can exacerbate these conditions—every hateful word strengthens racism's grasp, and every wrongful act extends its reach. Facebook CEO Mark Zuckerberg has noted that social media offers a form of communication “where resonant messages get amplified many times.”²⁷ This offers both risk and reward. “At its best, this focuses messages and exposes people to different ideas. At its worst, it oversimplifies important topics and pushes us towards extremes.”²⁸ Michael Hayden, the former Director of the Central Intelligence Agency, acknowledged that Russia used these features of social media to take advantage of existing tensions in the United States, noting that “[c]overt influence campaigns don't create divisions on the ground, they amplify divisions on the ground.”²⁹

25. Consistent with international law, this Article uses the term “racial discrimination” to include discrimination based on race, color, descent, ethnicity, or national origin. See *infra* Part II. This Article also recognizes how other distinctions such as religion and language are also implicated in cases of racial discrimination. See generally Aisha Nicole Davis, *Intersectionality and International Law: Recognizing Complex Identities on the Global Stage*, 28 HARV. HUM. RTS. J. 205 (2015); Llezlie L. Green, *Gender Hate Propaganda and Sexual Violence in the Rwandan Genocide: An Argument for Intersectionality in International Law*, 33 COLUM. HUM. RTS. L. REV. 733 (2002).

26. Vann R. Newkirk II, *White Supremacy is the Achilles Heel of American Democracy*, THE ATLANTIC (Apr. 17, 2018), <https://www.theatlantic.com/politics/archive/2018/04/white-supremacy-is-still-americas-biggest-security-threat/557591/>.

27. Mark Zuckerberg, *Building a Global Community*, FACEBOOK (Feb. 16, 2017), <https://www.facebook.com/notes/mark-zuckerberg/building-global-community/10154544292806634/>.

28. *Id.*

29. Julia Ioffe, *The History of Russian Involvement in America's Race Wars*, THE ATLANTIC, Oct. 21, 2017. *But see* John Herman, *Up in Arms*, N.Y. TIMES MAG., Mar. 14, 2017, at 11 (arguing against the perception that social media can be weaponized).

In an era where social media offers a simple and speedy method for reaching billions of people around the world, the implications of Russia's actions are evident.³⁰ Democracy is a powerful yet fragile form of governance. Its legitimacy stems from popular will but its egalitarian principles can be readily coopted by a populist agenda.³¹ When foreign states use sophisticated propaganda campaigns to manipulate political opinion, democracies face even greater risks.³² Technological advances heighten this threat.³³ International human rights law offers a valuable approach for assessing Russia's social media campaign. These norms can help close the echo chamber that has allowed racism to resonate with even greater frequency in the United States.

I. RUSSIAN INTERVENTION IN AMERICAN POLITICS

The history of foreign government intervention in the United States is a long one.³⁴ It can be found in the acts of the English government during the colonial era and throughout the early years of the American republic.³⁵ In fact, foreign government intervention in American po-

30. See generally SINGER & BROOKING, *supra* note 13.

31. See NATIONAL ACADEMIES OF SCIENCES, SECURING THE VOTE: PROTECTING AMERICAN DEMOCRACY 15-17 (2018); STEVEN LEVITSKY & DANIEL ZIBLATT, HOW DEMOCRACIES DIE 1-8 (2018); Sherrilyn Ifill, *It's Time to Face the Facts: Racism is a National Security Issue*, WASH. POST (Dec. 18, 2018), https://www.washingtonpost.com/opinions/its-time-to-face-the-facts-racism-is-a-national-security-issue/2018/12/18/f9746466-02e8-11e9-b5df-5d3874f1ac36_story.html?noredirect=on&utm_term=.7b3748dbc92c.

32. Michael Chertoff & Anders Fogh Rasmussen, *The Unhackable Election: What it Takes to Defend Democracy*, FOREIGN AFFAIRS (Jan./Feb. 2019), <https://www.oreignaffairs.com/articles/2018-12-11/unhackable-election>; JOHN CARLIN & DAVID NEWMAN, HOOVER INST., 2018 AND BEYOND (2018), https://www.hoover.org/sites/default/files/research/docs/carlin_webready.pdf; DIPAYAN GHOSH & BEN SCOTT, NEW AM., DIGITAL DECEIT II: A POLICY AGENDA TO FIGHT DISINFORMATION ON THE INTERNET (2018), <https://www.newamerica.org/public-interest-technology/reports/digital-deceit-ii/>; NAT'L ACADS. OF SCIS., ENG'G, & MED., SECURING THE VOTE: PROTECTING AMERICAN DEMOCRACY (2018); HENRY FARRELL & BRUCE SCHNEIER, COMMON-KNOWLEDGE ATTACKS ON DEMOCRACY (2018); CAN PUBLIC DIPLOMACY SURVIVE THE INTERNET? BOTS, ECHO CHAMBERS, AND DISINFORMATION (Shawn Powers & Markos Kounalakis eds., 2017).

33. Robert Chesney & Danielle Citron, *Deepfakes and the New Disinformation Campaign: The Coming Age of Post-Truth Geopolitics*, FOREIGN AFFAIRS (Jan./Feb. 2019), <https://www.foreignaffairs.com/articles/world/2018-12-11/deepfakes-and-new-disinformation-war>.

34. Karl E. Ettinger, *Foreign Propaganda in America*, 10 PUB. OP. Q. 392 (1946).

35. Alden Fletcher, *Foreign Election Interference in the Founding Era*, LAWFARE (Oct. 25, 2018), <https://www.lawfareblog.com/foreign-election-interference-founding-era>; Eliga H. Gould, *How Did the British Press Cover the American Revolution?*, FOREIGN POL'Y (July

litical life has occurred throughout American history. Such intervention has sought to influence both U.S. domestic and foreign policy. At its most extreme, it sought to undermine the legitimacy of the democratic process and destroy the social fabric of the country. It has appeared in many forms, including pamphlets, magazines, newspapers, radio, television, and movies.³⁶

A. *A Brief History of Russian Intervention in American Politics*

Russian efforts to influence U.S. public opinion can be traced to the Communist International of 1919, which was established at the founding of the Soviet Union.³⁷ Soviet leaders soon recognized that racial inequality in the United States offered an opportunity to undermine the legitimacy of democracy and promote the spread of communism throughout the West.³⁸ Indeed, the Soviet Union routinely used print media to criticize U.S. domestic politics, and racial inequality was often at the center of these efforts.³⁹ The Soviets criticized the treatment of African Americans and used racial inequality to highlight the failings of American democracy. Most of these efforts occurred overseas through Soviet media outlets and statements by proxy states.⁴⁰

Visual images were an important part of Soviet propaganda campaigns, and posters were quite common during this era. Racism was a defining theme in many campaigns.⁴¹ The following two illustrations were

3. 2012), <https://foreignpolicy.com/2012/07/03/how-did-the-british-press-cover-the-american-revolution/>.

36. See generally WAR, MEDIA, AND PROPAGANDA: A GLOBAL PERSPECTIVE (Yahya R. Kamalipour et al. eds., 2004); Elizabeth A. Downey, *A Historical Survey of the International Regulation of Propaganda*, 5 MICH. J. INT'L L. 341 (1984).

37. See, e.g., INTERNATIONAL COMMUNISM AND THE COMMUNIST INTERNATIONAL, 1919-1943, at 15-27 (Tim Rees & Andrew Thorpe eds., 1998); JAMES W. HULSE, THE FORMING OF THE COMMUNIST INTERNATIONAL 1-6 (1964); see also FREDERICK C. BARGHOORN, SOVIET FOREIGN PROPAGANDA 7-9 (1964).

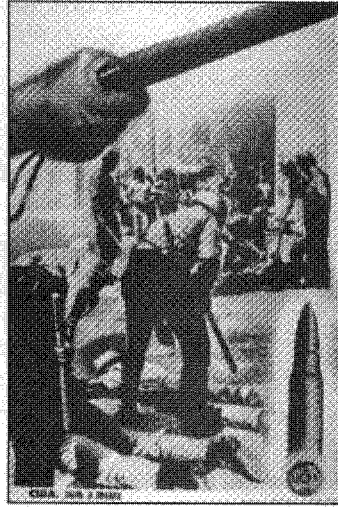
38. MARY L. DUDZIAK, COLD WAR, CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY (2000); Steve Rose, *Racial Harmony in a Marxist Utopia: How the Soviet Union Capitalised on U.S. Discrimination*, THE GUARDIAN (Jan. 24, 2016), <https://www.theguardian.com/artanddesign/shortcuts/2016/jan/24/racial-harmony-in-a-marxist-utopia-how-the-soviet-union-capitalised-on-us-discrimination-in-pictures>.

39. DUDZIAK, *supra* note 38, at 37.

40. *Id.* at 37, 93.

41. See generally MEREDITH L. ROMAN, OPPOSING JIM CROW: AFRICAN AMERICANS AND THE SOVIET INDICTMENT OF U.S. RACISM, 1928-1937 (2012).

drawn by Soviet artist Victor Koretsky and represent some of the images of the United States that the Soviet government conveyed to the world.⁴²



The True Story of 'Rights' in the United States



American Imperialism—It's War, Struggle, Racism!

During the Cold War, countering Russian propaganda became a significant feature of U.S. foreign policy. These efforts even extended to U.S. domestic politics and legal proceedings involving racial discrimination. A surprising forum for these efforts became the U.S. Supreme Court. In *Shelley v. Kraemer*, for example, the Supreme Court was asked

42. *Art and Communism: Soviet posters against Racism and War*, TELESUR (Oct. 25, 2017), <https://www.telesurtv.net/english/multimedia/Art-and-Communism-Soviet-Posters-Against-Racism-and-War-20160906-0026.html>.

to address the constitutionality of racially restrictive covenants in private housing.⁴³ The case involved two private parties and had no connection to the U.S. government or the Soviet Union. Nonetheless, the Justice Department submitted a brief to the U.S. Supreme Court addressing the harmful impact of racial discrimination on the conduct of U.S. foreign policy.⁴⁴ Citing a letter from the Legal Adviser of the State Department, the brief noted, “the United States has been embarrassed in the conduct of foreign relations by acts of discrimination taking place in this country.”⁴⁵ While this case involved the constitutionality of racially restrictive covenants, the Justice Department brief emphasized its implications extended beyond the United States.⁴⁶

Brown v. Board of Education, the seminal decision on racial equality, also reflects Russian influence on American politics.⁴⁷ In its submission to the Supreme Court, the Justice Department argued the constitutionality of racial segregation must be assessed in light of foreign policy considerations.

It is in the context of the present world struggle between freedom and tyranny that the problem of racial discrimination must be viewed. The United States is trying to prove to the people of the world, of every nationality, race, and color, that a free democracy is the most civilized and most secure form of government yet devised by man. We must set an example for others by showing firm determination to remove existing flaws in our democracy.⁴⁸

The Justice Department highlighted how American discrimination and racial segregation were often used by foreign governments, including the Soviet Union, to undermine the legitimacy of American democracy.

43. *Shelley v. Kraemer*, 334 U.S. 1 (1948).

44. Brief for the United States as Amicus Curiae, at 19, *Shelley v. Kraemer*, 334 U.S. 1 (1948).

45. *Id.* at 19 (citing Letter of Ernest A. Gross, Legal Adviser to the Sec’y of State, to the Att’y Gen. (Nov. 4, 1947)).

46. In support of its arguments challenging the constitutionality of racially restrictive covenants, the United States referred to several international sources, including the U.N. Charter, a U.N. General Assembly resolution, and several statements issued at the Inter-American Conference on Problems of War and Peace. *Id.* at 97-100.

47. Mary L. Dudziak, *Brown as a Cold War Case*, 91 J. AM. HIST. 32 (2004); THOMAS BORSTELMANN, *THE COLD WAR AND THE COLOR LINE: AMERICAN RACE RELATIONS IN THE GLOBAL ARENA* (2001).

48. Brief for the United States as Amicus Curiae, at 6, *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

The existence of discrimination against minority groups in the United States has an adverse effect upon our relations with other countries. Racial discrimination furnishes grist for the Communist propaganda mills, and it raises doubts even among friendly nations as to the intensity of our devotion to the democratic faith.⁴⁹

In support of its submission, the Justice Department included correspondence prepared by Secretary of State Dean Acheson that described the harmful effects of racial segregation on U.S. foreign policy. According to the Secretary Acheson, “[t]he United States is under constant attack in the foreign press, over the foreign radio, and in such international bodies as the United Nations because of various practices of discrimination against minority groups in this country.”⁵⁰ The U.S. commitment to “freedom, justice, and democracy” was subject to challenge, particularly in this case which involved racial segregation of school children.⁵¹

Although progress is being made, the continuance of racial discrimination in the United States remains a source of constant embarrassment to this Government in the day-to-day conduct of its foreign relations; and it jeopardizes the effective maintenance of our moral leadership of the free and democratic nations of the world.⁵²

When the Supreme Court issued its decision in *Brown*, the U.S. government broadcast the news around the world, even as federal officials downplayed its significance at home.⁵³ And when Southern states challenged desegregation, such as the refusal of Arkansas governor Orval Faubus to desegregate high schools in Little Rock, the Soviet Union was quick to publicize and condemn these efforts.⁵⁴

Throughout the Cold War, the Soviet Union regularly used propaganda to maintain political control within the Soviet bloc and extend its reach around the world.⁵⁵ As part of these propaganda efforts, the Soviet government used traditional media as well as intelligence resources to

49. *Id.*

50. *Id.* at 7 (quoting letter from the Sec’y of State Dean Acheson to the Att’y Gen. (Dec. 2, 1952)).

51. *Id.* at 8.

52. *Id.*

53. BORSTELMANN, *supra* note 47, at 94.

54. Ioffe, *supra* note 29.

55. *See, e.g.*, LINDA RISSO, PROPAGANDA AND INTELLIGENCE IN THE COLD WAR: THE NATO INFORMATION SERVICE (2014); WALTER L. HIXSON, PARTING THE CURTAIN: PROPAGANDA, CULTURE, AND THE COLD WAR, 1945-1961 (1998).

pursue its strategic goals against the United States.⁵⁶ The end of the Cold War and the disintegration of the Soviet Union offered a brief pause, but efforts to undermine American democracy were quietly resumed by a re-surgent Russia.

B. *Russian Intervention in the 2016 U.S. Presidential Election*

Under Vladimir Putin, traditional media sources were still used by Russia in its propaganda campaigns.⁵⁷ The advent of social media, which offers an inexpensive and anonymous platform to reach millions of people, provided Russia with a unique opportunity.⁵⁸

1. The Work of the Internet Research Agency

Russian operations to influence the 2016 presidential election began in 2014 through the work of the Internet Research Agency, a Russian corporation headquartered in St. Petersburg, Russia.⁵⁹ The Internet Research Agency had direct links to the Russian government and was funded by a multimillion-dollar annual budget. It operated through a sophisticated organizational structure and was supported by hundreds of employees. Its mission was to engage in “information warfare against the

56. See Andrew Wilson, *Four Types of Russian Propaganda*, ASPEN REV. (2015), <https://www.aspen.review/article/2017/four-types-of-russian-propaganda/>.

57. For example, the Russian government funded the establishment of Russia Today, now known as RT, as a media company that would provide a pro-Russian perspective on the news. See generally Jim Rutenberg, *RT, Sputnik and Russia's New Theory of War*, N.Y. TIMES MAG., Sept. 17, 2017, at MM44.

58. See generally DIPAYAN GHOSH & BEN SCOTT, *NEW AM., #DIGITAL DECEIT: THE TECHNOLOGIES BEHIND PRECISION PROPAGANDA ON THE INTERNET* (2018), <https://www.newamerica.org/public-interest-technology/policy-papers/digitaldeceit/>.

59. See generally Jason Murdock, *What is the Internet Research Agency? Facebook Shuts Hundreds of Accounts Linked to Russian Troll Factory*, NEWSWEEK (Apr. 4, 2018), <https://www.newsweek.com/what-internet-research-agency-facebook-shuts-hundreds-accounts-linked-russia-870889>; Krishnadev Calamur, *What is the Internet Research Agency?*, THE ATLANTIC (Feb. 16, 2018), <https://www.theatlantic.com/international/archive/2018/02/russia-troll-farm/553616/>; Adrian Chen, *What Mueller's Indictment Reveals About Russia's Internet Research Agency*, NEW YORKER (Feb. 16, 2018), <https://www.newyorker.com/news/news-desk/what-muellers-indictment-reveals-about-russias-internet-research-agency>; Daisy Sindelar, *The Kremlin's Troll Army*, THE ATLANTIC (Aug. 12, 2014), <https://www.theatlantic.com/international/archive/2014/08/the-kremlins-troll-army/375932/>; ANDREI SOLDATOV & IRINA BOROGAN, *THE RED WEB: THE KREMLIN'S WARS ON THE INTERNET* (2017).

United States of America” and “spread distrust towards the candidates and the political system in general.”⁶⁰

The staff at the Internet Research Agency worked in teams, each focusing on different issues such as domestic politics or foreign policy.⁶¹ To hide their Russian identity, they used proxy servers and communicated in English.⁶² Many social media accounts were created using personal information stolen from real people. The staff was required to meet publication quotas on drafting new posts and commenting on existing posts.⁶³ Productive staff members were awarded bonuses, and unproductive staff was subjected to fines.⁶⁴ The process of creating fake posts was data-driven.

Every day at the Internet Research Agency was essentially the same The first thing employees did upon arriving at their desks was to switch on an Internet proxy service, which hid their I.P. addresses from the places they posted Workers received a constant stream of “technical tasks”—point-by-point exegeses of the themes they were to address, all pegged to the latest news.⁶⁵

In its operations against the United States, the Internet Research Agency developed a multi-faceted campaign that involved both social media platforms and real-world activities.⁶⁶ It created fictitious social media accounts as well as thematic group pages on Facebook, Twitter, and Instagram.⁶⁷ These thematic groups addressed a number of distinct topics, including race, law enforcement, immigration, gun rights, LGBT rights, and religion.⁶⁸ In addition, the Internet Research Agency purchased thousands of ads for targeted distribution on social media platforms.

60. *United States v. Internet Research Agency*, No. 18-cr-0032 (DLF), at 6 (D.D.C. Feb. 16, 2018).

61. Adrian Chen, *The Agency*, N.Y. TIMES MAG., June 6, 2015, at 57.

62. A proxy server is a computer that serves as an intermediary between a user and another computer. It can facilitate anonymous online activity.

63. SINGER & BROOKING, *supra* note 13, at 111-14.

64. Chen, *supra* note 61, at 57.

65. *Id.*

66. See generally April Glaser, *What We Know About How Russia's Internet Research Agency Meddled in the 2016 Election*, SLATE (Feb. 16, 2018), <https://slate.com/technology/2018/02/what-we-know-about-the-internet-research-agency-and-how-it-meddled-in-the-2016-election.html>; *Inside the Internet Research Agency's Lie Machine*, THE ECONOMIST (Feb. 22, 2018), <https://www.economist.com/briefing/2018/02/22/inside-the-internet-research-agencys-lie-machine>.

67. These fake identities are euphemistically referred to as “sockpuppets.”

68. Thematic pages were created for groups such as Secured Borders, Blacktivist, United Muslims of America, Army of Jesus, South United, and Heart of Texas.

While some of these ads specifically addressed the 2016 presidential election, many did not.

The process of social media influence began with the development of an online presence.⁶⁹ Once a fake account was established, it would be used to build followers and gain credibility with a broader audience. Over time, the account would incorporate targeted messages. These accounts were also used to support other accounts, both real and fake. This strategy legitimized fake accounts and amplified their messages. In addition, these accounts would purchase fake ads to extend their reach. Social media platforms allowed for these ads to be directed at particular groups through various criteria, including demographic data, location, interests, and behavior.⁷⁰ The following chart illustrates how the Russian social media strategy worked.



69. See generally Brian Feldman, *Did Russia's Facebook Ads Actually Swing the Election?*, N.Y. MAG. (Oct. 20, 2017), <http://nymag.com/selectall/2017/10/did-russias-facebook-ads-actually-swing-the-election.html>.

70. See, e.g., FACEBOOK, <https://www.facebook.com/business/products/ads/ad-targeting>.

Facebook describes this process as false amplification, in which coordinated activity among inauthentic and connected accounts seeks to manipulate public opinion.⁷¹ This activity has several goals:

- *Promoting or denigrating a specific cause or issue.* This is the most straightforward manifestation of false amplifiers. It may include the use of disinformation, memes, and/or false news. There is frequently a specific hook or wedge issue that the actors exploit and amplify, depending on the targeted market or region. This can include topics around political figures or parties, divisive policies, religion, national governments, nations and/or ethnicities, institutions, or current events.
- *Sowing distrust in political institutions.* In this case, fake account operators may not have a topical focus, but rather seek to undermine the status quo of political or civil society institutions on a more strategic level.
- *Spreading confusion.* The directors of networks of fake accounts may have a longer-term objective of purposefully muddying civic discourse and pitting rival factions against one another. In several instances, we identified malicious actors on Facebook who, via inauthentic accounts, actively engaged across the political spectrum with the apparent intent of increasing tensions between supporters of these groups and fracturing their supportive base.⁷²

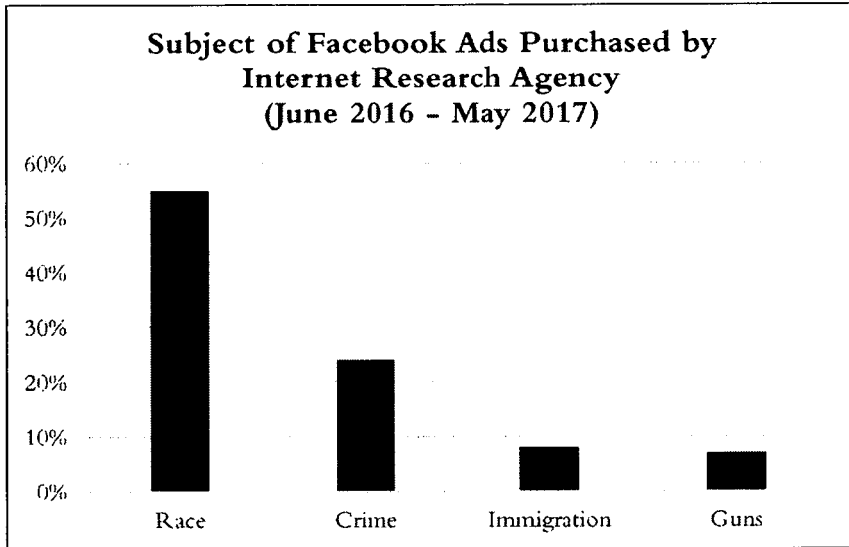
According to several estimates, the Internet Research Agency purchased approximately 3,517 ads on Facebook from June 2015 through August 2017.⁷³ But in all likelihood, this does not reveal the full scope of the Russian operation on Facebook because these accounts and corresponding ads were specifically designed to hide their origins. These ads focused on several social and political issues.⁷⁴

71. FACEBOOK INFORMATION OPERATIONS, *supra* note 11, at 5.

72. *Id.* at 8.

73. Nick Penzenstadler et al., *We Read Every One of the 3,517 Facebook Ads Bought by Russians. Here's What We Found*, USA TODAY (May 31, 2018), <https://www.usatoday.com/story/news/2018/05/11/what-we-found-facebook-ads-russians-accused-election-meddling/602319002/> [hereinafter USA TODAY STUDY]; Issie Lapowsky, *House Democrats Release 3,500 Russia-Linked Facebook Ads*, WIRED (May 10, 2018), <https://www.wired.com/story/house-democrats-release-3500-russia-linked-facebook-ads/>.

74. See generally Dan Keating et al., *The Facebook Ads Russians Targeted at Different Groups*, WASH. POST, Nov. 1, 2017.



Approximately 55% of the Facebook ads addressed race.⁷⁵ While some of these ads made explicit reference to the 2016 presidential election or the candidates, many ads focused on discrete issues or targeted specific groups from both sides of the ideological spectrum.

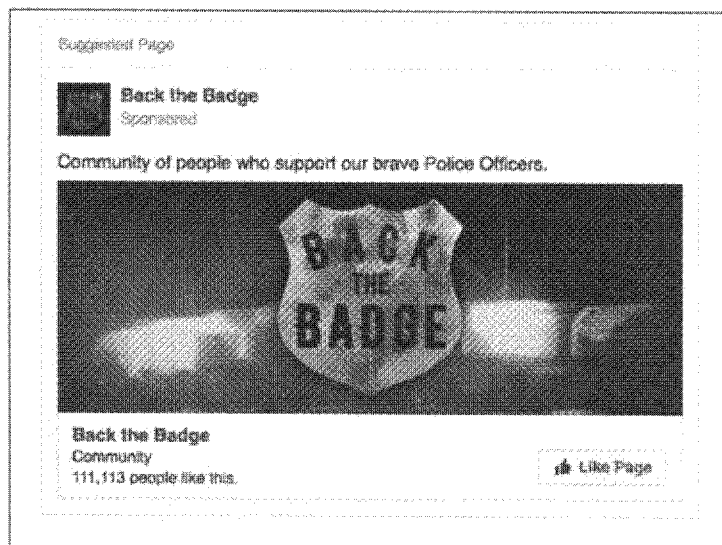
For example, the Internet Research Agency created a Facebook ad on October 19, 2016 called “Back the Badge.”⁷⁶ The ad cost 110,587 rubles (approximately \$1,800).⁷⁷ It targeted individuals between the ages of 20 to 65+ living in the United States with the following interests: Support Law Enforcement, The Thin Blue Line, Officer Down Memorial Page, Police Wives United, National Police Wives Association, or Heroes Behind the Badge.⁷⁸

75. See Sam Levin et al., “Our Pain for their Gain:” *The American Activists Manipulated by Russian Trolls*, THE GUARDIAN (Oct. 21, 2017), <https://www.theguardian.com/world/2017/oct/21/russia-social-media-activism-blacktivist>; Sam Levin, *Did Russia Fake Black Activism on Facebook to Sow Division in the US?*, THE GUARDIAN (Sept. 30, 2017), <https://www.theguardian.com/technology/2017/sep/30/blacktivist-facebook-account-russia-us-election>.

76. Archive of Social Media Advertisements, U.S. HOUSE OF REPRESENTATIVES, PERMANENT SELECT COMM. ON INTELLIGENCE, File: P(1)0005294, Ad. ID 2751, https://drive.google.com/open?id=1I3ZxNa7qqosAwC-zj-fdSNq4IL_pKRvh.

77. Facebook records reveal the denomination of origin used to purchase the ads. The Internet Research Agency ads were purchased in Russian currency (rubles). *Id.*

78. *Id.*



This ad received 1,334,544 ad impressions and 73,063 ad clicks. It was the most successful Facebook placement by the Internet Research Agency. According to Facebook, an ad impression occurs when a publisher delivers an ad to a user.⁷⁹ While an ad impression does not guarantee the ad was actually viewed by a user, it does reveal the reach of these ads.⁸⁰

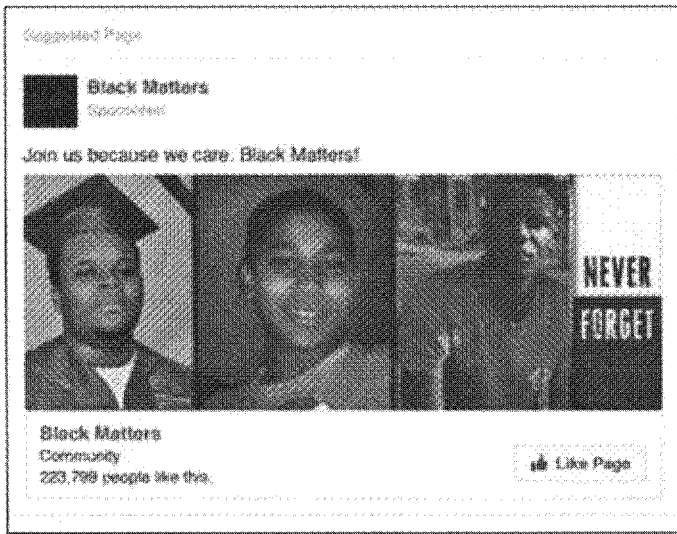
Another Facebook ad titled “Black Matters” was created by the Internet Research Agency on July 13, 2015.⁸¹ The ad cost 151,608 rubles (approximately \$2,222). This ad targeted individuals between the ages of 18-65+ living in the United States who matched with the following interests: Martin Luther King, Jr., African American Civil Rights Movement, African American history, Malcolm X, blacknews.com, HuffPost Black Voices, or African American.⁸²

79. Facebook Business, *The Value of Viewed Impressions*, FACEBOOK (Feb. 18, 2015), <https://www.facebook.com/business/news/viewed-impressions>.

80. *Id.* Facebook distinguishes between served impressions, which indicates an ad was delivered to a user, and viewed impressions, which indicates the ad was actually viewed by a user.

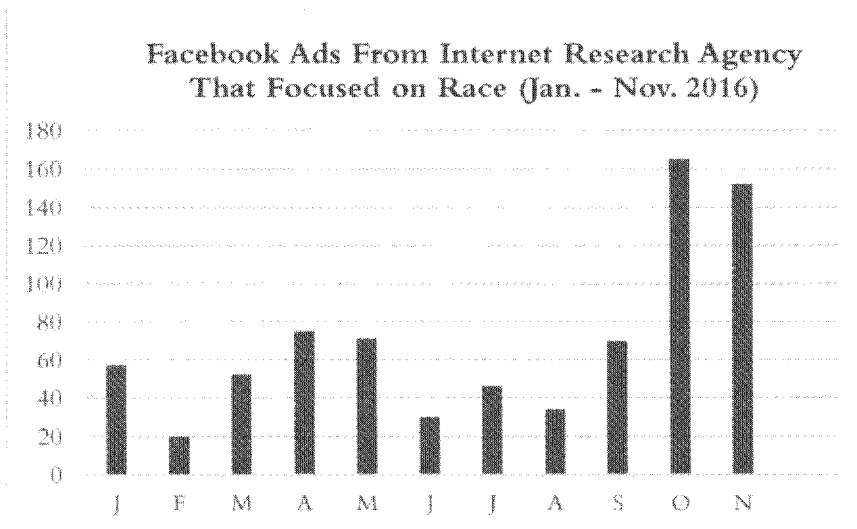
81. Archive of Social Media Advertisements, U.S. HOUSE OF REPRESENTATIVES, PERMANENT SELECT COMM. ON INTELLIGENCE, https://drive.google.com/open?id=1yxQ7-T_5aWvfMaIOMjrfOFjrnP2PNQfVm.

82. *Id.*



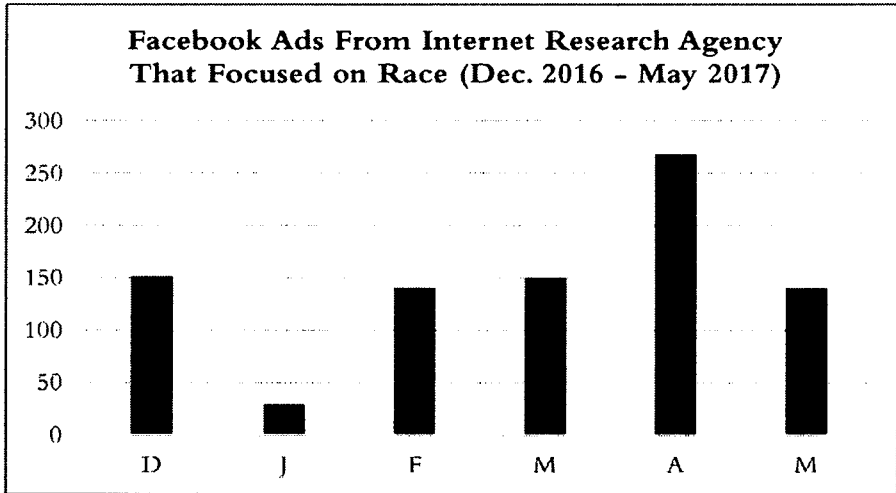
This ad received 784,116 ad impressions and 55,761 ad clicks.

The number of monthly Facebook ads focusing on race varied throughout the election cycle.⁸³ From June 2015 through December 2015, they ranged from 20-70 per month. These numbers remained relatively constant with minor fluctuations through September 2016. They increased considerably one month before the election in October 2016 and continued at a high rate into November 2016.



83. USA TODAY STUDY, *supra* note 73.

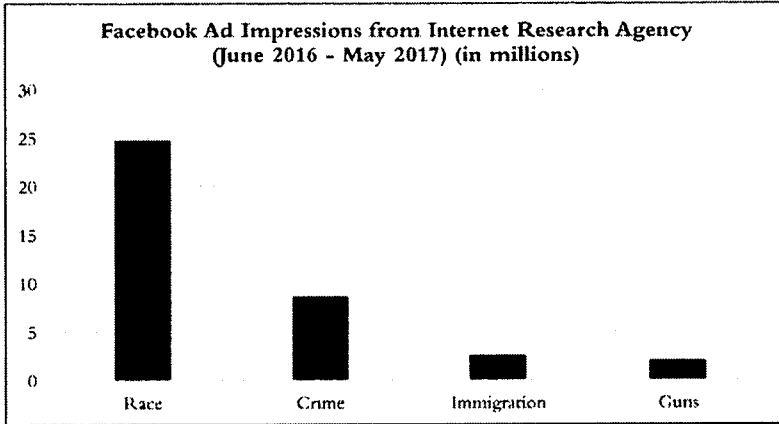
The Facebook ads did not stop after the election.⁸⁴ They continued at a high level in December 2016. In January 2017, there was a significant decrease. The posts returned to high levels in February 2017, and they remained at comparable levels through May 2017. A small number of ads were purchased in June, July, and August 2017.



In total, the Internet Research Agency purchased approximately 3,517 Facebook ads from June 2015 through August 2017, with the majority of these ads focusing on race.⁸⁵ One way to measure the impact of this campaign is to consider the number of ad impressions garnered by each ad.

84. *Id.*

85. *Id.*



Ads addressing race received approximately 25 million impressions between June 2016 and May 2017. These numbers reveal the extraordinary reach of the Russian propaganda campaign.

Several Facebook groups created by the Internet Research Agency were particularly active: Blacktivist, Heart of Texas, United Muslims of America, Being Patriotic, Secured Borders, and LGBT United. These groups generated thousands of posts. These posts were then shared millions of times.⁸⁶ Unlike Facebook ads that are purchased and then directed at targeted groups by the owner, this data reveals the organic reach of these Facebook groups.⁸⁷

Name of Group	Facebook URL	Total Shares	Interactions
Blacktivist	/Blacktivist	103,767,792	6,182,835
Heart of Texas	/Txrebels	102,950,151	3,453,143
United Muslims of America	/MuslimAmerica	71,355,895	2,128,875
Being Patriotic	/Patriototus	51,139,860	4,438,745
Secured Borders	/Secured.Borders	5,600,136	1,592,771
LGBT United	/Lgtbun	5,187,494	1,262,386

86. Dataset of 3000 Posts from Five Removed Facebook Pages Linked to the 2016 U.S. Election Investigation by Tow Center for Digital Journalism, Columbia Journalism School, <https://drive.google.com/open?id=1focZp2fN7nDV3ftHfg-KFQ0nlzBJycpy>.

87. On social media platforms, an interaction occurs when users comment, like, or share a post. See Megan O'Neill, *How to Drive Meaningful Interactions in Facebook Groups*, SOC. MEDIA EXAMINER (Feb. 20, 2018), <https://www.socialmediaexaminer.com/how-to-drive-meaningful-interactions-in-facebook-groups/>.

In addition to Facebook, the Internet Research Agency used Twitter as part of its social media campaign.⁸⁸ While some of these Twitter accounts were operated by human beings, many were Twitter bots, which are automated programs that can generate millions of tweets with minimal resources.⁸⁹ Several fake Twitter accounts created by the Internet Research Agency generated tweets that were widely shared.⁹⁰

Name of Tweeter	Retweet Count	Text Excerpt
trayneshacole	20,494	go all the way off
ten_gop	12,078	OMG, this new Anti-Hillary ad is brilliant. It's fantastic!!!!!! Spread it far and wide!
ten_gop	10,042	RT the hell out of it: Dem party operatives: "We've been bussing people in..for 50 yrs and we're not going to sto..."
bleepthepolice	10,310	Wow. Hadn't thought of it that way but that's exactly what is happening. So true. #BlackLivesMatter
trayneshacole	9,432	White boyfriend shows true colors on his Black girlfriend over Trump, #BlackLivesMatter Girl, you should've punch ...
ten_gop	4,211	While Michelle Obama campaigning for Hillary American blacks are waking up and seeing Hillary for who she really is

The "ten_gop" group was a particularly active and influential fake Twitter account.⁹¹ It purported to represent the Tennessee GOP. It had

88. Ben Popken, *Twitter Deleted 200,000 Russian Troll Tweets. Read Them Here*, NBCNEWS (Feb. 14, 2018), <https://www.nbcnews.com/tech/social-media/now-available-more-200-000-deleted-russian-troll-tweets-n844731>. Several websites have compiled the tweets that were prepared by the Internet Research Agency. See, e.g., THE RUSSIA TWEETS, <https://perma.cc/P26A-FBJJ> (last visited Apr. 16, 2019).

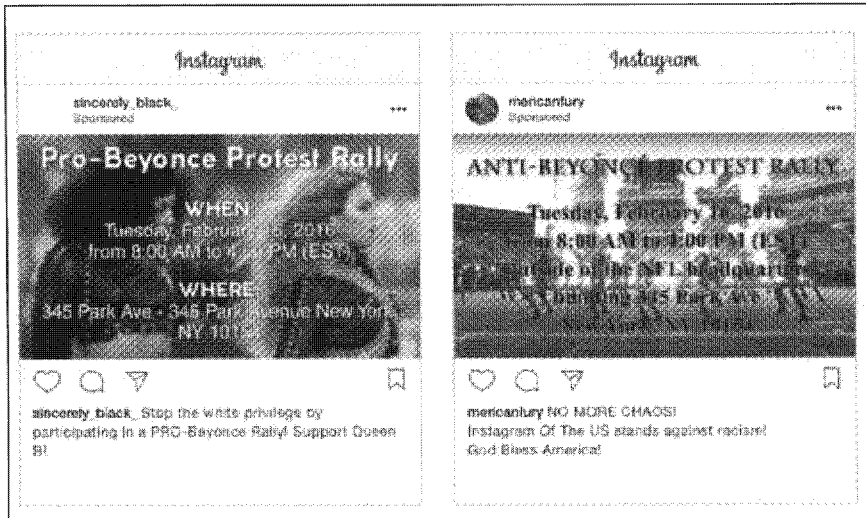
89. FREEDOM HOUSE, *FREEDOM ON THE NET 2017: MANIPULATING SOCIAL MEDIA TO UNDERMINE DEMOCRACY* 9 (2017).

90. Ben Nimmo et al., *#TrollTracker: Twitter Troll Farm Archives*, MEDIUM (Oct. 17, 2018), <https://perma.cc/EG4D-396Q>.

91. Feldman, *supra* note 69.

approximately 136,000 followers, which was ten times as many as the real Twitter account for the Tennessee GOP. In addition, its tweets were routinely quoted by news outlets around the country.⁹²

Instagram accounts were also used by the Internet Research Agency. In fact, one set of Instagram posts highlights the pernicious nature of Russia's social media campaign. Two separate Instagram accounts promoted competing rallies at the headquarters of the National Football League at 345 Park Avenue in New York City at 8:00 a.m. on February 16, 2016.⁹³ The rallies were called in response to the halftime performance of Beyoncé at the Super Bowl, a performance that acknowledged the Black Lives Matter movement.⁹⁴ One rally was designated as a "Pro-Beyoncé Protest Rally" and was meant to attract individuals interested in denouncing "[W]hite privilege." The competing rally was designated as an "Anti-Beyoncé Protest Rally" and was designed to attract individuals interested in denouncing "racism."



92. *Id.*

93. See Tony Romm, "Pro-Beyoncé" vs. "Anti-Beyoncé": 3,500 Facebook Ads Show the Scale of Russian Manipulation, WASH. POST, May 10, 2018; Olivia Solon & Julia Carrie, #BlueLivesMatter and Beyoncé: Russian Facebook Ads Hit Hot-Button US Issues, THE GUARDIAN (May 10, 2018), <https://www.theguardian.com/us-news/2018/may/10/russia-facebook-ads-us-elections-congress>.

94. Katie Rogers, Beyoncé Faces Police Boycott of Her Concert in Miami, N.Y. TIMES, (Feb. 19, 2016), <https://www.nytimes.com/2016/02/20/arts/music/beyonce-concert-boycotted-by-police-group-over-halftime-show.html>.

When the counter-rallies took place in New York, there were few confrontations and no violence occurred.⁹⁵

This was not an isolated event. On several occasions, the Russian propaganda campaign moved from the virtual world to the real world.⁹⁶ On some occasions, the Internet Research Agency hired individuals to organize these rallies.⁹⁷ On other occasions, it would hire individuals to carry signs with pre-selected messages at these rallies.

2. Discovering Russia's Active Measures Campaign

While there were some reports before the 2016 presidential election that Russia was seeking to disrupt the electoral process, the scope of the Russian propaganda campaign became evident in early 2017. On January 6, 2017, the U.S. intelligence community released an unclassified report that described the multi-faceted nature of the Russian campaign.⁹⁸ The report was a collaborative document prepared by the Central Intelligence Agency, National Security Agency, and the Federal Bureau of Investigation.⁹⁹ The report offered several key findings. First, it determined Russian President Vladimir Putin ordered the social media campaign, and the campaign was managed by Russian intelligence agencies.¹⁰⁰ Second, it established the campaign had two basic goals: (1) to support the presidential campaign of Donald Trump and weaken the campaign of Hillary Clinton; and (2) to undermine public faith in the U.S. electoral process and the democratic system.¹⁰¹ Third, it found that the campaign involved multiple actors, including the Russian government and intelligence agencies as well as state-funded media companies, private corporations, and

95. Amber Jamieson, *Anti-Beyonce Protest Countered by Black Lives Matter Demonstration*, THE GUARDIAN (Feb. 16, 2016), <https://www.theguardian.com/music/2016/feb/16/anti-beyonce-protest-new-york-black-lives-matter-super-bowl-half-time-show>.

96. See, e.g., Scott Shane, *How Unwitting Americans Encountered Russian Operatives Online*, N.Y. TIMES, Feb. 18, 2018, at A1; *Russians Staged Rallies for and Against Trump to Promote Discord, Indictment Says*, BLOOMBERG (Feb. 17, 2018), <http://fortune.com/2018/02/17/russian-organized-rallies-election-meddling/>; Claire Allbright, *A Russian Facebook Page Organized a Protest in Texas. A Different Russian Page Launched the Counterprotest*, TEX. TRIB., Nov. 1, 2017; Casey Michel, *How the Russians Pretended to be Texans—And Texans Believed Them*, WASH. POST., Oct. 17, 2017.

97. Indictment at 20–23, *United States v. Internet Research Agency*, No. 18-cr-00032-DLF (D.D.C. Feb. 16, 2018), 2018 WL 91477 [hereinafter *IRA Indictment*].

98. OFFICE OF THE DIRECTOR OF NAT'L INTELLIGENCE, *ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS (2017)* [hereinafter *2017 NATIONAL INTELLIGENCE REPORT*].

99. *Id.* at i.

100. *Id.* at 1.

101. *Id.* at 1–2.

individuals.¹⁰² While private corporations and individuals participated in these efforts, the report indicated they operated under the direction and support of the Russian government.¹⁰³

By Fall 2017, the scope of the Russian campaign had been fully exposed. On November 1, 2017, the House Select Committee on Intelligence held hearings with senior management from Facebook, Twitter, and Google.¹⁰⁴ In their written testimony, Facebook officials revealed that the Internet Research Agency had spent approximately \$100,000 to purchase over 3,000 Facebook and Instagram ads between June 2015 and August 2017.¹⁰⁵ In addition, Facebook determined that the Internet Research Agency set up approximately 120 Facebook accounts and that these accounts then posted over 80,000 pieces of content between January 2015 and August 2017.¹⁰⁶ According to Facebook, “[m]ost of the ads appear to focus on divisive social and political messages across the ideological spectrum, touching on topics from LGBT matters to race issues to immigration to gun rights.”¹⁰⁷ These ads were often forwarded by users to other users. Accordingly, Facebook concluded that Russian social media posts may have reached approximately 126 million users.¹⁰⁸

Twitter officials identified approximately 2,752 accounts that were linked to the Internet Research Agency.¹⁰⁹ These accounts posted approximately 131,000 messages.¹¹⁰ In addition, Twitter officials identified approximately 36,000 accounts with suspicious attributes or activities relating to the 2016 presidential election.¹¹¹ These accounts posted approximately 1.4 million tweets relating to the U.S. presidential elections from September through November 2016, and these tweets received approximately 288 million impressions.¹¹²

Google had the least amount of activity associated with the Russian propaganda campaign. Google identified only two accounts that appeared

102. *Id.* at 2.

103. *Id.* at 1–2.

104. Mike Isaac & Daisuke Wakabayashi, *Broad Reach of Campaign by Russians is Disclosed*, N.Y. TIMES, Oct. 30, 2017, at B1.

105. *Russian Investigative Task Force Hearing with Social Media Companies Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 4 (2017) (statement of Colin Stretch, General Counsel, Facebook).

106. *Id.* at 4.

107. *Id.* at 5.

108. *Id.*

109. *Russian Investigative Task Force Hearing with Social Media Companies Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 11 (2017) (statement of Sean J. Edgett, Acting General Counsel, Twitter, Inc.).

110. *Id.* at 12.

111. *Id.* at 9–10.

112. *Id.* at 9.

to be a part of the campaign.¹¹³ Google officials acknowledged that this activity may have been limited “because of various safeguards that we had in place in advance of the 2016 election, and the fact that Google’s products didn’t lend themselves to the kind of micro-targeting or viral dissemination that these actors seem to prefer.”¹¹⁴

In his opening remarks at the November 2017 House hearing, Majority Member Michael Conaway acknowledged the scope of Russia’s propaganda campaign and its use of race.

It is no secret that Russian actors used your social media platforms during and after the election cycle to communicate messages to the American public, many of which sought to sow discord, racial animus and division among our citizens. Such tactics by foreign adversaries are not new or novel, but the manner in which they can be employed using social media are unique.¹¹⁵

Ranking Member Adam Schiff also recognized that the “social media campaign was designed to further a broader Kremlin objective: sowing discord in the U.S. by inflaming passions on a range of divisive issues.”¹¹⁶

On February 16, 2018, the Justice Department filed a multi-count indictment against the Internet Research Agency, as well as two other entities and thirteen Russian nationals.¹¹⁷ The complaint, which was filed in the federal district court for the District of Columbia, raised eight separate counts: conspiracy to defraud the United States, conspiracy to commit wire fraud and bank fraud, and six counts of aggravated identity theft.¹¹⁸ According to the indictment, the defendants sought to influence the U.S. election and the political system.

Defendants, posing as U.S. persons and creating false U.S. personas, operated social media pages and groups designed to attract U.S. audiences. These groups and pages, which addressed divisive U.S. political and social issues, falsely claimed to be

113. *Russian Investigative Task Force Hearing with Social Media Companies Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 11 (2017) (statement of Kent Walker, Senior Vice President and General Counsel, Google).

114. *Id.* at 3.

115. *Russian Investigative Task Force Hearing with Social Media Companies Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 11 (2017) (statement of Rep. K. Michael Conaway).

116. *Russian Investigative Task Force Hearing with Social Media Companies Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. (2017) (statement of Rep. Adam B. Schiff).

117. IRA Indictment, *supra* note 97.

118. *Id.* at 4, 30, 34.

controlled by U.S. activists when, in fact, they were controlled by Defendants. Defendants also used the stolen identities of real U.S. persons to post on ORGANIZATION-controlled social media accounts. Over time, these social media accounts became Defendants' means to reach significant numbers of Americans for purposes of interfering with the U.S. political system, including the presidential election of 2016.¹¹⁹

The indictment alleged the defendants used false identities to create accounts at U.S. banks, which were then used to fund their social media efforts on various platforms, including Facebook, Twitter, and Instagram. In addition to their social media campaign, the indictment alleged the defendants engaged in other efforts to influence the U.S. election, including organizing political rallies and hiring actors to participate at these rallies.

Defendant ORGANIZATION had a strategic goal to sow discord in the U.S. political system, including the 2016 U.S. presidential election. Defendants posted derogatory information about a number of candidates, and by early to mid-2016, Defendants' operations included supporting the presidential campaign of then-candidate Donald J. Trump ("Trump Campaign") and disparaging Hillary Clinton. Defendants made various expenditures to carry out those activities, including buying political advertisements on social media in the names of U.S. persons and entities. Defendants also staged political rallies inside the United States, and while posing as U.S. grassroots entities and U.S. persons, and without revealing their Russian identities and ORGANIZATION affiliation, solicited and compensated real U.S. persons to promote or disparage candidates. Some Defendants, posing as U.S. persons and without revealing their Russian association, communicated with unwitting individuals associated with the Trump Campaign and with other political activists to seek to coordinate political activities.¹²⁰

The indictment identified several issues raised by the social media campaign. Many ads specifically addressed the candidates in the 2016 presidential campaign, and most of these ads presented Trump in a positive light and Clinton in a negative light.¹²¹ However, some ads did not

119. *Id.* at 3.

120. *Id.* at 4.

121. *Id.* at 20.

address either candidate or the election. Instead, they addressed a range of social issues. Some of these ads targeted conservative voters through accounts titled “Secured Borders,” “Stop A.I. [Alien Invasion],” and “South United.”¹²² But other ads were specifically directed at minority groups through accounts titled “Woke Blacks,” “Blacktivist,” and “United Muslims of America.”¹²³ While these criminal proceedings are pending, the federal district court has already denied several efforts to dismiss the indictment.¹²⁴

On March 22, 2018, the House Permanent Select Committee on Intelligence issued a detailed report on Russia’s social media campaign.¹²⁵ While there were strong disagreements between the majority and minority members on a number of issues, there did not appear to be any disagreement about Russia’s extensive intervention in the election.¹²⁶ The Report on Russia’s Active Measures chronicled Russia’s history of using propaganda and psychological warfare against domestic critics and foreign governments, including the United States.¹²⁷ It also established that these measures were directed against the United States in anticipation of the 2016 presidential election:

The Russian active measures campaign against the United States was multifaceted. It leveraged cyberattacks, covert platforms, social media, third-party intermediaries, and state-run media. Hacked material was disseminated through this myriad network of actors with the objective of undermining the effectiveness of the future administration. This dissemination worked in conjunction with derisive messages posted on social media to undermine confidence in the election and sow fear and division in American society.¹²⁸

The Committee’s report confirmed that Russia’s social media campaign used multiple platforms, including Facebook, Twitter, Instagram, and Google, and that posts were generated through these platforms “to pro-

122. *Id.* at 17, 27.

123. IRA Indictment, *supra* note 97, at 18.

124. *See* United States v. Concord Mgmt. & Consulting LLC, 317 F. Supp. 3d 598 (D.D.C. 2018).

125. H. PERMANENT SELECT COMM. ON INTELLIGENCE, 116TH CONG., REP. ON RUSSIA’S ACTIVE MEASURES (2018), https://intelligence.house.gov/uploadedfiles/final_russia_investigation_report.pdf. [hereinafter HPSCI Report].

126. MINORITY MEMBERS OF H. PERMANENT SELECT COMM. ON INTELLIGENCE, 116TH CONG., REP. ON MINORITY VIEWS (2018), <https://democrats-intelligence.house.gov/uploadedfiles/minorityviews.pdf> [hereinafter Minority Views Report].

127. HPSCI Report, *supra* note 125, at 11-37.

128. *Id.* at 2.

mote divisive social and political messages across the ideological spectrum”¹²⁹

On July 3, 2018, the Senate Select Committee on Intelligence issued its own preliminary report assessing the Russian social media campaign.¹³⁰ While the Senate Committee was conducting a broader investigation, its report focused on the January 2017 report prepared by the U.S. intelligence community. The Senate Committee concluded that the intelligence community report was sound and that subsequent evidence reinforced its findings.¹³¹ For example, the Senate Committee concurred with intelligence and open-source assessments that the Russian “influence campaign was approved by President Putin.”¹³² The Committee added that its own investigation had exposed “a far more extensive Russian effort to manipulate social media outlets to sow discord and to interfere in the 2016 election and American society.”¹³³

On September 28, 2018, the Justice Department filed a criminal complaint against Elena Alekseevna Khusyaynova in federal district court for the Eastern District of Virginia.¹³⁴ The complaint alleged Ms. Khusyaynova was the primary accountant for Project Lakhta, a Russian operation that “engaged in political and electoral interference” that targeted the United States and several other countries.¹³⁵ The complaint described how Project Lakhta was engaging in self-described “information warfare against the United States of America.”¹³⁶ It noted that “[m]embers of the conspiracy, posing as U.S. persons, operated fictitious social media personas, pages, and groups designed to attract U.S. audiences and to address divisive U.S. political and social issues or advocate for the election or electoral defeat of particular candidates.”¹³⁷ According to the complaint, Khusyaynova oversaw all the financial aspects of Project Lakhta, including “the budget and payment of expenses associated with social media operations, web content, advertising campaigns, infrastruc-

129. *Id.* at 33.

130. S. SELECT COMM. ON INTELLIGENCE, 116TH CONG., INITIAL FINDINGS OF INTELLIGENCE COMMUNITY ASSESSMENT (2018), https://www.burr.senate.gov/imo/media/doc/SSCI%20ICA%20ASSESSMENT_FINALJULY3.pdf.

131. *Id.* at 7.

132. *Id.* at 4.

133. *Id.* at 6-7.

134. Affidavit in Support of a Criminal Complaint, *United States v. Khusyaynova*, No. 1:18-MJ-464 (E.D. Va. Sept. 27, 2018) [hereinafter *Khusyaynova Affidavit*].

135. *Id.* at 4; see Quinta Jurecic, *Where in the World is Elena Khusyaynova?*, *LAWFARE* (Oct. 26, 2018), <https://www.lawfareblog.com/where-world-elena-khusyaynova>.

136. *Khusyaynova Affidavit*, *supra* note 134, at 6.

137. *Id.*

ture, salaries, travel, office rent, furniture, and supplies and the registration of legal entities used to further Project Lakhta activities.”¹³⁸

Khusyaynova was charged with conspiracy to defraud the United States based on violations of two federal statutes. The Foreign Agent Registration Act requires agents of foreign principals to register with the federal government and to comply with reporting and disclosure requirements.¹³⁹ The Federal Election Campaign Act prohibits foreign nationals from making a contribution or donation of any kind in connection with a federal, state, or local election in the United States.¹⁴⁰ According to the complaint, Khusyaynova conspired with other individuals to impair, obstruct, and defeat “the lawful governmental functions of the United States by dishonest means in order to enable Project Lakhta actors to interfere with U.S. political and electoral processes, including the 2018 U.S. elections.”¹⁴¹

The Khusyaynova complaint provided extensive details on the Russian social media campaign. For example, the complaint described how members of the conspiracy discussed the timing of messages. Since the conspiracy operated in Russia, there was a significant time difference with the United States.

Posting can be problematic due to time difference, but if you make your re-posts in the morning St. Petersburg time, it works well with liberals – LGBT groups are often active at night. Also, the conservative can view your re-post when they wake up in the morning if you post it before you leave in the evening St. Petersburg time (preliminary translation of Russian text).¹⁴²

Members of the conspiracy were directed to “aggravate the conflict between minorities and the rest of the population.”¹⁴³ Accordingly, the conspiracy used social media “to inflame passions on a wide variety of topics, including immigration, gun control and the Second Amendment, the Confederate flag, race relations, LGBT issues, the Women’s March, and the NFL national anthem debate.”¹⁴⁴ To maximize conflict, messages were often drafted from opposing perspectives.¹⁴⁵

138. *Id.* at 5.

139. Foreign Agent Registration Act, 22 U.S.C. §§ 611-621 (1938).

140. Federal Election Campaign Act, 52 U.S.C. § 30121 (1971).

141. Khusyaynova Affidavit, *supra* note 134, at 6.

142. *Id.* at 14.

143. *Id.* at 13.

144. *Id.*

145. *Id.*

Guidance was offered on how to present messages to liberal and conservative groups. “[I]f you write posts in a liberal group, . . . you must not use Breitbart titles. On the contrary, if you write posts in a conservative group, do not use Washington Post or BuzzFeed’s titles.”¹⁴⁶ Some of the conspiracy’s most offensive statements involved their views on racial minorities. Members of the conspiracy were provided the following instructions on how to target racial minorities.

Colored LGBT are less sophisticated than [W]hite; therefore, complicated phrases and messages do not work. Be careful dealing with racial content. Just like ordinary Blacks, Latinos, and Native Americans, colored LGBT people are very sensitive towards #whiteprivilege and they react to posts and pictures that favor [W]hite people Unlike with conservatives, infographics works well among LGBT and their liberal allies, and it does work very well. However, the content must be simple to understand consisting of short text in large font and a colorful picture (preliminary translation of Russian text).¹⁴⁷

The bulk of the Khusyaynova complaint described how the conspiracy created several fake personas and how they issued false posts. For example, the conspiracy created “Bertha Malone,” a fake persona allegedly from New York City, who then created the “Stop A.I.” Facebook group, one of the most virulently anti-immigrant groups in Russia’s social media campaign.¹⁴⁸ Another fake persona was “Rachell Edison” who created the “Defend the 2nd” Facebook group.¹⁴⁹ Numerous Facebook and Twitter posts were included in the complaint, highlighting the extensive nature of the social media campaign.

In December 2018, the Senate Select Committee on Intelligence announced the release of two reports by independent research groups that addressed Russia’s social media campaign.¹⁵⁰ The reports offered a detailed forensic analysis of data provided by the Committee, and their findings reinforced the conclusion that Russia’s efforts were coordinated, systematic, and sought to polarize and divide the U.S. public.¹⁵¹ They

146. *Id.* at 14.

147. Khusyaynova Affidavit, *supra* note 134, at 14.

148. *Id.* at 20.

149. *Id.* at 21–22.

150. STAFF OF S. SELECT COMM. ON INTELLIGENCE, 115TH CONG., NEW REPORTS SHED LIGHT ON INTERNET RESEARCH AGENCY’S SOCIAL MEDIA TACTICS (2018).

151. See RENEE DiRESTA ET AL., NEW KNOWLEDGE, THE TACTICS AND TROPES OF THE INTERNET RESEARCH AGENCY (2018); PHILIP N. HOWARD ET AL.,

noted, for example, that Russia encouraged “African American voters to boycott elections or follow the wrong voting procedures in 2016, and more recently for Mexican American and Hispanic voters to distrust U.S. institutions.”¹⁵² The Russian campaign encouraged “extreme right-wing voters to be more confrontational.”¹⁵³ The reports also indicated the Russian campaign spread “sensationalist, conspiratorial, and other forms of junk political news and misinformation to voters across the political spectrum.”¹⁵⁴

In March 2019, Special Counsel Robert Mueller released his *Report on the Investigation into Russian Interference in the 2016 Presidential Election*.¹⁵⁵ The report confirmed the existence of the Russian propaganda campaign and determined that “[t]he Russian government interfered in the 2016 presidential election in sweeping and systematic fashion.”¹⁵⁶ The report offered a detailed summary of the evidence in support of the Special Counsel’s conclusion that Russia had implemented “active measures” to disrupt the 2016 election and affect the U.S. political process.¹⁵⁷ While numerous portions of the report were redacted, the information that was released establishes the breadth of Russia’s social media campaign and its targeted scope.¹⁵⁸

Because multiple investigations are ongoing and criminal proceedings continue, the full scope of Russia’s social media campaign has not been fully revealed. However, the following core elements have been established:

- The Russian government authorized and supported a propaganda campaign in the United States that used multiple social media platforms. The Internet Research Agency was an important agent in this campaign.

COMPUTATIONAL PROPAGANDA RESEARCH PROJECT, THE IRA, SOCIAL MEDIA AND POLITICAL POLARIZATION IN THE UNITED STATES, 2012-2018 (2018).

152. HOWARD, *supra* note 151, at 3.

153. *Id.*

154. *Id.*

155. SPECIAL COUNSEL ROBERT S. MUELLER, III, REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION (2019) [hereinafter MUELLER REPORT]. See generally Alina Polyakova, *What the Mueller Report Tells Us About Russian Influence Operations*, BROOKINGS (Apr. 18, 2019), <https://www.brookings.edu/blog/order-from-chaos/2019/04/18/what-the-mueller-report-tells-us-about-russian-influence-operations/>.

156. MUELLER REPORT, *supra* note 155, at 1.

157. The term “active measures” is “a term that typically refers to operations conducted by Russian security services aimed at influencing the course of international affairs.” *Id.* at 14.

158. *Id.* at 16–33. The majority of redactions were made because of concern that the release of the information would cause harm to ongoing investigations.

- The campaign had two strategic objectives: (1) to support the presidential campaign of Donald Trump and weaken the campaign of Hillary Clinton; and (2) to undermine public faith in the U.S. electoral process and the democratic system.
- The campaign used race and racial divisions to promote its strategic objectives.

II. PROMOTING EQUALITY AND PREVENTING RACIAL DISCRIMINATION AND HATE SPEECH: A HUMAN RIGHTS PERSPECTIVE

Since the beginning of the human rights era, international law has addressed racism and discrimination.¹⁵⁹ Equality is a core feature of the human rights canon. Indeed, it represents a defining goal of the United Nations.¹⁶⁰ According to Article 1 of the U.N. Charter, one of the purposes of the United Nations is to encourage “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”¹⁶¹ The prohibition against racial discrimination is an essential corollary and appears in support of the equality norm throughout international law. Racist hate speech, which demeans or threatens groups on racial grounds, is addressed by the prohibition against racial discrimination.¹⁶² Because of its pernicious nature, human rights treaties often address racist hate speech separately.

This Part addresses the prohibitions against racial discrimination and hate speech under international law. It focuses on three treaties that directly address these issues.¹⁶³ Significantly, Russia has ratified these treaties and is in violation of each of them.

159. See, e.g., NATAN LERNER, GROUP RIGHTS AND DISCRIMINATION IN INTERNATIONAL LAW 7-8 (2d ed. 2003); DISCRIMINATION AND HUMAN RIGHTS: THE CASE OF RACISM (Sandra Fredman ed., 2001); MICHAEL BANTON, INTERNATIONAL ACTION AGAINST RACIAL DISCRIMINATION 1-10 (1996).

160. MARY ANN GLENDON, A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 13 (2001). But see Ursula Tracy Doyle, *Strange Fruit at the United Nations*, 61 HOWARD L.J. 187 (2018).

161. U.N. Charter art. 1, ¶ 3.

162. See generally JEREMY WALDRON, THE HARM IN HATE SPEECH (2012); Erik Bleich, *The Rise of Hate Speech and Hate Crime Laws in Liberal Democracies*, 37 J. ETHNIC & MIGRATION STUD. 917 (2011); Stephanie Farrior, *Molding the Matrix: The Historical and Theoretical Foundations of International Law Concerning Hate Speech*, 14 BERKELEY J. INT'L L. 1 (1996); MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT (1993).

163. The International Criminal Tribunal for Rwanda has indicated that the prohibition against hate speech has risen to a customary norm of international law. *Nahimana v. Prosecutor*, ICTR-99-52-A, Appeals Judgment, ¶ 986 (Nov. 28, 2007). However, some commentators have questioned whether the prohibition against hate speech has risen to a

A. *International Convention on the Elimination of all
Forms of Racial Discrimination*

It is not surprising that the first human rights treaty adopted through the United Nations was the International Convention on the Elimination of all Forms of Racial Discrimination (“CERD”).¹⁶⁴ Racial prejudice represented one of the defining features of the Second World War, and it served as an impetus for the creation of the United Nations. The drive to address racism and discrimination became even more pronounced as the United Nations expanded its membership. Many of the new states entering the United Nations had suffered through decades or even centuries of discriminatory treatment by Western powers. Racist oppression permeated the colonial era, and the vestiges of colonialism remained embedded in the international system.¹⁶⁵ And, of course, the apartheid system in South Africa operated as an explicit and state-sanctioned system of racism and discrimination. As a result, former colonies and other developing states called for the adoption of U.N. General Assembly resolutions condemning racism and discrimination.¹⁶⁶

These efforts culminated in CERD’s adoption by the U.N. General Assembly in 1965, and its entry into force in 1969. CERD defines racial discrimination in these terms:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹⁶⁷

customary norm. See, e.g., Roni Cohen, *Regulating Hate Speech: Nothing Customary About It*, 15 CHI. J. INT’L L. 229 (2014).

164. International Convention on the Elimination of all Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195. See generally PATRICK THORNBERRY, *THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION* (2016); NATAN LERNER, *THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION* (2015).

165. FIFTY YEARS OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION xiv, xv (David Keane & Annapurna Waughray eds., 2017).

166. See Theodor Meron, *The Meaning and Reach of the International Convention on the Elimination of all Forms of Racial Discrimination*, 79 AM. J. INT’L L. 283, 284 (1985); Egon Schwelb, *The International Convention on the Elimination of all Forms of Racial Discrimination*, 15 INT’L & COMP. L.Q. 996 (1966).

167. CERD, *supra* note 164, art. 1 ¶ 1.

Under CERD, therefore, claims of racial discrimination must contain five elements:

1. There must be some form of distinction, exclusion, restriction or preference;
2. Based on race, color, descent, or national or ethnic origin;
3. Which has the purpose or effect;
4. Of nullifying or impairing;
5. The recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

CERD offers the most explicit definition of racial discrimination in international law and creates a broad set of state obligations. CERD is also unique among the human rights treaties because it requires states to impose criminal liability on speech that promotes racial hatred or incitement to racial discrimination.

Member states accept several obligations under CERD. Article 2(1), for example, requires states to “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, . . .”¹⁶⁸ To implement this obligation, Article 2(1) then requires member states to refrain from engaging in racial discrimination or sponsoring, defending, or supporting racial discrimination.¹⁶⁹ Member states must also prohibit racial discrimination by any persons or organizations.

Article 5 builds upon the requirements contained in Article 2 by addressing equality under the law. It requires member states to promote equality before the law to all persons without distinction as to race, color, or national or ethnic origin.¹⁷⁰ It then provides a list of rights that must be guaranteed to everyone, including the right to equal treatment before tribunals, the right to security of person, political rights, other civil rights, as well as economic, social, and cultural rights.¹⁷¹

Article 4 addresses the dissemination of ideas based on racial superiority or hatred. Member states are required to condemn “all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any

168. *Id.* art. 2, ¶ 1.

169. *Id.* art. 2, ¶ 1(a)-(e).

170. *Id.* art. 5.

171. *Id.* art. 5(a)-(e).

form”¹⁷² In addition, member states must “undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination”¹⁷³ To fulfill this obligation, member states:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.¹⁷⁴

The Committee on the Elimination of Racial Discrimination (“CERD Committee”) was established under CERD.¹⁷⁵ It consists of a group of independent experts who are selected by member states to monitor treaty compliance. As part of its responsibilities, the CERD Committee reviews regular reports prepared by member states and shares its views on compliance through “concluding observations.”¹⁷⁶ It is authorized to consider inter-state complaints when a member state believes another member state is not giving effect to the treaty.¹⁷⁷ A member state may also accept the CERD Committee’s competence “to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth” in the treaty.¹⁷⁸ In other words, the Committee has the authority to accept claims by individuals against states that have allegedly violated their rights under the treaty.

172. *Id.* art. 4.

173. CERD, *supra* note 164, art. 4.

174. *Id.* art. 4(a)–(c).

175. *Id.* art. 8. Details on the CERD Committee are located on its website: *Committee on the Elimination of Racial Discrimination*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (1996–2019), <https://www.ohchr.org/en/hrbodies/cerd/pages/cerdindex.aspx>.

176. CERD, *supra* note 164, art. 9.

177. *Id.* art. 11.

178. *Id.* art. 14, ¶ 1.

In addition, the CERD Committee offers interpretations of CERD treaty provisions through “general recommendations” and provides commentary on issues relating to racial discrimination through thematic discussions.¹⁷⁹ In its General Recommendation No. 35, the CERD Committee addressed the issue of racist hate speech.¹⁸⁰ While the term “hate speech” is not used in CERD, the Committee made clear that hate speech phenomena is covered by the treaty. According to the Committee, racist hate speech is “understood as a form of other-directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society.”¹⁸¹ The Committee noted that racist hate speech can take many forms beyond “explicitly racial remarks” and can include “indirect language.”¹⁸² Restrictions on hate speech apply “in whatever forms it manifests itself, orally or in print, or disseminated through electronic media, including the Internet and social networking sites, as well as non-verbal forms of expression such as the display of racist symbols, images and behavior at public gatherings, including sporting events.”¹⁸³

As part of their CERD obligations, member states are required to condemn all propaganda that is based on theories of racial superiority or which attempt to justify or promote racial hatred. The CERD Committee has addressed this obligation on several occasions. In General Recommendation No. 15, the Committee indicated that member states must penalize four categories of misconduct: (1) dissemination of ideas based upon racial superiority or hatred; (2) incitement to racial hatred; (3) acts of violence against any race or group of persons of another color or ethnic origin; and (4) incitement to such acts.¹⁸⁴ In General Recommendation No. 35, the Committee expanded on this list and recommended that member states impose criminal sanctions for the following acts:

- (a) All dissemination of ideas based on racial or ethnic superiority or hatred, by whatever means;

179. *Id.* art. 9, ¶ 2.

180. U.N. Human Rights Office of the High Comm’r, Comm. on the Elimination of Racial Discrimination, General Recommendation No. 35: Combating Racist Hate Speech, U.N. CERD/C/GC/35 (Sept. 26, 2013) [hereinafter CERD General Recommendation No. 35].

181. *Id.* ¶ 10.

182. *Id.* ¶ 7.

183. *Id.*

184. U.N. Human Rights Office of the High Comm’r, Comm. on the Elimination of Racial Discrimination, General Recommendation No. 15 on Article 4 of the Convention, at ¶ 3 (1993).

- (b) Incitement to hatred, contempt or discrimination against members of a group on grounds of their race, colour, descent, or national or ethnic origin;
- (c) Threats or incitement to violence against persons or groups on the grounds in (b) above;
- (d) Expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above, when it clearly amounts to incitement to hatred or discrimination;
- (e) Participation in organizations and activities which promote and incite racial discrimination.¹⁸⁵

The CERD Committee has addressed claims involving hate speech in several cases. In *Jewish Community of Oslo v. Norway*, for example, the CERD Committee considered whether the statements of a neo-Nazi group made at a public event constituted hate speech and whether such statements were protected or subject to prosecution.¹⁸⁶ The statements included support of “the [W]hite race,” condemnation of “Communists and Jew-lovers,” and the demonization of immigrants.¹⁸⁷ The authors of the complaint included two leaders of the Jewish community in Norway as well as an anti-racism advocate. To begin with, the Committee found that the authors of the complaint were victims for purposes of the proceedings because “they are at risk of being exposed to the effects of the dissemination of ideas of racial superiority and incitement to racial hatred, without being afforded adequate protection.”¹⁸⁸ The Committee also accepted the authors’ submission that the failure of Norwegian law to punish such racist speech “contributed to an atmosphere in which acts of racism, including acts of violence, are more likely to occur”¹⁸⁹

On the merits, the Committee found that the statements contained “ideas based on racial superiority or hatred” and were hate speech in contravention of CERD. While the statements were “objectively absurd, the lack of logic of particular remarks is not relevant to the assessment of whether or not they violate” the prohibition on racist hate speech.¹⁹⁰ The Committee rejected arguments that such statements were protected expression. It noted that “the principle of freedom of speech has been afforded a lower level of protection in cases of racist and hate speech dealt

185. CERD General Recommendation No. 35, *supra* note 180, ¶ 13.

186. *Jewish Cmty. of Oslo v. Norway*, U.N. Doc. CERD/C/67/D/30/2003, Opinion on Comm. No. 30/2003, ¶ 10.5 (Aug. 22, 2005).

187. *Id.* ¶ 2.1.

188. *Id.* ¶ 7.3.

189. *Id.*

190. *Id.* ¶ 10.4.

with by other international bodies”¹⁹¹ The Committee also referred to General Recommendation No. 15, which indicated that the prohibition of ideas based upon racial superiority or hatred is compatible with the freedom of opinion and expression.¹⁹²

In *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, the CERD Committee found that a series of disparaging statements against racial, national, and religious groups made in a magazine constituted a violation of CERD.¹⁹³ These statements included the assertion that the Turkish population in Germany “does not have any productive function except for the fruit and vegetable trade, that they are neither able nor willing to integrate into German society and encourage a collective mentality that is aggressive and ancestral.”¹⁹⁴ These statements also included the assertion that the Turkish population did not make an effort to educate their children, that they constantly produce “new little headscarf girls,” and that there exists “a ‘Turkish problem.’”¹⁹⁵ While the Committee acknowledged the importance of freedom of expression, it determined that these statements “amounted to dissemination of ideas based upon racial superiority or hatred and contained elements of incitement to racial discrimination”¹⁹⁶

B. *International Covenant on Civil and Political Rights*

The International Covenant on Civil and Political Rights (“ICCPR”) prohibits discrimination on the basis of race, color, national origin as well as other characteristics.¹⁹⁷ Substantively, the ICCPR addresses discrimination in several ways. First, Article 2(1) recognizes that all rights recognized in the treaty must be applied without distinctions of any kind.

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present

191. *Id.* ¶ 10.5.

192. Jewish Cmty. of Oslo v. Norway, U.N. Doc. CERD/C/67/D/30/2003, Opinion on Comm. No. 30/2003, ¶ 10.5 (Aug. 22, 2005).

193. *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, U.N. Doc. CERD/C/82/D/48/2010, Opinion on Comm. No. 48/2010 (Apr. 4, 2013).

194. *Id.* ¶ 12.6.

195. *Id.*

196. *Id.* ¶ 12.8.

197. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]. See generally SARAH JOSEPH & MELISSA CASTAN, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, & COMMENTARY* (3d ed. 2013).

Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁹⁸

Second, several of the substantive provisions in the treaty specifically require equal treatment, including the requirement that all persons are equal before the courts, that spouses have equality of rights and responsibilities as to marriage, and that every citizen shall have the right to vote.¹⁹⁹ Third, Article 26 acknowledges the equality of all persons and requires equal protection of the law.

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁰⁰

Significantly, the ICCPR extends its protection against racial discrimination by addressing incitement. Article 20(2) provides “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”²⁰¹ Thus, Article 20(2) is distinct from other ICCPR provisions because it moves beyond discrimination and addresses advocacy of racial hatred that constitutes incitement.

While freedom of expression is a core human rights value and is codified in the ICCPR, Article 20(2) offers an explicit restriction in cases of incitement. This is compatible with the ICCPR’s provisions on freedom of expression. Article 19 provides that “[e]veryone shall have the right to freedom of expression,” which includes both receiving and imparting “information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media”²⁰² The freedom of expression, however, is subject to restrictions that are provided by law and are necessary “for the respect of the rights or reputations of others,” or “for the protection of national security or of public order (*ordre public*), or of public health or morals.”²⁰³

198. ICCPR, *supra* note 197, art. 2, ¶ 1.

199. *See id.* arts. 14, 23, 25.

200. *Id.* art. 26.

201. *Id.* art. 20, ¶ 2.

202. *Id.* art. 19, ¶ 2.

203. *Id.* art. 19, ¶ 3.

The Human Rights Committee (“HRC”) was established under the ICCPR.²⁰⁴ Like the CERD Committee, it also consists of a group of independent experts who are selected by member states to monitor treaty compliance. As part of its responsibilities, the HRC reviews regular reports prepared by member states and shares its views on compliance through “concluding observations.” It also offers interpretations of ICCPR treaty provisions through general comments.²⁰⁵ In addition, a member state may accept the HRC’s competence to receive and consider communications from a member state that believes another member state is not fulfilling its ICCPR obligations.²⁰⁶ And, by ratifying the Optional Protocol to the ICCPR, a member state may also accept the HRC’s competence “to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth” in the treaty.²⁰⁷

The work of the Human Rights Committee has helped to clarify various ICCPR provisions. In General Comment No. 18, for example, the HRC acknowledged that the term “discrimination” is not defined in the ICCPR.²⁰⁸ It then indicated that the term should be understood to imply:

any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.²⁰⁹

In General Comment No. 11, the HRC indicated that the prohibitions in Article 20(2) regarding “advocacy in support of national, racial, or religious hatred apply regardless of whether such propaganda or advocacy has aims which are internal or external to the State concerned.”²¹⁰ And, in

204. *Id.* art. 28. For details on the HRC, see U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMM’R, <https://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx>.

205. ICCPR, *supra* note 197, art. 40.

206. *Id.* art. 41.

207. Optional Protocol to the International Covenant on Civil and Political Rights art. 1, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR Optional Protocol].

208. See U.N. Human Rights Comm., CCPR General Comment No. 18: Non-discrimination, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I), ¶ 6, (Nov. 10, 1989).

209. *Id.* ¶ 7.

210. U.N. Human Rights Comm., CCPR General Comment No. 11: Prohibition of Propaganda for War and Inciting National, Racial, or Religious Hatred, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I), ¶ 2 (July 29, 1983).

General Comment No. 34, the HRC acknowledged the relationship between Articles 19 and 20.²¹¹ It noted, for example, that Article 20 identifies specific acts that must be prohibited by law, something which is not required under Article 19. “It is only with regard to the specific forms of expression indicated in article 20 that States parties are obliged to have legal prohibitions.”²¹²

The Human Rights Committee has elaborated on these issues in several cases. In *J.R.T. and the W.G. Party v. Canada*, the applicant recorded and made available through the telephone system a series of statements that warned “of the dangers of international finance and international Jewry leading the world into wars, unemployment and inflation and the collapse of world values and principles.”²¹³ When he refused to comply with a government order to stop disseminating these messages, the applicant was held in contempt by Canadian authorities. Alleging his conviction was in violation of the ICCPR’s freedom of expression provisions, the applicant brought a claim against Canada before the Human Rights Committee. While the Committee found the claim inadmissible, the HRC indicated “the opinions which . . . [the applicant] seeks to disseminate through the telephone system clearly constitute the advocacy of racial or religious hatred which Canada has an obligation under article 20(2) of the Covenant to prohibit.”²¹⁴

In *Rabbae, A.B.S. & N.A. v. Netherlands*, the Human Rights Committee considered a series of statements issued by a Dutch politician that were viewed by the applicants as “incitement to discrimination, violence and hatred.”²¹⁵ The speaker was subsequently charged with hate speech under Dutch law but was acquitted. These statements, which targeted several groups, were made in various media sources, including print and online.

The demographic composition of the population is the biggest problem in the Netherlands. I am talking about what comes to the Netherlands and what multiplies here. If you look at the figures and its development. Muslims will move from the big cities to the countryside. We have to stop the tsunami of Islamization. That stabs us in the heart, in our identity, in our

211. See U.N. Human Rights Comm., CCPR General Comment No. 34: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/G/34 (July 29, 2011).

212. *Id.* ¶ 52.

213. *J.R.T. v. W.G. Party of Canada*, U.N. Doc. CCPR/C/18/D/104/1981, Opinion on Comm. No. 104/1981, ¶ 2.1 (Apr. 6, 1983).

214. *Id.* ¶ 8(b).

215. *Rabbae v. Netherlands*, U.N. Doc. CCPR/C/117/D/2124/2011, Views Adopted by the Committee Concerning Comm. No. 2124/2011 (July 14, 2016).

culture. If we do not defend ourselves, then all other items from my programme will prove to be worthless.

One out of five Moroccan youngsters has a police record. Their behaviour arises from their religion and culture. You can't look at that detachedly. The Pope was completely right when he was saying that Islam is a violent religion. Islam means submission and conversion of non-Muslims. That interpretation applies in the living rooms of those delinquents and in the mosques. It is in the communities themselves.

Everyone adopts our dominant culture. Those who will not do so won't be here anymore in 20 years. They will be expelled.

Those Moroccan guys are truly violent. They beat up people based on their sexual origin.

I get sick of Islam in the Netherlands: no more Muslim migrants any more.²¹⁶

The applicants indicated they were directly affected by these statements. In their complaint, they stated they had "been either personally attacked or threatened and humiliated through the Internet."²¹⁷ While the speaker had been prosecuted for making these statements under Dutch hate speech law, he had been acquitted. The applicants indicated they were affected by the state's failure to convict the speaker for hate speech and the implication that such conduct is not criminal: "[t]hat signal makes the authors anxious about their future in the Netherlands."²¹⁸ For these reasons, the applicants claimed the Netherlands had violated Article 20(2) of the ICCPR.

In considering the applicants' claims, the Human Rights Committee did not dispute the characterization of the disputed statements as hate speech or that these statements were subject to the provisions of Article 20(2). The HRC accepted that Article 20(2) "provides protection for people as individuals and as members of groups against" discrimination based on national, racial or religious grounds.²¹⁹ It noted that the restrictions contained in Article 20(2) were narrowly crafted "in order to ensure that other equally fundamental Covenant rights, including freedom of expression . . . are not infringed."²²⁰

216. *Id.* ¶ 2.7.

217. *Id.* ¶ 2.11.

218. *Id.*

219. *Id.* ¶ 9.7.

220. *Id.* ¶ 10.4.

Despite this, the Human Rights Committee ruled against the applicants. Its decision was based on two considerations. First, the Netherlands had adopted legislation imposing criminal sanctions for hate speech, thereby fulfilling the central requirement of Article 20(2).²²¹ And, in fact, the speaker had been prosecuted under this law. Second, the failure to convict the speaker could not be viewed as a violation of the ICCPR.²²² In this respect, the HRC attached significance to several statements offered by the Dutch government regarding the legal proceedings. For example, the Dutch government had acknowledged “in the difficult area of hate speech, each set of facts is particular and must be assessed by a court or impartial decision maker on a case-by-case basis, according to its own circumstances and taking into account the specific context.”²²³ The Dutch government also indicated that “the public prosecutor impartially represented the prosecutor’s office and fully presented the factual and legal issues in the case, and that the court was independently responsible for evaluating the law and evidence and entered judgment after a careful assessment in the light of the applicable law”²²⁴ Under these circumstances, the HRC concluded the Netherlands had fulfilled its obligations under the ICCPR.

C. *European Convention for the Protection of Human Rights and Fundamental Freedoms*

The universality of the prohibitions against racial discrimination and hate speech are further evidenced by their codification in regional human rights treaties. The Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”) was adopted by the Council of Europe in 1950 and entered into force in 1953.²²⁵ It addresses a broad range of rights and prohibits discrimination with respect to any of the rights set forth in the treaty. Article 14 provides “[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”²²⁶

221. *Rabbae*, U.N. Doc. CCPR/C/117/D/2124/2011, ¶ 10.7.

222. *Id.* ¶ 10.

223. *Id.* ¶ 10.5.

224. *Id.* ¶ 10.6.

225. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR]; see generally WILLIAM A. SCHABAS, THE EUROPEAN CONVENTION ON HUMAN RIGHTS: A COMMENTARY (2014).

226. ECHR, *supra* note 225, art. 14.

Like both CERD and the ICCPR, the European Convention addresses the important balance between freedom of expression and protecting against hate speech.²²⁷ Article 10 provides that “[e]veryone has the right to freedom of expression” and the right to “receive and impart information and ideas without interference by public authority and regardless of frontiers.”²²⁸ However, freedom of expression is subject to restrictions as prescribed by law and as are necessary in a democratic society.²²⁹ Specifically, Article 10 identifies six distinct reasons for justifying restrictions on freedom of expression: (1) in the interest of national security, territorial integrity or public safety; (2) for the prevention of disorder or crime; (3) for the protection of health or morals; (4) for the protection of the reputation or rights of others; (5) for preventing the disclosure of information received in confidence; or (6) for maintaining the authority and impartiality of the judiciary.²³⁰

In 2000, the Council of Europe adopted Protocol 12 to the European Convention, which extended the non-discrimination provision to all rights recognized under law.²³¹ It provides:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.²³²

Protocol 12 entered into force in 2005, but it only binds those member states from the Council of Europe that have ratified it. While forty-seven member states have ratified or acceded to the European Convention, only twenty states have ratified or acceded to Protocol 12.²³³

The European Court of Human Rights (“European Court”) was first established by the European Convention in 1950 and worked along-

227. See generally DOMINIKA BYCHAWSKA-SINIARSKA, *PROTECTING THE RIGHT TO FREEDOM OF EXPRESSION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS: A HANDBOOK FOR LEGAL PRACTITIONERS* (2017).

228. ECHR, *supra* note 225, art. 10(1).

229. *Id.* art. 10(2).

230. *Id.*

231. See Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 2000, E.T.S. No. 177.

232. *Id.* art. 1.

233. Russia has signed but not yet ratified Protocol No. 12.

side the European Commission on Human Rights for many years.²³⁴ During this time, the European Commission essentially served as a tribunal of first instance for most cases involving a violation of the European Convention, and the European Court served as an appellate body. In 1994, the European Commission was eliminated by Protocol No. 11, and the European Court came to serve as the sole institutional mechanism for assessing state compliance with the European Convention.²³⁵

The European Court consists of judges who are appointed by member states but serve in their individual capacity.²³⁶ It has jurisdiction over all matters concerning the interpretation or application of the European Convention.²³⁷ There are two types of cases subject to the Court's jurisdiction. First, it may consider cases where a member state alleges a breach of the European Convention, including its protocols, by another member state.²³⁸ Second, the Court may consider applications from any person, non-governmental organization, or group of individuals that claim "to be the victim of a violation" of a right under the European Convention or its protocols by a member state.²³⁹

Unlike the CERD Committee or the Human Rights Committee, the European Court does not have the authority to conduct independent inquiries or prepare reports on member state compliance. However, the Council of Europe, which established the European Convention, has some independent oversight over member states, and its work supplements the human rights protections set forth in the European Convention.²⁴⁰ On several occasions, the Council of Europe and its corresponding bodies have issued statements addressing member state obligations regarding racial discrimination as well as hate speech. In 1997, for example, the Committee of Ministers for the Council of Europe issued Recommendation 97(20) which defined hate speech as "covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people

234. See generally ED BATES, *THE EVOLUTION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (2010).

235. See Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, *Restructuring the Control Machinery Established Thereby*, May 11, 1994, E.T.S. No. 155.

236. See ECHR, *supra* note 225, art. 20-22.

237. See *id.* art. 32.

238. *Id.* art. 33.

239. *Id.* art. 34.

240. See generally THE COUNCIL OF EUROPE: ITS LAW AND POLICIES (Stefanie Schmahl & Marten Breur eds., 2017); see also BIRTE WASSENBERG, *HISTORY OF THE COUNCIL OF EUROPE* (2013).

of immigrant origin.”²⁴¹ In 2015, the European Commission against Racism and Intolerance issued General Policy Recommendation No. 15 on Combatting Hate Speech, which defined hate speech as one or more particular forms of expression:

namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression – that is based on a non-exhaustive list of personal characteristics or status that includes “race,” colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.²⁴²

While these instruments are not binding for purposes of proceedings before the European Court, they offer relevant considerations and may inform the Court’s analysis.²⁴³

The European Court has issued several decisions addressing the prohibition on racial discrimination and hate speech. In *Féret v. Belgium*, for example, the Court affirmed that hate speech is prohibited and that member states have an obligation to address it.²⁴⁴ In this case, a Belgian political party distributed numerous pamphlets that denounced “the Islamization of Belgium,” challenged policies of “pseudo-integration,” and called for limiting asylum claims only to individuals of European ancestry.²⁴⁵ Some of the statements appeared online. The leader of the party, who also served as editor of the party’s publications, was subsequently prosecuted and convicted in Belgium for inciting racism, hatred, and discrimination. He then challenged his conviction with the European Court, alleging that it violated his freedom of expression. The European Court considered several sources addressing racial discrimination and hate speech, including Recommendation 97(20) which was issued by the

241. Eur. Parl. Ass., *Recommendation of the Comm. of Ministers on “Hate Speech,”* 60th Sess., Doc. No. 97(20) (1997), <https://rm.coe.int/1680505d5b>; see also ANNE WEBER, COUNCIL OF EUROPE, *MANUAL ON HATE SPEECH* i (2009).

242. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, *GENERAL POLICY RECOMMENDATION NO. 15 ON COMBATING HATE SPEECH* 16 (2015), <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>.

243. See, e.g., *Gunduz v. Turkey*, App. No. 35071/97, ¶ 22–24 Eur. Ct. H.R. (June 14, 2004) (referencing earlier recommendation from the European Commission against Racism and Intolerance).

244. *Féret v. Belgium*, App. No. 15615/07, Eur. Ct. H.R. (July 16, 2009).

245. *Id.* ¶ 8, 9.

Committee of Ministers for the Council of Europe, as well as recommendations by the European Commission against Racism and Intolerance.²⁴⁶ The Court determined the statements were “likely to arouse feelings of contempt, rejection and, for some, hatred of foreigners among the public, . . .”²⁴⁷ The Court recognized that while freedom of expression is essential in a democracy, it is not an absolute right and restrictions may be necessary in limited circumstances.

Tolerance and respect for the equal dignity of all human beings is the foundation of a democratic and pluralistic society. It follows that, in principle, it may be considered necessary in democratic societies to sanction or even to prevent all forms of expression that propagate, encourage, promote or justify hatred based on intolerance (including religious intolerance), ensuring that the “formalities,” “conditions,” “restrictions” or “sanctions” imposed are proportionate to the legitimate aim pursued (with regard to hate speech and the apology of violence . . .)²⁴⁸

Accordingly, the Court found no violation of the applicant’s freedom of expression under the European Convention.

In *Belkacem v. Belgium*, the European Court rejected an applicant’s claims that his online videos were protected speech and that his domestic prosecution for hate speech was a violation of the European Convention.²⁴⁹ The videos in *Belkacem* included demeaning statements about non-Muslims and called for Muslims to dominate non-Muslims in Belgium.²⁵⁰ The European Court again considered several sources addressing racial discrimination and hate speech, including Recommendation 97(20) issued by the Committee of Ministers for the Council of Europe as well as recommendations by the European Commission against Racism and Intolerance.²⁵¹ The Court expressed its agreement with the views of the Belgian courts that the applicant sought to promote hatred, discrimination, and violence with respect to all persons who are not Muslim. “In the view of the Court, such a general and vehement attack contradicts the values of tolerance, social peace and non-discrimination underlying

246. *Id.* ¶¶ 44, 45. The Court also referenced the Additional Protocol to the Convention on Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems, Jan. 28, 2003, E.T.S. No. 189.

247. *Id.* ¶ 69.

248. *Id.* ¶ 64.

249. *Belkacem v. Belgium*, App. No. 34367/14, Eur. Ct. H.R. (June 27, 2017).

250. *Id.* ¶ 4-7.

251. *Id.* ¶¶ 18, 23.

the Convention.”²⁵² Therefore, the applicant’s prosecution for hate speech did not violate the European Convention.²⁵³

D. Summary

Substantively, the decisions of the CERD Committee, Human Rights Committee, and the European Court of Human Rights reinforce the principles set forth in their constitutive treaties regarding the prohibitions against racial discrimination and hate speech. While they use different phrasing to describe these principles, the underlying norm is the same—the dissemination of statements that insult or degrade individuals on account of race and which promote or justify racial hatred contradicts the values of tolerance, respect, and non-discrimination underlying human rights law and may be prohibited.

This Part has focused on three treaties. There are, however, many other international instruments that promote equality, condemn racial discrimination, and prohibit hate speech. For example, the International Convention on the Suppression and Punishment of the Crime of Apartheid denounces apartheid and other forms of racial discrimination.²⁵⁴ Though the treaty defines apartheid to include those policies and practices of racial segregation and discrimination practiced in South Africa, it also includes other “inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.”²⁵⁵

252. *Id.* ¶ 34.

253. Other regional human rights treaties also recognize the prohibitions against racial discrimination and hate speech. The American Convention on Human Rights (“American Convention”) provides that “[a]ll persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.” American Convention on Human Rights arts. 13(5), 24, Nov. 22, 1969, O.A.S.T.S. No. 36. (“Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”); *see also* Inter-American Convention against Racism, Racial Discrimination, and Related Intolerance, June 5, 2013, O.A.S.T.S. No. A-68; *see also* African (Banjul) Charter on Human and Peoples’ Rights art. 3, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (“Every individual shall be equal before the law” and “shall be entitled to equal protection of the law.”); *see also id.*, art. 19 (“All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.”).

254. International Convention on the Suppression and Punishment of the Crime of Apartheid, Nov. 30, 1973, 1015 U.N.T.S. 243.

255. *Id.* art. II.

The Rome Statute of the International Criminal Court addresses racial discrimination in the context of crimes against humanity and genocide.²⁵⁶ Persecution on racial grounds may constitute a crime against humanity.²⁵⁷ Efforts to destroy a racial group in whole or in part may constitute genocide.²⁵⁸ Significantly, incitement to commit genocide is a recognized offense in international criminal law.²⁵⁹ Indeed, there is a robust jurisprudence on incitement to genocide in the decisions of the ad hoc international criminal tribunals.²⁶⁰

Other treaties address racial discrimination in the context of economic, social, and cultural rights.²⁶¹ Numerous international bodies have issued statements against racial discrimination, including the United Nations Educational, Scientific, and Cultural Organization, the U.N. Working Group of Experts on People of African Descent, the U.N. Special Rapporteur on Minority Issues, the U.N. Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, the International Labour Organization, and the Inter-American Commission on Human Rights.²⁶²

III. DID RUSSIA VIOLATE THE INTERNATIONAL PROHIBITIONS AGAINST RACIAL DISCRIMINATION AND HATE SPEECH?

The Russian social media campaign had two strategic goals: (1) to support the presidential campaign of Donald Trump and weaken the campaign of Hillary Clinton; and (2) to undermine public faith in the U.S. electoral process and the democratic system. To achieve these goals, the Russian campaign sought to amplify existing political tensions and social divisions in the United States. It did so by focusing on race.

256. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3.

257. *Id.* art. 7(1)(h).

258. *Id.* art. 6.

259. Convention on the Prevention and Punishment of the Crime of Genocide art. III(c), Dec. 9, 1948, 78 U.N.T.S. 277; see generally WIBKE KRISTIN TIMMERMANN, *INCITEMENT IN INTERNATIONAL LAW* (2016).

260. See generally Richard Ashby Wilson, *Inciting Genocide with Words*, 36 MICH. J. INT'L L. 277 (2015); PROPAGANDA, WAR CRIMES TRIALS AND INTERNATIONAL LAW: FROM SPEAKERS' CORNER TO WAR CRIMES (Predrag Dojcinovic ed., 2012).

261. International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

262. See, e.g., Inter-American Comm'n on Human Rights, *The Situation of People of African Descent in the Americas*, OEA/Ser.L/V/II. Doc. 62 (Dec. 5, 2011); UNESCO Declaration on Race and Racial Prejudice, I Records of the General Conference (Oct. 24 – Nov. 28, 1978), at 6 (1978).

Race was a key component in the Russian campaign as evidenced by the nature of the social media accounts and their messages. Accounts were created to mimic individuals from distinct racial groups. Posts and ads targeted individuals based on race. Some were explicit in their focus on race, while others addressed issues that resonated with particular groups. For example, Facebook ads by the “Black Matters” group targeted individuals interested in Martin Luther King, Jr., Malcolm X, and African American History. Some of these ads targeted specific geographic regions with a history of racial tensions, including Ferguson, Missouri and Atlanta, Georgia. Facebook ads from the “Secured Borders” group targeted individuals who were interested in conservatism, the Confederate States of America, Dixie, and the National Rifle Association. Classifications associated with race were also used in the social media campaign, including color, ethnicity, national origin, religion, and language.

It is important to distinguish among the distinct messages released by the Internet Research Agency. These posts and ads can be divided into several categories.

1. Messages that Promote Solidarity Among Minority Groups

Black Matters

Join us because we care. Black Matters!²⁶³

Blacktivist

Say it loud; I’m black and I’m proud!²⁶⁴

Brown Power

Brown Power is a platform designed to educate, entertain and connect Chicanos in the U.S.²⁶⁵

2. Messages that Promote Solidarity Among White Activists

South United

Heritage, not hate. The South will rise again!²⁶⁶

Heart of Texas

263. *Join Us Because We Care. Black Matters!*, MD. INST. FOR TECH. IN THE HUMANITIES (July 13, 2015), <https://mith.umd.edu/irads/items/show/6714>.

264. *Say it loud: I’m black and I’m proud!*, MD. INST. FOR TECH. IN THE HUMANITIES (Dec. 10, 2015), <https://mith.umd.edu/irads/items/show/7223>.

265. *Brown Power is a platform designed to ed . . .*, MD. INST. FOR TECH. IN THE HUMANITIES (Dec. 9, 2016), <https://mith.umd.edu/irads/items/show/8856>.

266. *Heritage, not hate. The south will rise . . .*, MD. INST. FOR TECH. IN THE HUMANITIES (Feb. 2, 2017), <https://mith.umd.edu/irads/items/show/7871>.

One year after Charleston massacre spurred debate, what's happened with Texas' Confederate monuments? Since then, the Texas authorities have argued the appropriateness of the Confederate history symbols, from the flag itself to the monuments that praise long-dead soldiers and politicians of the Lost Cause. It just seems like liberals are trying to erase our Confederate heritage as if it never even happened.

3. Messages that Support Law Enforcement and the Government

Back the Badge

Community of people who support our brave Police Officers.²⁶⁷

Secured Borders

Secured borders are a national priority. We need to protect America now more than ever.²⁶⁸

4. Messages that Criticize Law Enforcement and the Government

Blacktivist

Black Panthers were dismantled by US government because they were black men and women standing up for justice and equality. Never forget that the Black Panthers, group formed to protect black people from the KKK, was dismantled by us govt. but the KKK exists today.²⁶⁹

Born Liberal

Let's say stop to police brutality?! We must be against racism of all kinds and make a strong and peaceful response to these!²⁷⁰

BM [Black Matters]

267. *Community of People Who Support Our Brav. . .*, MD. INST. FOR TECH. IN THE HUMANITIES (Oct. 18, 2016), <https://mith.umd.edu/irads/items/show/6885>.

268. *Secured Borders are a National PriorityFalse*, MD. INST. FOR TECH. IN THE HUMANITIES (July 19, 2017), <https://mith.umd.edu/irads/items/show/9464>.

269. April Glaser, *Russia's Election Meddling Targeted Activists and People of Color, Too*, SLATE (Nov. 3, 2017), <https://slate.com/technology/2017/11/russias-election-meddling-targeted-activists-and-people-of-color.html>.

270. Sean Burch, *10 Most Shocking Russian Troll Posts on Facebook and Instagram, From Hillary Clinton to Police Brutality (Photos)*, THE WRAP (May 10, 2018), <https://www.thewrap.com/russian-meme-gallery-photos/>.

Do everything in your power to change the society we live in and fight to protect our children. French Cartoon makes statement the entire world knows. US Police target Black people for death #Blacklivesmatter²⁷¹

5. Messages that Criticize Minority Groups

Being Patriotic

Boston police shot and killed a man wearing body armor and wielding an assault rifle who critically injured two officers responding to a domestic disturbance call late Wednesday. . . . Another gruesome attack on police by a BLM [Black Lives Matter] movement activist. Our hearts are with those 11 heroes.²⁷²

Heart of Texas

The police report that Black Lives Matter terrorist sniper Micah Johnson used to [sic] buildings owned by Muslim Arabs to carry [out] his attack. If you think it was just a coincidence, you make a mistake. . . Muslims seem to be not peace-loving as they say. And I don't want to see 10,000 potential terrorists here in Texas.²⁷³

Being Patriotic

Barack Obama has criticized overblown sentencing laws that "disproportionately impact communities of color." But is it indeed a reason to release criminals? If Latinos commit crimes often than whites, it doesn't mean that some Latino criminals should escape penalty.²⁷⁴

6. Messages that Call for Disengagement by Minority Groups from the Political Process

Woke Blacks

End the whining and crying, end the riots with these same white people (democrats), who will not march with you when your son, daughter or loved one gets shot for being Black. I

271. *Do Everything in Your Power to Change Th. . .*, MD. INST. FOR TECH. IN THE HUMANITIES (Oct. 26, 2016), <https://mith.umd.edu/irads/items/show/6912>.

272. *Boston Police Shot and Killed a Man Wear. . .*, MD. INST. FOR TECH. IN THE HUMANITIES (Oct. 15, 2016), <https://mith.umd.edu/irads/items/show/6914>.

273. *The Police Report That the Black Lives M. . .*, MD. INST. FOR TECH. IN THE HUMANITIES (July 15, 2016), <https://mith.umd.edu/irads/items/show/9046>.

274. *Join Us Because We Care. Black Matters!*, MD. INST. FOR TECH. IN THE HUMANITIES (Oct. 10, 2015), <https://mith.umd.edu/irads/items/show/9377>.

opted out of the elections and I had many Black people all up in my case, telling me how I was wrong and how I need to make my vote count for Mrs. Clinton, all just to make sure Trump doesn't become president. Well now all I want to say is get over Trump and Clinton, they are rich white people²⁷⁵

Woke Blacks

“[A] particular hype and hatred for Trump is misleading the people and forcing Blacks to vote Killary. We cannot resort to the lesser of two devils. Then we'd surely be better off without voting AT ALL.”²⁷⁶

7. Messages that Criticize Foreign Nationals, Including Migrants and Refugees

Secured Borders

Like if you agree. No free tuition for illegal aliens!²⁷⁷

Secured Borders

Idaho: Muslim refugee arrested for lewd conduct with 8-year old child. No more Muslim refugees/migrants into our country. Period! Like if you agree.²⁷⁸

Stop A.I. [Alien Invasion]

Who is behind this mask? A man? A woman? A terrorist? Burqa is a security risk and it should be banned on U.S. soil. Like and share if you want burqa banned in America.²⁷⁹

Stop A.I. [Alien Invasion]

275. *End the Whining and Crying, End the Riot. . .*, MD. INST. FOR TECH. IN THE HUMANITIES (Nov. 15, 2016), <https://mith.umd.edu/irads/items/show/6459>.

276. Dave Lee, *The Tactics of a Russian Troll Farm*, BBC (Feb. 16, 2018), <https://www.bbc.com/news/technology-43093390>.

277. Kurt Snibbe, *Here are Some of the Russian Ads That Targeted Crucial Election States on Facebook and Twitter*, OC REGISTER (Nov. 2, 2017), <https://www.ocregister.com/2017/11/01/here-are-some-of-the-russian-ads-that-targeted-crucial-election-states-on-facebook-and-twitter/>.

278. Kevin Poulsen, *30 Batsh*t Crazy, Mostly Racist Facebook Memes the Russians Used to Corrupt Your Mind*, DAILY BEAST (Sept. 9, 2017), <https://www.thedailybeast.com/30-batsht-crazy-mostly-racist-facebook-memes-the-russians-used-to-corrupt-your-mind>.

279. Mary Vergenes, *Mr. Zuckerberg Goes to Washington*, MEDIUM (Apr. 9, 2018), https://medium.com/@maryv_10036/mr-zuckerberg-goes-to-washington-2a00be04bd37.

We are under attack. Even there is no open action the war has already started. The enemy is smart and ruthless. We are losing so far, because our leader is one of them. Obama has betrayed America and now he is just executing orders of his bosses. Obama was always a mere pawn in the hands of Arabian Sheikhs. His latest orders are just proving it. All these refugees, which we are about to take in, are soldiers with one simple goal. They are going to try to terrorist the nation.²⁸⁰

Stop A.I. [Alien Invasion]

“Religious” face coverings are putting American people at huge risk! We must not sacrifice national security to satisfy the demands of minorities. All face covering should be banned in every state across America! Do you want this to be banned in America?²⁸¹

Photographs and illustrations were often included to reinforce the themes in these messages.

Significantly, some messages specifically called for acts of violence. On April 5, 2016, for example, the “Being Patriotic” group issued a post stating that Black Lives Matter activists who were disrespectful to the American flag should “be immediately shot.”²⁸² This post added, “I’m sick of liberals and their media approving BLM and Black Panthers terrorists.”²⁸³ Posts from the “Secured Borders” group also targeted immigrants for violence. On March 4, 2017, a post described the threat of “dangerous illegal aliens” and stated that “[t]he only way to deal with them is to kill them all.”²⁸⁴ On June 6, 2017, a post targeting immigrants stated “if you get deported that’s your only warning. You come back you

280. *We are Under Attack. Even There is no Op. . .*, MD. INST. FOR TECH. IN THE HUMANITIES (May 5, 2016), <https://mith.umd.edu/irads/items/show/7590>.

281. Jill Disis & Donie O’Sullivan, *Here are 27 Ads Russian Trolls Bought on Facebook and Instagram*, CNN MONEY (Nov. 1, 2017), <https://money.cnn.com/gallery/news/2017/11/01/facebook-russia-ads/21.html>.

282. Curt Devine, ‘Kill Them All’—*Russian-Linked Facebook Accounts Called for Violence*, CNN MONEY (Oct. 31, 2017), <https://money.cnn.com/2017/10/31/media/russia-facebook-violence/index.html>; see also d1gi, TABLEAU PUBLIC, <https://public.tableau.com/profile/d1gi#!/>; Jeremy Roebuck & Andrew Seidman, ‘Being Patriotic’—*How Russia Worked to Influence Pennsylvania Voters Over Social Media in 2016*, PITTSBURGH POST-GAZETTE (Feb. 20, 2018), <http://www.post-gazette.com/news/politics-state/2018/02/20/Russia-trolls-Pennsylvania-election-meddling-oters-trump-2016-social-media-influence-false-information/stories/201802200095>.

283. Devine, *supra* note 282.

284. *Id.*; see also d1gi, *Secured Borders*, TABLEAU PUBLIC (Oct. 5, 2017), <https://public.tableau.com/profile/d1gi#!/vizhome/FB4/SecuredBorders>.

get shot and rolled into a ditch . . . BANG, problem solved.”²⁸⁵ Even some posts from social justice groups called for violence. On November 25, 2016, a “Blacktivist” post denounced police brutality against communities of color. It stated that “Black people have to do something. An eye for an eye. The law enforcement officers keep harassing and killing us without consequences.”²⁸⁶

In assessing these messages, it is essential to understand Russia’s social media strategy.²⁸⁷ Not every ad promoted racist views. And not every ad called for violence. In fact, many did not. But every message had a distinct purpose. When the Russian social media campaign is considered *in toto*, it clearly violates the prohibitions against racial discrimination and hate speech.

To begin with, the Russian social media campaign was designed to promote racial divisions in the United States.²⁸⁸ Accordingly, many Facebook, Instagram, and Twitter messages were drafted and disseminated with reference to race. Many posts and ads were explicit in their focus on race or characteristics associated with race such as ethnicity, national origin, religion, and language. Other messages addressed issues that resonated with particular minority groups.²⁸⁹

Messages targeted minority groups, including African Americans, Latinx, and Muslims, regarding disparate treatment with respect to government services.²⁹⁰ The right of minority groups to enter or remain in the United States was questioned. Their right to health care and education benefits was challenged. Some messages were simply designed to

285. Devine, *supra* note 282; see also d1gi, *supra* note 275.

286. Devine, *supra* note 282; see also d1gi, *Blacktivists*, TABLEAU PUBLIC (Oct. 5, 2017), <https://public.tableau.com/profile/d1gi#!/vizhome/FB4/SecuredBorders>.

287. Cf. Bruce Schneier, *Toward an Information Operations Kill Chain*, LAWFARE (Apr. 24, 2019), <https://www.lawfareblog.com/toward-information-operations-kill-chain>; Henry Farrell & Bruce Schneier, *Defending Democratic Mechanisms and Institutions against Information Attacks*, DEFUSING DISINFO (Jan. 28, 2019), <https://defusingdis.info/2019/01/28/defending-democratic-mechanisms-and-institutions-against-information-attacks/>.

288. An additional component of the Russian social media campaign sought to discredit public officials and question the legitimacy of the democratic process.

289. See Justin Hendrix, *Two New Reports Expose How Black Americans are Targeted by Russian Disinformation*, JUST SECURITY (Oct. 24, 2018), <https://www.justsecurity.org/61192/facebook-twitter-reports-expose-black-americans-targeted-russian-disinformation/>; Ahmer Arif, Leo G. Stewart & Kate Starbird, *Acting the Part: Examining Information Operations Within #BlackLivesMatter Discourse*, 2 PROC. ACM ON HUMAN-COMPUTER INTERACTION 20 (2018); Leo G. Stewart et al., *Drawing the Lines of Contention: Networked Frame Contests Within #BlackLivesMatter Discourse*, 1 PROC. OF THE ACM ON HUMAN-COMPUTER INTERACTION 96 (2017).

290. In addition, there were some messages that called for minority groups to disengage from the political process. For example, some messages called for African Americans to not vote in the 2016 presidential election.

disparage and ridicule these groups. On several occasions, members of these groups were equated with terrorists or criminals. Some messages downplayed the significance of violent acts perpetrated against these groups. Other messages specifically called for violence.

These messages meet the requirements for racial discrimination under international law.²⁹¹ They made distinctions among people based solely on race, color, descent, national or ethnic origin. These messages then sought to impair the rights of these people to the recognition, enjoyment and exercise of human rights and fundamental freedoms.

These messages also promoted racial hatred and incitement to racial hatred.²⁹² In establishing Russia's incitement of racial hatred, there is one aspect of the social media campaign that is *sui generis*—it was intended to promote conflict and incite hatred. In its own words, the Russian campaign was specifically designed to “aggravate the conflict between minorities and the rest of the population.”²⁹³ The clearest evidence of intentionality appears in the Internet Research Agency's creation of social media accounts that mimicked individuals from distinct racial, ethnic, national, and religious groups. These accounts denounced opposing groups and took divisive positions on controversial topics.²⁹⁴ As noted by the Justice Department, the Russian campaign “did not exclusively adopt one ideological viewpoint; they wrote on topics from varied and sometimes opposing perspectives.”²⁹⁵ There is only one reasonable explanation for such action—to incite conflict between these groups. This dynamic was most evident in those instances when the Internet Research Agency organized rallies by opposing groups on highly charged issues at the same time and location. There is, again, only one reasonable explanation—to incite conflict between these groups.

291. See CERD, *supra* note 164, art. 1(1); ICCPR, *supra* note 197, arts. 2(1), 26; ECHR, *supra* note 225, art. 14.

292. While this discussion addresses incitement in the context of human rights law, it should be noted that incitement can also give rise to international criminal responsibility. See generally Shannon Fyfe, *Tracking Hate Speech Acts as Incitement to Genocide in International Criminal Law*, 30 LEIDEN J. INT'L L. 523 (2017); Wibke Kristin Timmermann, *Incitement in International Criminal Law*, 88 INT'L REV. RED CROSS 823, 823 (2006).

293. Khusyaynova Affidavit, *supra* note 134, at 13.

294. There is a growing concern within intelligence communities about false flag operations—situations where deceptive action is taken to give the appearance that another individual or entity is responsible. See, e.g., Andy Greenberg, *Russian Hacker False Flags Work—Even After They're Exposed*, WIRED (Feb. 27, 2018), <https://www.wired.com/story/russia-false-flag-hacks/>; NATO COOP. CYBER DEF. CTR. OF EXCELLENCE, MITIGATING RISKS ARISING FROM FALSE-FLAG AND NO-FLAG CYBER ATTACKS (Mauno Pihelgas ed. 2015).

295. Khusyaynova Affidavit, *supra* note 134, at 13.

Such actions fulfill the requirements of inciting racial hatred. Article 4 of CERD requires member states to “condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form”²⁹⁶ The CERD Committee has added that racist speech is “a form of other-directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society.”²⁹⁷ The Committee has found that statements supporting “the [W]hite race” and demonizing immigrants were properly categorized as hate speech and that victims could understandably fear “being exposed to the effects of the dissemination of ideas of racial superiority and incitement to racial hatred.”²⁹⁸ Statements asserting the inability of migrants to integrate into society also amounted to hate speech and contained elements of incitement to racial discrimination.²⁹⁹ The European Court has likewise condemned speech that seeks to “propagate, encourage, promote or justify hatred based on intolerance”³⁰⁰ It has determined that incitement can be established by “insulting, holding up to ridicule or slandering specific groups of the population”³⁰¹ Incitement can also be established by calls for violence or other criminal acts.³⁰² And, the Human Rights Committee has acknowledged that statements denouncing immigrants as delinquents and criminals who should be expelled constitute hate speech.³⁰³

It is unnecessary to establish that racial discrimination or violence actually occurred as a result of Russia’s actions.³⁰⁴ Incitement is considered an inchoate offense, meaning it does not require completion of the

296. CERD, *supra* note 164, art 4.

297. CERD General Recommendation No. 35, *supra* note 180, ¶ 10.

298. Jewish Cmty. of Oslo v. Norway, U.N. Doc. CERD/C/67/D/30/2003, ¶¶ 2.1, 7.3.

299. TBB-Turkish Union in Berlin/Brandenburg v. Germany, U.N. Doc. CERD/C/82/D/48/2010, ¶¶ 12.6, 12.8.

300. Féret v. Belgium, App. No. 15615/07, Eur. Ct. H.R. (July 16, 2009).

301. Vejdeland v. Sweden, App. No. 1813/07, Eur. Ct. H.R. ¶ 55 (2012).

302. *Id.*

303. *Rabbae*, U.N. Doc. CCPR/C/117/D/2124/2011, ¶¶ 9.7, 10.4.

304. It bears emphasis, however, that hate crimes have increased in the past three years. See, e.g., Niall McCarthy, *FBI: Hate Crimes Have Increased for the Third Year Straight*, FORBES (Nov. 14, 2018), <https://www.forbes.com/sites/niallmccarthy/2018/11/14/fbi-hate-crimes-have-increased-for-the-third-year-straight-infographic/#1cc384561701>; John Eligon, *Hate Crimes Increase for the Third Consecutive Year*, *F.B.I. Reports*, N.Y. TIMES, Nov. 13, 2018.

advocated acts.³⁰⁵ Establishing responsibility for inchoate acts is justified in light of the dangers posed by incitement. It “permits law enforcement officers and the judiciary to become involved before any harm has occurred, and thus serves to reduce the incidence of harm.”³⁰⁶ For these reasons, human rights bodies have consistently upheld claims of incitement without any evidence that the speech resulted in actual discrimination or violence.³⁰⁷ Arguably, the need for establishing responsibility is heightened as the likelihood of harm increases and the severity of the harm grows. Accordingly, some commentators have proposed a “reasonably possible consequence” test in assessing liability for incitement.³⁰⁸ But even this approach does not require completion of the advocated acts. Moreover, this heightened standard is typically considered in the context of criminal proceedings, which already have more rigorous standards of proof as well as heightened *mens rea* and *actus reus* standards.

In response to these claims, Russia may argue that the statements issued by the Internet Research Agency are protected by human rights law. It is true that international law protects freedom of expression, which provides individuals with the right to express their opinions even on controversial topics.³⁰⁹ But even if this right extends to states (and not just individuals), the CERD Committee, Human Rights Committee, and European Court have consistently found that racist hate speech is not entitled to protection under international law.³¹⁰ As noted by the CERD

305. RICHARD ASHBY WILSON, INCITEMENT ON TRIAL: PROSECUTING INTERNATIONAL SPEECH CRIMES 25, 71 (2017); see also Fyfe, *supra* note 292, at 525; Timmermann, *supra*, note 292, at 825.

306. Timmermann, *supra* note 292, at 827.

307. See, e.g., Jewish Cmty. of Oslo v. Norway, U.N. Doc. CERD/C/67/D/30/2003, ¶ 11; TBB-Turkish Union in Berlin/Brandenburg v. Germany, U.N. Doc. CERD/C/82/D/48/2010, ¶¶ 12.8, 12.9; *Rabbae*, U.N. Doc. CCPR/C/117/D/2124/2011, ¶ 10.7; Féret v. Belgium, App. No. 15615/07, Eur. Ct. H.R. (July 16, 2009).

308. See Susan Benesch, *The Ghost of Causation in International Speech Crime Cases*, in PROPAGANDA, WAR CRIMES TRIALS AND INTERNATIONAL LAW: FROM SPEAKERS' CORNER TO WAR CRIMES, *supra* note 252, at 262 (Predrag Dojcinovic ed., 2012); Susan Benesch, *Vile Crime or Inalienable Right: Defining Incitement to Genocide*, 48 VA. J. INT'L L. 485, 494 (2008).

309. See, e.g., Amal Clooney & Philippa Webb, *The Right to Insult in International Law*, 48 COLUM. HUM. RTS. L. REV. 1, 2 (2017); Michael O'Flaherty, *Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No. 34*, 12 HUM. RTS. L. REV. 627, 627 (2012).

310. The regulation of hate speech is not without controversy in both national and international legal systems. See, e.g., WALDRON, *supra* note 162; EXTREME SPEECH AND DEMOCRACY (Ivan Hare & James Weinstein eds., 2009); see also Mario Oetheimer, *Protecting Freedom of Expression: The Challenge of Hate Speech in the European Court of Human Rights Case Law*, 17 CARDOZO J. INT'L & COMP. L. 427 (2009); Jean-Francois Gaudreault-DesBiens, *From Sisyphus's Dilemma to Sisyphus's Duty? A Meditation on the*

Committee, “the principle of freedom of speech has been afforded a lower level of protection in cases of racist and hate speech dealt with by other international bodies”³¹¹ And, in fact, restrictions on such speech are compatible with the freedom of expression.

Moreover, Russia’s efforts to assert such a defense would fail because a propaganda campaign based on fake personas and fake posts is not entitled to meaningful protection.³¹² There is no evidence anyone within the Internet Research Agency sincerely believed in the statements they posted online. And since it released statements from competing groups with opposing positions on the same issues, it seems clear the Internet Research Agency and its agents did not believe them. In other words, the Russian campaign did not involve the legitimate exercise of freedom of expression. Instead, it involved the release of fake statements by fake personas that sought to amplify political tensions and promote social divisions in the United States. In the terminology of free speech, this was not a “marketplace of ideas;” it was an echo chamber that resonated hateful speech.³¹³ This is a critical distinction.³¹⁴

Regulation of Hate Propaganda in Relation to Hate Crimes and Genocide, 46 MCGILL L.J. 121 (2000).

311. *Jewish Cmty. of Oslo*, U.N. Doc. CERD/C/67/D/30/2003, at ¶ 10.5.

312. There is a robust debate regarding the constitutionality of restrictions on false speech in the United States. See, e.g., Erwin Chemerinsky, *False Speech and the First Amendment*, 71 OKL. L. REV. 1 (2018); Louis W. Tompros et al., *The Constitutionality of Criminalizing False Speech Made on Social Networking Sites in a Post-Alvarez, Social Media-Obsessed World*, 31 HARV. J. L. & TECH. 65 (2017); Brittany Vojak, *Fake News: The Commoditization of Internet Speech*, 48 CAL. W. INT’L L. J. 123 (2017); Garrett Epps, *Does the First Amendment Protect Deliberate Lies?*, THE ATLANTIC (Aug. 16, 2016), <https://www.theatlantic.com/politics/archive/2016/08/does-the-first-amendment-protect-deliberate-lies/496004/>; Staci Leiffring, *First Amendment and the Right to Lie: Regulating Knowingly False Campaign Speech after United States v. Alvarez*, 97 MINN. L. REV. 1047 (2013); SEANA VALENTINE SCHIFFRIN, SPEECH MATTERS: ON LYING MORALITY, AND THE LAW (2014); Alvin Goldman & James Cox, *Speech, Truth, and the Free Market for Ideas*, 2 LEGAL THEORY 1 (1996); CASS SUNSTEIN, DEMOCRACY AND THE PROBLEM OF FREE SPEECH (1993).

313. To be sure, the protection of freedom of expression differs between U.S. law and international human rights law. See Jan Oster, *Which Limits on Freedom of Expression are Legitimate? Divergence of Free Speech Values in Europe and the United States*, in THE NET AND THE NATION STATE 39 (Uta Kohl ed., 2017); Ioanna Tourkochoriti, *Should Hate Speech be Protected? Group Defamation, Party Bans, Holocaust Denial and the Divide Between (France), Europe and the United States*, 45 COLUM. HUM. RTS. L. REV. 552 (2014); Elizabeth F. DeFeis, *Freedom of Speech and International Norms: A Response to Hate Speech*, 29 STAN. J. INT’L L. 57 (1992).

314. See generally Megan Bench, *The Dissemination and Exportation of Hate: Legal Accountability for Anti-LGBT Hate Speech Abroad*, 48 GEO. WASH. INT’L L. REV. 853 (2016); Hadley Rose, *Speak No Evil, Hear No Evil, Do No Evil: How Rationales for the Criminalization of Hate Speech Apply in Transitional Contexts*, 22 WILLAMETTE J. INT’L L. & DISP. RESOL. 313 (2015); Kitsuron Sangsuvan, *Balancing Freedom of Speech on the Internet Under International*

CONCLUSION

This Article has focused on Russia, the United States, and race. But this story has a far broader reach. The Russian government believed race was an issue that could divide the American public. And, to a great extent, it was correct. America's longstanding struggle with racial inequality and social injustice offered Russia a receptive audience.³¹⁵ But Russia's propaganda campaign was not limited to race—it addressed ethnicity, religion, and national origin.³¹⁶ Russian messages targeted immigration, border policies, law enforcement, crime, and LGBT rights. Russia sought to inject divisions within every major inflection point in American culture and politics.

Russia violated the prohibition against racial discrimination and its attendant proscription against hate speech. Other rights were also affected. By seeking to influence voter preferences and undermine the legitimacy of the electoral process, Russia violated the right to vote, which is recognized as a fundamental human right.³¹⁷ By creating false stories and disseminating them, Russia infringed on freedom of thought as well as the right to hold opinions without interference.³¹⁸ By targeting religious minorities, it violated freedom of religion.³¹⁹

Although Russia directed its propaganda campaign against the United States, it also targeted other countries.³²⁰ According to a detailed study

Law, 39 N.C. J. INT'L L. & COM. REG. 701 (2014); Meera Chandramouli, *Protecting Both Sides of the Conversation: Towards a Clear International Standard for Hate Speech Regulation*, 34 U. PA. J. INT'L L. 831 (2013).

315. Lili Loofbourow, *The Hacking of America: It's Not Russia's Fault. It's Ours*, SLATE (July 26, 2018), <https://slate.com/news-and-politics/2018/07/russian-election-interference-only-worked-because-americans-were-primed-for-it.html>; WHITNEY PHILLIPS, *THIS IS WHY WE CAN'T HAVE NICE THINGS: MAPPING THE RELATIONSHIP BETWEEN ONLINE TROLLING AND MAINSTREAM CULTURE* (2016).

316. While this Article has focused on Russia's social media campaign surrounding the 2016 presidential election, Russia's propaganda efforts extended well beyond Facebook, Twitter, and Instagram. For example, Russia also created websites that targeted the African American community. See April Glaser, *Russian Trolls Are Still Co-Opting Black Organizers' Events*, SLATE (Nov. 7, 2017), http://www.slate.com/articles/technology/technology/2017/11/a_fake_website_made_by_russian_trolls_is_still_running_and_still_co_opting.html.

317. ICCPR, *supra* note 197, art. 25(b). See also Michael N. Schmitt, "Virtual" Disfranchisement: Cyber Election Meddling in the Grey Zones of International Law, 19 CHI. J. INT'L L. 30 (2018).

318. ICCPR, *supra* note 197, arts. 18(1), 19(1).

319. *Id.* art. 18(1).

320. See generally Neil MacFarquhar, *Russia's Powerful Weapon to Hurt Rivals: Falsehoods*, N.Y. TIMES, Aug. 28, 2016, at A1; Daniel Boffey, *Europe's New Cold War Turns Digital as Vladimir Putin Expands Media Offensive*, THE GUARDIAN (Mar. 5, 2016),

by the Rand Corporation, “Russia is engaged in an active, worldwide propaganda campaign.”³²¹ And Russia is not the only country that uses social media to influence foreign public opinion.³²² A 2017 Freedom House report found that: “[g]overnments around the world have dramatically increased their efforts to manipulate information on social media”³²³ In fact, “[m]anipulation and disinformation tactics played an important role in elections in at least 17 other countries over the past year, damaging citizens’ ability to choose their leaders based on factual news and authentic debate.”³²⁴

In Fall 2018, social media companies disclosed that Russia had renewed its efforts to intervene in American political life prior to the 2018 mid-term elections.³²⁵ Research conducted on several Facebook accounts

<https://www.theguardian.com/world/2016/mar/05/europe-vladimir-putin-russia-social-media-trolls>; Theodore P. Gerber & Jane Zavisca, *Does Russian Propaganda Work?*, 39 WASH. Q. 79 (2016).

321. RAND CORPORATION, *RUSSIAN SOCIAL MEDIA INFLUENCE: UNDERSTANDING RUSSIAN PROPAGANDA IN EASTERN EUROPE* ii (2018).

322. See generally, Ayesha Tanzeem, *Facebook Removes Accounts Linked to Indian Political Parties, Pakistan’s Military*, VOA (Apr. 1, 2019), <https://www.voanews.com/a/facebook-removes-accounts-linked-to-indian-political-parties-pakistan-military/4857314.html>; Heather Kelly et al., *Facebook Takes Down 652 Pages After Finding Disinformation Campaigns Run from Iran and Russia*, CNN TECH (Aug. 21, 2018), <https://money.cnn.com/2018/08/21/technology/facebook-disinformation-iran-russia/index.html>; SAMANTHA BRADSHAW & PHILIP N. HOWARD, *COMPUTATIONAL PROPAGANDA RESEARCH PROJECT, TROOPS, TROLLS AND TROUBLEMAKERS: A GLOBAL INVENTORY OF ORGANIZED SOCIAL MEDIA MANIPULATION* (2017); Alex Hern, *Thirty Countries Use “Armies of Opinion Shapers” to Manipulate Democracy—Report*, THE GUARDIAN (Nov. 14, 2017), <https://www.theguardian.com/technology/2017/nov/14/social-media-influence-election-countries-armies-of-opinion-shapers-manipulate-democracy-fake-news>. Of course, the United States has engaged in similar efforts to influence foreign governments and their local constituencies. See generally LAURA A. BELMONT, *SELLING THE AMERICAN WAY: U.S. PROPAGANDA AND THE COLD WAR* (2010); NICHOLAS J. CULL, *THE COLD WAR AND THE UNITED STATES INFORMATION AGENCY: AMERICAN PROPAGANDA AND PUBLIC DIPLOMACY, 1945-1989* (2009); cf. ERIN STEUTER & DEBORAH WILLS, *AT WAR WITH METAPHOR: MEDIA, PROPAGANDA, AND RACISM IN THE WAR ON TERROR* (2009).

323. FREEDOM HOUSE, *FREEDOM ON THE NET 2018: THE RISE OF DIGITAL AUTHORITARIANISM* 1 (2018).

324. *Id.*; see also Sheera Frenkel et al., *After Russia, False Posts on Twitter Going Global*, N.Y. TIMES, Jan. 31, 2019, at B1; JAMES M. LUTES & MARK R. JACOBSON, *SHATTER THE HOUSE OF MIRRORS: A CONFERENCE REPORT ON RUSSIAN INFLUENCE OPERATIONS* (2017).

325. See generally Robert McMillan & Deepa Seetharaman, *Facebook Pulls Fake Accounts That Mimic Russian Tactics Ahead of Election*, WALL STREET J. (Aug. 16, 2018), <https://www.wsj.com/articles/facebook-removes-fake-accounts-that-displayed-activity-consistent-with-russian-efforts-during-2016-election-1533055712>; Sheera Frenkel, *How a Fake Group on Facebook Created Real Protests*, N.Y. TIMES, Aug. 14, 2018, at B1; Nick Statt, *Facebook Confirms Discovery of New “Inauthentic” Social Media Campaign Ahead of U.S.*

revealed these accounts “included language patterns that indicate non-native English and consistent mistranslation, as well as an overwhelming focus on polarizing issues”³²⁶ It was clear these accounts “sought to promote divisions and set Americans against one another.”³²⁷ Facebook also announced it had removed eighty-two pages, groups, and accounts which exhibited inauthentic behavior that originated in Iran and which targeted the U.S. electorate.³²⁸

Both the U.S. government and social media companies have announced they are ready to combat any new foreign intervention.³²⁹ Even members of the international community have announced their intention to address foreign interference in national elections.³³⁰ It is unclear, how-

Midterm Elections, THE VERGE (July 31, 2018), <https://www.theverge.com/2018/7/31/17635288/facebook-russia-influence-us-midterm-election-meddling>.

326. Atlantic Council, Digital Fortress Research Lab, *#TrollTracker: Facebook Uncovers Active Influence Operation*, MEDIUM (July 31, 2014), <https://medium.com/dflab/trolltracker-facebook-uncovers-active-influence-operation-74bddfb8dc06>.

327. *Id.*

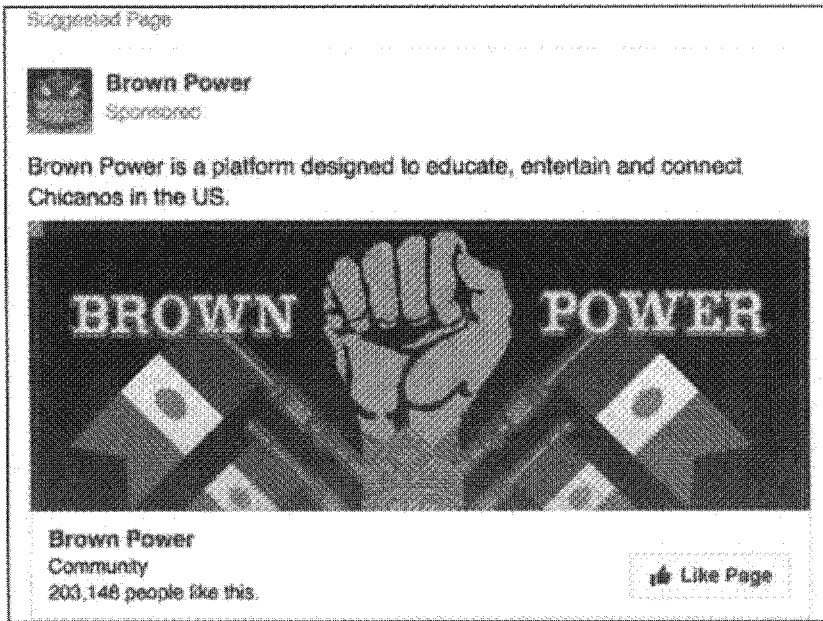
328. Facebook, *Taking Down Coordinated Inauthentic Behavior from Iran*, FACEBOOK (Oct. 26, 2018), <https://newsroom.fb.com/news/2018/10/coordinated-inauthentic-behavior-takedown/>.

329. See Press Release, U.S. Dep’t of Justice, Acting Attorney General and Secretary of Homeland Security Submit Joint Report on Impact of Foreign Interference on Election and Political/Campaign Infrastructure in 2018 Elections (Feb. 5, 2019), <https://www.dhs.gov/news/2019/02/05/acting-attorney-general-and-secretary-homeland-security-submit-joint-report-impact>; Ben Nimmo, *Psy-Ops, Meet Cyber-Ops: U.S. Takes on Russian Trolls*, JUST SECURITY (Oct. 29, 2018), <https://www.justsecurity.org/61265/psy-ops-meet-cyber-ops-u-s-takes-russian-trolls>; Evelyn Douek, *Senate Hearing on Social Media and Foreign Influence Operations: Progress, But There’s a Long Way to Go*, LAWFARE (Sept. 6, 2018), <https://www.lawfareblog.com/senate-hearing-social-media-and-foreign-influence-operations-progress-theres-long-way-go>; Mark Zuckerberg, *Protecting Democracy is an Arms Race. Here’s How Facebook Can Help*, WASH. POST (Sept. 4, 2018), https://www.washingtonpost.com/opinions/mark-zuckerberg-protecting-democracy-is-an-arms-race-heres-how-facebook-can-help-win-it/2018/09/04/53b3c8ee-b083-11e8-9a6a-565d92a3585d_story.html?noredirect=on; Cecilia Kang & Sheera Frankel, *Facebook and Twitter Have a Message for Lawmakers: We’re Trying*, N.Y. TIMES, Sept. 4, 2018, at B1; but see Alex Stamos, *How the U.S. Has Failed to Protect the 2018 Elections—and Four Ways to Protect 2020*, LAWFARE (Aug. 22, 2018), <https://www.lawfareblog.com/how-us-has-failed-protect-2018-election-and-four-ways-protect-2020>; Joshua Geltzer, *The Most Extraordinary Lesson of Two New Reports on Russian Disinformation: What They Reveal About White House Paralysis*, JUST SECURITY (Dec. 17, 2018), <https://www.justsecurity.org/61908/extraordinary-lesson-reports-russian-disinformation-reveal-white-house-paralysis/>; David E. Sanger, *U.S. Declines to Sign Macron Declaration Against Cyberattacks*, N.Y. TIMES, Nov. 12, 2018, at A6.

330. Emmanuel Macron, *Paris Call for Trust and Security in Cyberspace* (Nov. 12, 2018), https://www.diplomatie.gouv.fr/IMG/pdf/paris_call_text_-_en_cle06f918.pdf; see generally Sean McDonald & An Xiao Mina, *The War-Torn Web: A Once-Unified Online World Has Broken into New Warring States*, FOREIGN POL’Y (Dec. 19, 2018),

ever, whether the American public is equally prepared to challenge the efforts of countries intending to incite a race war in the United States. Eventually, history will reveal whether these foreign interventions fail or whether race remains a permanent inflection point in American life.

APPENDIX: EXAMPLES OF SOCIAL MEDIA POSTS
 CREATED BY THE INTERNET RESEARCH AGENCY³³¹



Created: December 2016

Ad Impressions: 968,768

Ad Clicks: 56,000

331. These examples were compiled from several sources. See, e.g., Dean Keating et al., *The Facebook Ads Russians Targeted at Different Groups*, WASH. POST (Nov. 1, 2017), https://www.washingtonpost.com/graphics/2017/business/russian-ads-facebook-targeting/?noredirect=on&utm_term=.eec213460940; Politico Staff, *The Social Media Ads Russia Wanted Americans to See*, POLITICO (Nov. 1, 2017), <https://www.politico.com/story/2017/11/01/social-media-ads-russia-wanted-americans-to-see-244423>; USA TODAY STUDY, *supra* note 73; *Counter Action*, FLICKR, <https://www.flickr.com/photos/158142060@N04/with/40431994150/>.

Suggested Page

 **Woke Blacks**
Sponsored

Staying Woke, building up our communities, uplifting our people. Join us!



Woke Blacks
Community
82,612 people like this.

[Like Page](#)

Created: December 2016
 Ad Impressions: 752,179
 Ad Clicks: 33,444

 **Native American United**
Sponsored

[Like Page](#)

Ogala Lakota
 One of the parts of Sioux nation. Reject name Sioux because it means "snake" and was given by enemies.
 Today tribe has 45,856 enrolled members. The population of Lakota greatly increased since the 18th century.
 Ogala Lakota had good relationships with the US government but was moved into the reservation on the territory of South Dakota and Nebraska.
 Ogala people have their own flag.



106 Facebook 30 Twitter

[Like](#) [Comment](#) [Share](#)

Created: January 2017
 Ad Impressions: 1,200
 Ad Clicks: 203

United Muslims of America
Sponsored · 25

Like Page

Who is ready to do the same in any public place during the weekends ??
We really need to stop islamophobia and the fear of Muslims, and change that false image about us, it's everybody's duty...

TALK TO A MUSLIM
LET'S HAVE A CONVERSATION
AND ASK ME ABOUT ISLAM

Talk To A Muslim
Let's Have A Conversation And Ask Me About Islam

430 Reactions · 14 Comments · 73 Shares

Like Comment Share

Created: March 2016
Ad Impressions: 1,640
Ad Clicks: 213

Secured Borders
Sponsored

Every man should stand for our borders! Job!

NO INVADERS ALLOWED

Secured Borders
Next 3 Media Weeks
130,301 people like this

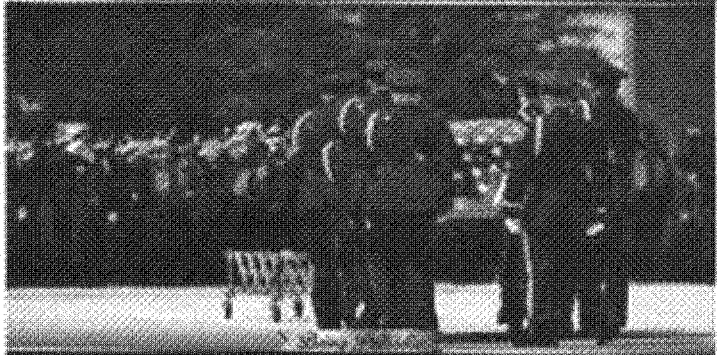
Like Page

Created: February 2016
Ad Impressions: 97,529
Ad Clicks: 15,254

Being Patriotic Like Page

Boston police shot and killed a man wearing body armor and wielding an assault rifle who critically injured two officers responding to a domestic disturbance call late Wednesday, according to Police Commissioner William Evans.

A gun battle raged at an East Boston home as a suspect, Kirk Figueroa, 33, of East Boston, critically injured two Boston police officers late on October 12. He was then shot and killed by other officers who ran into the home to drag out their wounded col... See More



ANOTHER GRUESOME ATTACK ON POLICE BY A BLM MOVEMENT ACTIVIST

OUR HEARTS ARE WITH THOSE 11 HEROES

126 Retweets, 43 Comments, 378 Shares


Like Comment Share

Created: October 2016


Ad Impressions: 3,362

Ad Clicks: 761


Suggested Page

 **Defend the 2nd**
Sponsored

The community of 2nd Amendment supporters, guns lovers & patriots




Defend the 2nd
Community
96,678 people like this.


 Like Page

Created: October 2016
Ad Impressions: 301,608
Ad Clicks: 24,955


Suggested Page

 **South United**
Sponsored


Heritage, not hate. The South will rise again!



South United
Community
137,138 people like this.

 Like Page

Created: October 2014
Ad Impressions: 511,224
Ad Clicks: 40,134



CITIZENS OF THE REFUGEES

608
27 Citizens before refugees
Public event by Secured Borders

📅 **Details:** August 27, 2018 at 11:00 AM - 2:00 PM EDT

📍 **City Council Chambers, 328 Third Ave., Twin Falls, Idaho**

About Discussion

4 Went · 48 Interested
Showing people who you friends

Details:

Due to the town of Twin Falls, Idaho, becoming a center of refugee resettlement, which led to the huge upsurge of violence towards American citizens, it is crucial to draw society's attention to this problem.

Twin Falls suffered the most from Obama's immigration policy, because at least two horrific assaults by refugees happened there in just last two months. First, a little girl was raped by three refugee kids in June, and then another alleged refugee sexually assaulted a woman of Twin Falls.

This meeting is about protesting Obama's treacherous immigration policy and further resettlement of refugees from Muslim countries.

We must stop taking in Muslim refugees! We demand open and thorough investigation of all the cases regarding Muslim refugees! All government officials, who are covering up for these criminals, should be fired! US attorney Wendy Olson, who interfered with the investigation and threatened local citizens, should be fired! All these refugee criminals and their families should be deported without a right to return!

Secured Borders
October 10, 2018 · 48

As politicians in Washington trying to convince us that there's no problem at the border and "as the matter of fact fewer immigrants are entering the U.S. illegally" (although as it turns out fewer apprehended, or catch-and-release under Obama admin policy). And still smugglers continue to transport women, children, and entire families into the country. Because it's so easy these days.

Good Lord, we really need that wall. We need to stop this madness. We need Trump.



"SHHH! BE REALLY QUIET!! WE'VE GOTTA SNEAK OVER THE US BORDER!"

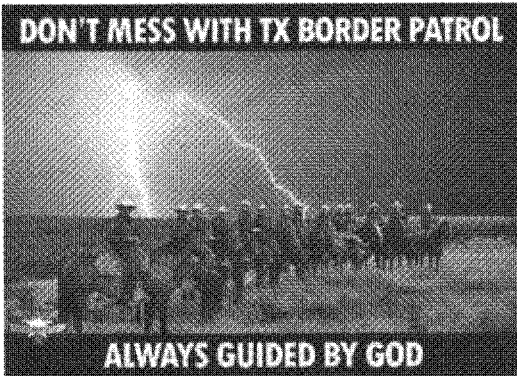
USDA THE EXPLORER KNOWS HOW EASY IT IS TO CROSS THE US BORDER. IT'S LIKE A CHILDREN'S GAME AND EVEN IF YOU GET CAUGHT, THEY'D JUST SEND YOU BACK IN YOUR COUNTRY SO YOU CAN TRY AGAIN.

Heart of Texas Sponsored · 47 Like Page

Border Patrol agents in South Texas arrested an illegal alien from Honduras that had previously been deported and convicted of Rape Second Degree.

Thanks to Obama's and Hillary's policy, illegals come here because they wait for amnesty promised. The wrong course had been chosen by the American government, but all those politicians are too far from the border to see who actually sneaks through it illegally.

Rapists, drug dealers, human traffickers, and others. The percent of innocent poor families searching for a better life is too small to become an argument for amnesty and Texas warm welcome.



4.1K Reads · 88 Comments · 1.2K Shares


Like Comment Share

Heart of Texas Sponsored · 47 Like Page

The police report that the Black Lives Matter terrorist sniper Micah Johnson used to buildings owned by Muslim Arabs to carry his attack. If you think it was just a coincidence, you make a mistake.

Johnson got set up in one building and moved more than 10 miles away to another building owned by the same people to shoot from. It doesn't look like it is a coincidence. Moreover, some witnesses said that they saw Johnson visiting a mosque.

Muslims seem to be not peace-loving as they say. And I don't want to see 10,000 potential terrorists here in Texas.



4.1K Reads · 88 Comments · 675 Shares

Like Comment Share


Wake Blacks Sponsored · 48 Like Page

End the whining and crying, and the riots with those same white people(democrats), who will not march with you when your son, daughter or loved one gets shot for being Black.


I opted out of the elections and i had many Black people all up in my case, telling me how i was wrong and how i needed to make my vote count for Mrs. Clinton, all just to make sure Trump doesn't become president.

Well now all i want to say is get over Trump and Clinton, they are rich white people, the ... See More

**LET ME KNOW WHEN Y'ALL DONE CRYING
OVER TWO WHITE PREZ. CANDIDATES.**



**SO WE CAN GET BACK TO
MAKING OUR COMMUNITY BETTER!**

@wake_black 

137 Reactions · 11 Comments · 24 Shares

Like Comment Share

Blacktivist

Black Panthers were dismantled by US government because they were black men and women standing up for justice and equality.

never forget that the Black Panthers, group formed to protect black people from the KKK, was dismantled by us govt but the KKK exists today



 6.2K 905 Comments · 29K Shares

Suggested Page

 **Stop A.I.**
Sponsored

Take care of our vets, not illegals. Like to join!




**IF YOU WANT TO SAVE AMERICA,
YOU'RE A PART OF US**


Stop A.I.
Community
193,813 people like this.

 Like Page

Suggested Page


 **Stop A.I.**
Sponsored

If you want to save America, you're a part of us. Like to join!



**CLOSE THE BORDERS
UNTIL IT'S TOO LATE**

Stop A.I.
Community
193,813 people like this.

 Like Page

