

RACIAL BIAS IN THE UNITED STATES ARMED FORCES:
A THREAT TO NATIONAL SECURITY IN THE ERA OF RENEWED
GREAT POWER COMPETITION

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On January 6, 2021, an insurrection supporting then-President Trump stormed the U.S. Capitol. The insurrectionists were disproportionately military members and veterans, motivated by violent extremist ideologies including far-right anti-government politics, fascism, and white supremacy. In response to the overrepresentation of military affiliation, Secretary of Defense Lloyd J. Austin III ordered a Department of Defense-wide stand down to address the challenge of extremist and supremacist ideology. Extremism and supremacy, however, only represents a small subsection of the larger issue of racial bias in the U.S. Armed Forces. While the Armed Forces has been defined by racial bias throughout recent international security environments, racial bias now poses a key threat with respect to U.S. military dominance, renewed ideological competition, and rapid technological changes across multi-domain operations within the Era of Renewed Great Power Competition. To confront the threat, the U.S. must now incorporate a commitment to combatting extremism and supremacy, and enhancing diversity, equity, and inclusion within the National Security Strategy.

“[T]he murder of George Floyd was a wakeup call. . . . And it was a wakeup call for us as well as leaders. We know we're not immune to what is happening in broader society, that society that we serve”
—27th U.S. Secretary of Defense Mark T. Esper¹

“We woke up one day and discovered that we had extremist elements in our ranks, and they did bad things that we certainly held them accountable for. . . . But we discovered that the signs for that activity were there all along.”
—28th U.S. Secretary of Defense Lloyd J. Austin III²

¹ Lauren C. Williams, *SecDef: 'Murder of George Floyd Was A Wakeup Call'*, FCW (Aug. 5, 2020), <https://fcw.com/articles/2020/08/05/williams-esper-racism-wakeup-call.aspx>.

² Lolita C. Baldor, *For 1st Black Pentagon Chief, Racism Challenge Is Personal*, AP NEWS (Jan. 23, 2021), <https://apnews.com/article/politics-race-and-ethnicity-biden-cabinet-lloyd-austin-army-e3fa150af670ff2a3673e7d72dbe77bd> (discussing U.S. Secretary of Defense Austin's 19 January 2021 confirmation hearing in which he referred to the murder of two Black civilians by self-proclaimed neo-Nazi Soldiers in the 82nd Airborne Division).

INTRODUCTION

On January 6, 2021, a mob supporting then-President Donald J. Trump stormed the United States Capitol building in a failed attempt to overturn his loss in the 2020 presidential election.³ Many of the insurrectionists held extremist ideologies including far-right anti-government politics,⁴ fascism,⁵ and white supremacy.⁶ Nearly 20% of those charged in relation to the attack either serve or served in the United States Armed Forces.⁷ However, only 7% of American adults are veterans and less than one percent are active duty.⁸ In response to the overrepresentation of military affiliation among those who stormed the capital, Secretary of Defense Lloyd J. Austin III directed a Department of Defense (DoD)-wide stand down to address the challenge of extremist and supremacist ideology

³ See Jay Reeves et al., *Capitol assault a more sinister attack than first appeared*, AP NEWS (Jan. 11, 2021), <https://apnews.com/article/donald-trump-ap-top-news-michael-pence-nancy-pelosi-capitol-siege-14c73ee280c256ab4ec193ac0f49ad54>; Eric McQueen, *Examining Extremism: The Oath Keepers*, CTR. FOR STRATEGIC & INT’L STUD. (June 17, 2021), <https://www.csis.org/blogs/examining-extremism/examining-extremism-oath-keepers>.

⁴ See David Shortell et al., *Members of extremist Oath Keepers group planned attack on US Capitol, prosecutors say*, CNN (Jan. 20, 2021), <https://www.cnn.com/2021/01/19/politics/oath-keepers-capitol-riot-charges/index.html>.

⁵ See Charlie Savage et al., *‘This Kettle Is Set to Boil’: New Evidence Points to Riot Conspiracy*, N.Y. TIMES (Jan. 19, 2021), <https://www.nytimes.com/2021/01/19/us/politics/oath-keepers-capitol-riot.html>; Reeves et al., *supra* note 3 (quoting Rep. Jim McGovern, who stated, “What I saw in front of me was basically home-grown fascism ...”).

⁶ See Devlin Barrett et al., *Dozens of people on FBI terrorist watch list came to D.C. the day of Capitol riot*, WASH. POST (Jan. 14, 2021), https://www.washingtonpost.com/national-security/terror-watchlist-capitol-riot-fbi/2021/01/14/07412814-55f7-11eb-a931-5b162d0d033d_story.html (finding that dozens of people on the Terrorist Screening Database stormed the U.S. Capitol building, the majority of whom were suspected white supremacists).

⁷ See Tom Dreisbach & Meg Anderson, *Nearly 1 In 5 Defendants In Capitol Riot Cases Served In The Military*, NPR (Jan. 21, 2021), <https://www.npr.org/2021/01/21/958915267/nearly-one-in-five-defendants-in-capitol-riot-cases-served-in-the-military>.

⁸ See Katherine Schaffer, *The changing face of America’s veteran population*, PEW RSCH. CTR. (Apr. 5, 2021), <https://www.pewresearch.org/fact-tank/2021/04/05/the-changing-face-of-americas-veteran-population/> (“In 2018, about 7% of U.S. adults were veterans, down from 18% in 1980, according to the Census Bureau. This drop coincides with decreases in active-duty personnel. Over the past half-century, the number of people on active duty has dropped significantly, from 3.5 million in 1968, during the military draft era, to about 1.4 million (or less than 1% of all U.S. adults) in today’s all-volunteer force.”).

in the ranks,⁹ followed by working groups¹⁰ and changes in DoD regulation.¹¹ Extremism and supremacy, however, only represents a small subsection of the larger issue of racial bias in the United States Armed Forces.

The United States has entered into a new “Era of Renewed Great Power Competition,” principally defined by three features: first, challenges to military advances due to the reemergence of long-term, strategic competition and a resilient, but weakening, post-WWII international order; second, renewed ideological competition against authoritarianism and illiberal democracy; and third, rapid technological advancements and the changing character of war.¹² As the United States enters this new era, it will have to grapple with the threat that racial bias, both explicit and

⁹ See OFF. OF THE SEC’Y OF DEF., LEADERSHIP STAND-DOWN TO ADDRESS EXTREMISM IN THE FORCE (2021), <https://media.defense.gov/2021/Feb/26/2002589872/-1/-1/1/leadership-stand-down-frame-work.pdf>.

¹⁰ See, e.g., COUNTERING EXTREMIST ACTIVITY WORKING GRP., REPORT ON COUNTERING EXTREMIST ACTIVITY WITHIN THE DEPARTMENT OF DEFENSE (2021), <https://media.defense.gov/2021/Dec/20/2002912573/-1/-1/0/report-on-countering-extremist-activity-within-the-department-of-defense.pdf>; SEC’Y OF DEF., MEMORANDUM ON COUNTERING EXTREMIST ACTIVITIES WITHIN THE DEPARTMENT OF DEFENSE, (Dec. 20, 2021), <https://media.defense.gov/2021/Dec/20/2002912574/-1/-1/0/secretary-of-defense-memorandum-on-countering-extremist-activities-within-the-department-of-defense.pdf>.

¹¹ See U.S. DEP’T OF DEF., INSTR. 1325.06, HANDLING PROTEST, EXTREMIST, AND CRIMINAL GANG ACTIVITIES AMONG MEMBERS OF THE ARMED FORCES (Dec. 20, 2021) (clarifying what constitutes active participation in extremist activity).

¹² The Biden administration recently transmitted its National Defense Strategy (NDS) to Congress. The NDS is currently classified, but the DoD’s unclassified fact sheet outlines four priorities, including (1) “[d]efending the homeland, paced to the growing multi-domain threat posed by the PRC [People’s Republic of China]”; (2) [d]eterring strategic attacks against the United States, Allies, and partners”; (3) “deterring aggression, while being prepared to prevail in conflict when necessary, prioritizing the PRC challenge in the Indo-Pacific, then the Russia challenge in Europe”; and (4) “[b]uilding a resilient Joint Force and defense ecosystem”. See OFF. OF THE SEC’Y OF DEF., FACT SHEET: 2022 NATIONAL DEFENSE STRATEGY, <https://media.defense.gov/2022/Mar/28/2002964702/-1/-1/1/NDS-FACT-SHEET.PDF> [hereinafter 2022 NDS SUMMARY]. Ultimately, this is not a major departure from the 2018 NDS, which also prioritized long-term strategic threats. See DEP’T OF DEF., SUMMARY OF THE 2018 NATIONAL DEFENSE STRATEGY OF THE U.S.: SHARPENING THE AMERICAN MILITARY’S COMPETITIVE EDGE 1–4 (2018) [hereinafter 2018 NDS SUMMARY]; see also John A. Tirpak, *Strategy and Policy*, AIR FORCE MAG. (June 30, 2021), <https://www.airforcemag.com/article/strategy-policy-17/> (“While the 2018 strategy pushed for technological dominance of potential allies, the Biden administration’s take is to instead rely on establishing a ‘favorable distribution of power’ to prevent adversaries from threatening the U.S. and its allies or denying them access to the global commons.”).

implicit, poses to national security with respect to U.S. military dominance, renewed ideological competition, and rapid technological changes across multi-domain operations (MDOs). To confront the threat, the United States must now incorporate a commitment to diversity, equity, and inclusion (DEI) within the National Security Strategy (NSS).

This Article proceeds in four parts. Part I presents the history of international security environments, from the Cold War Era to the Post-Cold War Era to the current Era of Renewed Great Power Competition. Part II defines racial bias and discusses its role in the three eras of international security. Part III defines national security and argues that racial bias is a threat thereto, specifically with respect to U.S. military dominance, renewed ideological competition, and rapid technological changes across MDOs. Part IV advocates for the elevation of DEI commitments within the NSS and concludes with recommended NSS language.

I. THE HISTORY OF INTERNATIONAL SECURITY ENVIRONMENTS

For approximately the last 75 years, the United States has witnessed three distinct international security environments: the Cold War Era (from the late 1940s until the late 1980s or early 1990s), the Post-Cold War Era (from the late 1980s or early 1990s until 2006-2008), and the Era of Renewed Great Power Competition (2006-2008 to present day). To better understand the unique threats that the Era of Renewed Great Power Competition poses, as well as the threat racial bias poses to national security, this section provides a brief primer on these three epochs.

A. The Cold War Era

The Cold War Era is generally viewed as lasting from the late 1940s until the late 1980s or early 1990s. Bipolarity defined the Era, “featuring two superpowers—the United States and the Soviet Union—engaged in a political, ideological, and military competition for influence across multiple geographic regions.”¹³ During the early years of the Cold War, the United States emphasized the need for reliance on power projection to defend against an adversary whose sole objective was global domination.¹⁴ Indeed, much of the Cold War was defined by the struggle between the U.S.-led NATO alliance and the Soviet-led Warsaw Pact alliance, which confronted one another with large numbers of conventional forces and the

¹³ See RONALD O’ROURKE, CONG. RSCH. SERV., R43838, RENEWED GREAT POWER COMPETITION: IMPLICATIONS FOR DEFENSE-ISSUES FOR CONGRESS 21 (2021), <https://crsreports.congress.gov/product/pdf/R/R43838/73>.

¹⁴ See Phil Williams et al., *Atlantis Lost, Paradise Regained? The U.S. and Western Europe after the Cold War*, 69 INT’L AFFS. 1 (1993); see also David Sykes, *The US Victory in the Cold War: Economic Strength, Foreign Policy Triumph or Both?*, E-INT’L RELS. (July 15, 2010), <https://www.e-ir.info/2010/07/15/the-us-victory-in-the-cold-war-economic-strength-foreign-policy-triumph-or-both/>.

threat of nuclear weapons. During this time, the United States conception of security focused on external geopolitical threats rather than issues relating to internal order due to the view that the Soviet Union and its communist allies were seen as both a military and ideological threat.

B. The Post-Cold War Era

The Post-Cold War Era is typically understood as lasting from the late 1980s or early 1990s until 2006 to 2008.¹⁵ The fall of the Berlin Wall and collapse of the Soviet Union, as well as the transition to a unipolar moment in international relations wherein the United States maintained uncontested hegemony, defined this Era. Following these tectonic shifts in the international security environment, the U.S. conception of national security changed, but not radically. As one commentator states: “Compared to the Cold War, the Post-Cold War Era generally featured reduced levels of overt political, ideological, and military competition among major states.”¹⁶

The Cold War approach changed following the September 11, 2001 attack (9/11). The decisions made in the immediacy of 9/11 signaled the unraveling of the structure and substance of the law, legal opinions, rules of engagement, and standard operating procedures that had struck the balance between preserving liberty and protecting national security for over fifty years.¹⁷ While conflicts between states did not define the Post-Cold War Era, it was “characterized by a strong focus (at least from a U.S. perspective) on countering transnational terrorist organizations”¹⁸ By the early-Aughts, it had become clear that non-state actors can have a substantial impact on national security.¹⁹

C. The Era of Renewed Great Power Competition

Between 2006 to 2008, the Post-Cold War Era began to fade as the U.S. encountered a rising China and Russia.²⁰ By 2014, following dubious Chinese territorial claims in the South and East China Seas and Russia’s

¹⁵ See O’ROURKE, *supra* note 13, at 21.

¹⁶ See *id.*

¹⁷ See John J. Farmer, Jr., *Awaiting “The Authorities”: 9/11 and National Security Doctrine After Ten Years*, 63 RUTGERS L. REV. 1085 (2011).

¹⁸ See O’ROURKE, *supra* note 13, at 21.

¹⁹ See Kristen Boon, *The UN Security Council and Non-State Actors*, 113 PROC. OF THE ASIL ANN. MEETING 209 (2019); see also MAJOR DAVID W. HUDSPETH, COUNTERING THE IMPACT AND INFLUENCE OF NON-STATE THREATS (2008), <https://apps.dtic.mil/dtic/tr/fulltext/u2/a504879.pdf>.

²⁰ George Friedman, *Beyond the Post-Cold War World*, STRATFOR (Apr. 2, 2013), <https://worldview.stratfor.com/article/beyond-post-cold-war-world>.

seizure and annexation of Crimea, it was clear that the international environment had fundamentally shifted.²¹ Whereas non-state actors and counter-terrorism defined the Post-Cold War Era, the return to geopolitics defined the Era of Renewed Great Power Competition.²²

The DoD's now central focus is to better align activities needed to counter Chinese and, secondarily, Russian military capabilities.²³ Additionally, the renewal of great power competition has led to a renewed emphasis on nuclear weapons and nuclear deterrence.²⁴ Similar to the events of the Cold War, Russia has reasserted itself as a major world power as evidence by its military operations in Ukraine starting with disputes over Crimea and parts of the Donbas during February 2014 to most recently its invasion of Ukraine during February 2022.²⁵ Russia's attempts to reassert itself has additionally been accomplished through propaganda and mis- and disinformation campaigns, such as those famously used in the 2016 U.S. Presidential Elections,²⁶ as well as maintaining its status as a major nuclear power.²⁷ While China has far less nuclear capabilities than the United States or Russia, observers believe that China will vastly increase

²¹ See O'ROURKE, *supra* note 13, at 21; see also Robert J. Samuelson, *The New World Order*, WASH. POST (Jan. 1, 2017), https://www.washingtonpost.com/opinions/the-new-world-order/2017/01/01/fc54c3e6-ce9d-11e6-a747-d03044780a02_story.html.

²² See Martin Wolf, *The long and painful journey to world disorder*, FIN. TIMES (Jan. 5, 2017), <https://www.ft.com/content/ef13e61a-ccec-11e6-b8ceb9c03770f8b1>; see also Fred Kaplan, *The Decade Big Power Politics Returned*, SLATE (Dec. 16, 2019), <https://slate.com/news-and-politics/2019/12/big-power-politics-returned-this-decade.html>.

²³ See O'ROURKE, *supra* note 13, at 4. While Iran and North Korea also pose regional security challenges, Russia and China remain the focus of American national security strategy. See *id.* at 22.

²⁴ See generally LA. TECH RSCH. INST., *GUIDE TO NUCLEAR DETERRENCE IN THE AGE OF GREAT-POWER COMPETITION* (2020), <https://atloa.org/wp-content/uploads/2020/12/Guide-to-Nuclear-Deterrence-in-the-Age-of-Great-Power-Competition-Lowther.pdf>.

²⁵ See Becky Sullivan, *Russia's at war with Ukraine. Here's how we got here*, NPR (Feb. 24, 2022), <https://www.npr.org/2022/02/12/1080205477/history-ukraine-russia>.

²⁶ See Report of the Select Committee on Intelligence, United States Senate, 116th Congress, *Russian Active Measures, Campaigns, and Interference in the 2016 U.S. Election*, Vol V, S. Rep. No. 116-290, at 5 (2020) ("The Committee found that the Russian government engaged in an aggressive, multifaceted effort to influence, or attempt to influence, the outcome of the 2016 presidential election."); see also Mary Clare Jalonick & Eric Tucker, *Senate panel backs assessment that Russia interfered in 2016*, AP NEWS (Apr. 21, 2020), <https://apnews.com/article/d094918c0421b872eac7dc4b16e613c7>.

²⁷ See Hans M. Kristensen & Robert S. Norris, *Russian nuclear forces, 2016*, 72 BULL. OF ATOMIC SCIENTISTS 125 (2016).

its nuclear capabilities in the upcoming years.²⁸ China also engages in propaganda efforts not least to bolster its own credibility in lieu of human rights violations,²⁹ but also to “diminish[] democracy’s appeal.”³⁰ Like Russia, China currently contests the territorial sovereignty of nearby states, such as Taiwan, and claim regions of geostrategic importance, such as the South China Sea.

Consequently, three key features define the Era of Renewed Great Power Competition: first, challenges to military advances due to the “reemergence of long-term, strategic competition” and a “resilient, but weakening, post-WWII international order”³¹; second, “renewed ideological competition”³² against authoritarianism and illiberal democracy; and third, “rapid technological advancements and the changing character of war.”³³

II. RACIAL BIAS IN THE UNITED STATES ARMED FORCES

Racial bias can be both explicit and implicit.³⁴ Explicit bias exists on a spectrum, ranging from institutionally sponsored segregation to individuals harboring extremist or supremacist ideology.³⁵ For example, with respect to explicit bias, the U.S. Air Force has defined an extremist doctrine, ideology, or cause as characterized by “a common belief which might otherwise be politically or socially acceptable, but which espouses the use or

²⁸ See Pranay Vaddi & Ankit Panda, *When it comes to China’s nuclear weapons, numbers aren’t everything*, DEF. NEWS (Mar. 13, 2021), <https://www.defensenews.com/opinion/commentary/2021/03/13/when-it-comes-to-chinas-nuclear-weapons-numbers-arent-everything/#:~:text=First%2C%20the%20U.S.%20Defense%20Department’s,inventory%20of%205%2C800%20nuclear%20warheads>.

²⁹ See Kathy Gilsinan, *How China is Planning to Win Back the World*, ATLANTIC (May 28, 2020), <https://www.theatlantic.com/politics/archive/2020/05/china-disinformation-propaganda-united-states-xi-jinping/612085/>.

³⁰ Jessica Brandt & Torrey Taussig, *The Kremlin’s disinformation playbook goes to Beijing*, BROOKINGS (May 19, 2020), <https://www.brookings.edu/blog/order-from-chaos/2020/05/19/the-kremlins-disinformation-playbook-goes-to-beijing/>.

³¹ See 2018 NDS SUMMARY, *supra* note 12, at 1–4.

³² See O’ROURKE, *supra* note 13, at 22.

³³ See 2018 NDS SUMMARY, *supra* note 12, at 3.

³⁴ See generally DEP’T OF JUST., UNDERSTANDING BIAS: A RESOURCE GUIDE (last visited March 28, 2021), <https://www.justice.gov/crs/file/836431/download> (citing GORDON ALLPORT, *THE NATURE OF PREJUDICE* (1954)); Michael Billig, *Prejudice, Categorization, and Particularization: From a Perceptual to a Rhetorical Approach*, 15 EUR. J. SOC. PSYCH. 79 (1985).

³⁵ See, e.g., Lisa Caulley, *Sticks and Stones – Confronting the Full Spectrum of Racism*, 383 NEW. ENG. J. MED. 1103 (2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2021216>.

threat of force or violence to obtain their goals.”³⁶ Furthermore, it defines a supremacist doctrine or ideology as characterized by a fundamental tenant “that particular members of one race, color, gender, national origin, or ethnic group are genetically superior to others.”³⁷

Implicit bias, on the other hand, involves the subconscious perceptions, feelings, and attitudes that may naturally develop due to human evolutionary tendencies to make automatic associations and stereotype.³⁸ Implicit bias manifests unconsciously, for example, through micro-aggressions (*e.g.*, where are you *actually* from, you are so articulate for a Black woman, etc.)³⁹ or even the “soft bigotry of low expectations.”⁴⁰ Iterated at a systemic level, implicit racial bias creates racial disparity, including within legal systems.⁴¹ Consequently, explicit and implicit bias can manifest both at the individual micro-level, as well as the organizational macro-level. Diagram 1 represents the intersection of these various biases.

³⁶ U.S. AIR FORCE, INSTR. 51-508, POLITICAL ACTIVITIES, FREE SPEECH AND FREEDOM OF ASSEMBLY OF AIR FORCE PERSONNEL 3.4.2.4 (Oct. 12, 2018), https://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-508/afi51-508.pdf.

³⁷ *Id.* at 3.4.2.3.

³⁸ See SHAWN MARSH, THE LENS OF IMPLICIT BIAS 16–19 (2009), https://judicialengagementnetwork.org/images/documents/resources/cultural_awareness/ImplicitBias.pdf; Jonathan C. Ziegert & Paul J. Hanges, *Employment Discrimination: The Role of Implicit Attitudes, Motivation, and a Climate for Racial Bias*, 90 J. APPLIED PSYCH. 553 (2005).

³⁹ Micro aggressions are comments or actions that subtly expresses a prejudicial attitude toward a member of a marginalized group. See generally Derald Wing Sue et al., *Racial Microaggressions in the Life Experience of Black Americans*, 39 PRO. PSYCH.: RSCH. AND PRAC. 329 (2008).

⁴⁰ See Text: *George W. Bush’s Speech to the NAACP*, WASH. POST (July 10, 2000), <https://www.washingtonpost.com/wp-srv/onpolitics/elections/bushtext071000.htm> (coining the phrase).

⁴¹ See Justin D. Levinson et al., *Guilty By Implicit Racial Bias: The Guilty/Not Guilty Implicit Association Test*, 8 OHIO ST. J. CRIM. L. 187 (2010); Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195 (2009); Jelani Jefferson Exum, *Sentencing Disparities and the Dangerous Perpetuation of Racial Bias*, 26 WASH. & LEE J. CIV. RTS. & SOC. JUST. 491 (2020).

DIAGRAM 1: RACIAL BIAS WITHIN MICRO AND MACRO PERSPECTIVES

	<i>Explicit Bias</i>	<i>Implicit Bias</i>
<i>Micro Perspective</i>	Extremism/ Supremacy & Rac- ism	Micro-aggressions/ Unconscious Bias
<i>Macro Perspective</i>	Segregation/ Racist Symbols	Systemic Racism/ Racial Disparity

As the following sections describe, both explicit and implicit racial bias at various levels have regrettably played a key role in the U.S. Armed Forces in the Cold War Era, the Post-Cold War Era, and now the Era of Great Power Competition.

A. Racial Bias in the Cold War Era

World War II, like previous wars before it, was fought by a segregated military—a military that was used to enforce segregation at home, primarily in the form of Japanese internment. In 1942, President Roosevelt signed Executive Order 9066, giving the Secretary of Defense and the military authorization to forcefully relocate Japanese-Americans from their west coast homes to internment camps further inland, where they were deemed to be less of a threat to the war effort.⁴² Shortly before the end of World War II, the Supreme Court decided *Korematsu v. United States*, which affirmed a lower court’s decision upholding Executive Order 9066 as a necessity.⁴³

Seeking a break from this segregationist tradition both inside and out of the military, on July 26, 1948, President Harry S. Truman established the President’s Committee on Equality of Treatment and Opportunity in the Armed Services, which committed to integrating the military.⁴⁴ President Truman was responding to appeals from civil rights leaders and political advisors, as well as to arguments advanced by Army social and behavioral scientists; these groups all argued that minority troops would be more effective in integrated units and that White troops would accept the

⁴² See generally ERIC K. YAMAMOTO ET AL., RACE, RIGHTS, AND NATIONAL SECURITY: LAW AND THE JAPANESE AMERICAN INCARCERATION (3d ed. 2021).

⁴³ *Korematsu v. United States*, 323 U.S. 214 (1944). It took the Court nearly seventy-five years to overturn *Korematsu*, albeit in *dictum*. See *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018) (“*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—‘has no place in law under the Constitution.’”) (quoting 323 U.S., at 248 (Jackson, J., dissenting)).

⁴⁴ See Exec. Order No. 9981, 13 Fed. Reg. 4313 (July 26, 1948).

assignment of minorities in their units without deterioration of morale or unit standards.⁴⁵

Following the desegregation of the Armed Services, the Korean War proved to be a natural experiment in race relations post-desegregation.⁴⁶ However, racial bias, including explicit bias in the military justice system, was prominently displayed. For example, in 1951, Thurgood Marshall investigated the proceedings of the courts-martial of 32 Black soldiers.⁴⁷ Half of the men had been sentenced to death or life imprisonment and those remaining were sentenced to no less than 10 to 50 years.⁴⁸ Marshall found that several of the deliberations regarding life sentences lasted less than an hour; four life sentences had been issued in a span ranging from 42 to 50 minutes.⁴⁹ Additionally, Marshall found that one soldier sentenced was in the hospital at the time he was accused of being absent without leave (AWOL).⁵⁰ Another had falsified his age in order to enlist and was not yet 18 at the time of the sentencing, and four other soldiers were assigned to mess duty when they were accused of cowardice.⁵¹

Importantly, during the war, the military had initiated a study on the effects of integration in the Armed Services. The study, released in 1954, concluded that racially segregated units limited overall military effectiveness, while integration enhanced effectiveness.⁵² Specifically, by allowing members of different races to feel closer and more trustworthy of their fellow soldiers, units were able to be combat ready at a more effective pace.⁵³ The study went on to show that the more contact white soldiers had with African-American soldiers, the more favorably they looked at

⁴⁵ See SCHUYLER C. WEBB & WILLIAM J. HERRMANN, *HISTORICAL OVERVIEW OF RACISM IN THE MILITARY* 14 (2002). *But see* Derek Catsam, *The Civil Rights Movement and the Presidency in the Hot Years of the Cold War: A Historical and Historiographical Assessment*, 6 *HIST. COMPASS* 314, 315 (2008) (finding that while most Cold War U.S. presidents gladly defended liberal democracy from external threats, they at best saw the Civil Rights Movement as a distraction from their larger commitments, and at worst looked at it as a nuisance that damaged America's image).

⁴⁶ While it is beyond the scope of this paper, the WWII Era was clearly defined by racial strife stemming from the segregated force. One poignant example is the Freeman Field "Mutiny." See WEBB & HERRMANN, *supra* note 45, at 12–15 ("[F]our groups of Black officers stationed at Freeman Field, were arrested for entering Officers' Club Number Two.").

⁴⁷ *See id.* at 15.

⁴⁸ *See id.*

⁴⁹ *See id.*

⁵⁰ *See id.*

⁵¹ *See id.*

⁵² *See id.* at 14–15.

⁵³ *See id.*

integration.⁵⁴ By taking soldiers who came from segregated societies and forcing them into integrated units, the military was able to present them with a new way of thinking about racial cohesion.⁵⁵

By the time the Vietnam War commenced, some six years later, integration without an inclusive culture was a recipe for racial bias. For example, one program implemented during the war, Project 100,000, aimed to admit 100,000 service members that had previously failed the qualifying examination.⁵⁶ The intent of this project was to adjust the military standards, thereby offering poor individuals valuable training and opportunity. This program, however, proved to be deadly. The promised training was seldom implemented and there was little effort on behalf of the United States to train these individuals. As the Defense Equal Opportunity Management Institute concluded: “This resulted in many poor and uneducated men being deployed to Vietnam. Approximately 40,000 African Americans under the project were deployed to Vietnam. This ultimately contributed to the disproportionate twenty percent casualty figures African Americans sustained during the onset of the Vietnam War.”⁵⁷

To remedy these issues during the waning years of the Vietnam War, the DoD established the Defense Race Relations Institute to teach race relations at the base level to all Armed Services personnel, collect data on programs, conduct equal opportunity and related research, and conduct classes throughout the DoD. This marked one of the first post-integration efforts to combat racial disparity within the U.S. Armed Services.⁵⁸ A decade later, in the 1980’s, Defense Secretary Weinberger attempted to combat extremism in the military after reports showed several service members actively engaged in the Ku Klux Klan and other white-supremacist

⁵⁴ See Charles C. Moskos, Jr., *Racial integration in the Armed Forces*, 72 AM. J. SOC. 132, 140 (1966).

⁵⁵ “A white sergeant (from Virginia) described this when he admitted, ‘Many guys didn’t like it. I was one of them ... There was a lot of talk about what would happen. Nothing actually happened. In about two weeks it wore in. I slept with one right beside me. I resented it at first. It’s all in your mind. Once you get it out, you’re okay. If you can live with whites, you can live with most colored.’” Paul B. Foreman, *The Implications of Project Clear*, 16 PHYLON 263, 270 (1955).

⁵⁶ See WEBB & HERRMANN, *supra* note 45, at 15.

⁵⁷ See *id.*

⁵⁸ See generally MICKEY DANSBY ET AL., *MANAGING DIVERSITY IN THE MILITARY: RESEARCH PERSPECTIVES FROM THE DEFENSE EQUAL OPPORTUNITY MANAGEMENT INSTITUTE* (2001).

groups.⁵⁹ This included banning military personnel from having any involvement with such organizations.⁶⁰

B. Racial Bias in the Post-Cold War Era

Continued controversies surrounding Black-White relations, as well as post-9/11 racial bias⁶¹ (particularly surrounding Muslim American soldiers), defined racial bias in the U.S. Armed Forces during the Post-Cold War Era. Similar to African Americans, Muslims Americans have a rich history of defending the homeland and have fought in all major U.S. wars.⁶²

Post-Cold War and Pre-9/11, the same racial tensions that had plagued the military for decades continued to persist.⁶³ For example, in 1992, the lone African-American in an explosive ordinance detachment was punished for being late to a unit meeting.⁶⁴ The soldier's punishment was being subjected to a mock lynching, in which a white soldier dressed up in a white hood holding a noose.⁶⁵ After filing a complaint, a white sergeant accidentally shot the African-American soldier in the arm with a smoke grenade.⁶⁶

Moreover, in 1995, two members of the Army with ties to White supremacy were arrested and charged with murder after they executed a

⁵⁹ See Eric Lichtblau, *The Military Said It Wants to Fight White Supremacy. What Is It Waiting For?*, WASH. POST (Jan. 29, 2021), https://www.washingtonpost.com/outlook/military-white-supremacy-capitol-riot/2021/01/29/1693f124-61a1-11eb-afbe-9a11a127d146_story.html; See Lecia Brooks, *Extremism In The Ranks: SPLC Testifies To Congress About Persistence of White Supremacist Activity in Military*, S. POVERTY L. CTR. (Mar. 24, 2021), <https://www.splcenter.org/news/2021/03/24/extremism-ranks-splc-testifies-congress-about-persistence-white-supremacist-activity> (“active-duty Marines at Camp Lejeune were participating in paramilitary Ku Klux Klan activities and stealing weapons”).

⁶⁰ See Lichtblau, *supra* note 59.

⁶¹ See generally Gil Gott, *The Devil We Know: Racial Subordination and National Security Law*, 50 VILL. L. REV. 1073 (2005).

⁶² See Mariam Khan & Luis Martinez, *More than 5,000 Muslims Serving in US Military, Pentagon Says*, ABC NEWS (Dec. 8, 2015), <https://abcnews.go.com/US/5000-muslims-serving-us-military-pentagon/story?id=35654904>.

⁶³ See WEBB & HERRMANN, *supra* note 45, at 18.

⁶⁴ *Id.* at 17.

⁶⁵ *Id.*

⁶⁶ *Id.*

Black couple on the streets of Fayetteville, North Carolina.⁶⁷ A third member, acting as the driver, was charged with conspiracy to commit murder.⁶⁸ A subsequent investigation revealed that all three men were part of a white supremacist group that was active at Fort Bragg, and the room of one of the suspects contained Nazi flags and literature.⁶⁹ Indeed, then-Lt. Col. Austin (now Secretary of Defense) was serving with the 82nd Airborne Division at Ft. Bragg, North Carolina, when the three white soldiers, who self-identified as skinheads, were arrested for the murder of the Black couple because of their race.⁷⁰ The incident left Army officials concerned about White supremacy within the military's ranks.⁷¹ Then-Lt. Col. Austin felt the pressure of racial bias during his service.⁷² He was the first African-American operations officer with the 82nd Airborne.⁷³ Secretary Austin later stated that he typically had someone else give his briefings, "someone he felt White officers were more likely to listen to."⁷⁴

Post-9/11 has seen many examples of racial bias in the United States Armed Forces against Muslim Americans. One prominent example related to Army Specialist Zachari Klawonn, who reported several incidents of racism during basic training. In one instance he was referred to as a "carpet jockey" and a "terrorist."⁷⁵ Another example of racial bias towards Muslim Americans in the Armed Forces occurred at Guantanamo Bay. In addition to controversial "enhanced interrogation techniques" of enemy combatants, minority American soldiers were allegedly mistreated. For example, Captain James Yee, a former Guantanamo Bay Muslim chaplain, was arrested by military police after drawing attention to U.S. soldiers

⁶⁷ William Branigin & Dana Priest, *3 White Soldiers Held in Slaying of Black Couple*, WASH. POST (Dec. 9, 1995), <https://www.washingtonpost.com/archive/politics/1995/12/09/3-white-soldiers-held-in-slaying-of-black-couple/1f11ca9f-9fe2-4e28-a637-a635007decaf/>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See Lolita C. Baldor, *For 1st Black Pentagon Chief, Racism Challenge is Personal*, AP NEWS (Jan. 23, 2021), <https://apnews.com/article/politics-race-and-ethnicity-biden-cabinet-lloyd-austin-army-e3fa150af670ff2a3673e7d72dbe77bd>.

⁷¹ *Id.*

⁷² David Martin, *Race in the Ranks: Investigating Racial Bias in the U.S. Military*, CBS NEWS (Aug. 22, 2021), <https://www.cbsnews.com/amp/news/us-military-racism-60-minutes-2021-08-22/>.

⁷³ *Id.*

⁷⁴ *Id.* ("Secretary of Defense Lloyd Austin: It absolutely was a conscious bias.").

⁷⁵ See Bradley Blackburn & Margaret Aro, *Muslim-American Soldier Claims Harassment in the Army*, ABC NEWS (Apr. 14, 2010), <https://abcnews.go.com/WN/army-discrimination-muslim-army-specialist-zachari-klawonn-shares/story?id=10372314>.

abusing the Koran, mocking Islam, and stripping prisoners of their dignity.⁷⁶ He was subsequently taken to a Navy brig in Jacksonville, Florida where he spent 76 days in solitary confinement.⁷⁷ Captain Yee was allegedly forced to strip naked in front of the guards, despite his faith prohibiting him from being naked in front of others.⁷⁸ He was also allegedly routinely shackled and chained in a cell.⁷⁹ He was eventually released and given an Honorable Discharge.⁸⁰

Finally, on November 5, 2009, a radicalized extremist attacker at Ft. Hood, Texas killed 13 DoD employees and wounded another 32.⁸¹ Congressional inquiries have suggested that the alienation of this Muslim minority may have led to his radicalization and ultimately the Ft. Hood Attack.⁸²

C. Racial Bias in the Era of Renewed Great Power Competition

A shift in the way racial bias is combatted marks the Era of Renewed Great Power Competition. Whereas the Cold War Era was defined by *de jure* desegregation of White and Black service members (*i.e.*, resolving most macro-level explicit bias) and the post-Cold War Era was defined by trying to *socially* integrate the military (*i.e.*, resolving some but not all micro-level implicit biases), the U.S. Armed Forces in the Era of Renewed Great Power Competition has begun to tackle pernicious issues ranging from extremism and white supremacy (*i.e.*, micro-level explicit bias) while also continuing to create a more inclusive military through unconscious bias training and combatting micro-aggressions (*i.e.*, micro-level implicit bias). Importantly, unlike previous eras, the U.S. Armed Forces now prioritizes resolving *de facto* disparate treatment of racial minorities (*i.e.*, macro-level implicit bias). Indeed, for the first time, the DoD has recognized its failure to police symbols of hate has contributed to bias in the institution.⁸³ Consequently, with respect to racial bias, in the Era of

⁷⁶ See Bernd Debusmann, *Former Guantanamo chaplain wants U.S. Army apology*, REUTERS (Feb. 6, 2007), <https://www.reuters.com/article/us-usa-muslims-yee-idUSN0644620520070207>; see generally JAMES YEE, *FOR GOD AND COUNTRY: FAITH AND PATRIOTISM UNDER FIRE* (2005).

⁷⁷ See Debusmann, *supra* note 76.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See generally JOSEPH I. LIEBERMAN & SUSAN M. COLLINS, "A TICKING TIME BOMB": COUNTERTERRORISM LESSONS FROM THE U.S. GOVERNMENT'S FAILURE TO PREVENT THE FORT HOOD ATTACK (2011), https://www.hsgac.senate.gov/imo/media/doc/Fort_Hood/FortHoodReport.pdf.

⁸² See *id.*

⁸³ See, e.g., Mark T. Esper, *Secretary of Defense Dr. Mark T. Esper Guidance on Public Display or Depiction of Flags in the Department of Defense*, U.S.

Renewed Great Power Competition, three initiatives are defining: (1) the banning of symbols of hate, (2) the use of unconscious bias training, and (3) the recognition of racial disparity and systemic racism in the U.S. Armed Forces.

First, while the U.S. military had previously analyzed semiotics (the study of symbols) in war fighting,⁸⁴ more recently the military has studied the effects that certain symbols and flags have on minority members of the Armed Forces.⁸⁵ On July 17, 2020, the U.S. Navy and Marine Corps decided to ban the Confederate flag from military installations, and the Army similarly began considering whether to rename 10 bases named after Confederate generals.⁸⁶ To combat the racist ideology that these symbols represent, the DoD released a memo regarding the public display or description of flags.⁸⁷ The memo stated that the flags that the military flies must be in accord with the imperatives of good order and discipline, treating all our people with dignity and respect, and rejecting divisive symbols.⁸⁸

While to an outside observer the idea of flying the flag of the traitorous Confederacy or naming U.S. military installations after secessionist Generals seems preposterous, these symbols of hate are unfortunately deeply rooted in cultural traditions of many service members. For Black and minority service members—who had to see Confederate flags at their place of work or who still have to serve at installations revering Confederate Generals who supported the institution of slavery, such as at Forts Benning, Lee, Hood, etc.—these changes demonstrate that the institutions they serve respect their voices and opinions. Though Confederate military base names remain, Defense Secretary Austin has committed to change and has established a commission to study base renaming.⁸⁹ Further goals

DEP'T. OF DEF. (July 17, 2020), <https://www.defense.gov/Newsroom/Releases/Release/Article/2278101/secretary-of-defense-dr-mark-t-esper-guidance-on-public-display-or-depiction-of/>.

⁸⁴ See, e.g., MAJOR FREDERICK R. KIENLE, OPERATIONAL SYMBOLS: CAN A PICTURE BE WORTH A THOUSAND WORDS? (1991), <https://apps.dtic.mil/dtic/tr/fulltext/u2/a240337.pdf>; see generally UMBERTO ECO, A THEORY OF SEMIOTICS (1979).

⁸⁵ See Meghann Myers, *Confederate flag effectively banned from military installations*, MIL. TIMES (July 17, 2020), <https://www.militarytimes.com/news/your-military/2020/07/17/confederate-flag-effectively-banned-from-military-installations/>.

⁸⁶ See Matthew Delmont, *Why the Confederate Flag Flew During World War II*, ATLANTIC (June 14, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/how-us-military-came-embrace-confederate-flag/613027/>.

⁸⁷ See Esper, *supra* note 83.

⁸⁸ See *id.*

⁸⁹ See Kevin Baron, *Confederate Military Base Names Just Met Their Gettysburg*, DEF. ONE (Feb. 12, 2021), <https://www.defenseone.com/ideas/2021/02/confederate-military-base-names-just-met-their-gettysburg/172045/>.

include requirements for tracking and reporting “supremacist, extremist and criminal gang activity, and create[ing] an inspector general to oversee diversity and inclusion efforts.”⁹⁰

Second, in one of his first actions in office, President Biden issued Executive Order 13985 repealing President Trump’s September 22, 2020 Executive Order 13950.⁹¹ This repeal, first and foremost, restarts DEI training in the DoD. Executive Order 13950 sought “to combat offensive and anti-American race and sex stereotyping and scapegoating.”⁹² Given that federal employees and contractors faced serious repercussions for engaging in certain DEI training, nearly all such trainings were canceled during the pendency of Executive Order 13950.⁹³ Swinging the pendulum, President Biden’s new Executive Order also requires the head of each agency to provide a report on potential barriers to underserved communities and individuals taking advantage of agency procurement and contracting opportunities, directly implicating military contractors.⁹⁴

Finally, a growing recognition of racial disparity in the military justice system as a result of racial bias has characterized the Era of Renewed Great Power Competition. While the DoD has been aware that personnel of color, particularly Black service members, are, *inter alia*, more likely to face non-judicial punishment and are half as likely to be counseled rather than punished as opposed to their White counterparts, for over half a century, this awareness has not led to clear strategies for reform.⁹⁵ Indeed,

⁹⁰ See James LaPorta et al., *Deep-rooted Racism, Discrimination Permeate US Military*, AP NEWS (May 27, 2021), <https://apnews.com/article/us-military-racism-discrimination-4e840e0acc7ef07fd635a312d9375413>.

⁹¹ See Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

⁹² See Exec. Order No. 13950, 85 Fed. Reg. 60683 (Sept. 22, 2020).

⁹³ See Meghann Myers, *DoD canceled its diversity training audit to comply with new White House rules*, MIL. TIMES (Oct. 30, 2020), <https://www.militarytimes.com/news/your-military/2020/10/30/dod-canceled-its-diversity-training-audit-to-comply-with-new-white-house-rules/>; Jessica Abrahams et al., *President Biden Repeals Executive Order 13950 Upon Taking Office*, FAEGRE DRINKER BIDDLE & REATH LLP (Jan. 25, 2021), <https://www.faegredrinker.com/en/insights/publications/2021/1/president-biden-repeals-executive-order-13950-upon-taking-office> (noting that a substantial number of contractors erred on the side of caution and postponed or cancelled their training and other diversity initiatives). However, observing this chilling effect, on December 22, 2020, the U.S. District Court for the Northern District of California issued a preliminary injunction temporarily banning the enforcement of certain provisions of the executive order nationwide. See *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, No. 20-cv-07741-BLF, 2020 U.S. Dist. LEXIS 242006 (N.D. Cal. 2020).

⁹⁴ See Exec. Order No. 13985, *supra* note 91, at 5(b).

⁹⁵ See, e.g., DEP’T OF THE AIR FORCE INSPECTOR GEN., REPORT OF INQUIRY (S8918P) INDEPENDENT RACIAL DISPARITY REVIEW 4 (Dec. 2020) (“The Review Team examined 23 previous reports and studies related to diversity and racial

a 2019 Government Accountability Office report unambiguously stated that “Black and Hispanic service members across the armed forces are more likely than white service members to be investigated, received non-judicial punishments such as an Article 15 or to be court-martialed for alleged violations of the Uniform Code of Military Justice.”⁹⁶

On June 16, 2020, the House Armed Services Military Personnel Subcommittee held a hearing entitled, “Racial Disparities in the Military Justice System: How to Fix the Culture.”⁹⁷ Military legal heads of the U.S. Army, Navy, and Air Force were called to testify and addressed racial bias in the military. Lieutenant General Charles N. Pede, the Judge Advocate General of the U.S. Army, said that “the protections that are afforded to soldiers who are defending our nation are not afforded to all soldiers.”⁹⁸ Further, Lieutenant General Jeffrey A. Rockwell, the Judge Advocate General of the U.S. Air Force, confirmed that “black male Airmen below the rank of E-5 and with less than 5 years of time in service are statistically almost two times more likely to receive non-judicial punishment or face courts martial than similarly situated white Airmen.”⁹⁹ The Judge Advocate General of the U.S. Navy, Vice Admiral John G. Hannink, stated “black service members were twice as likely as White service members to be the subject of an investigation . . . by the Naval Criminal Investigative Service (NCIS)”¹⁰⁰

Following these hearings, the U.S. Congress required that for each courts martial the race, ethnicity, gender, and other such demographic information about the victim and the accused be recorded, and that data based on this information be included in the annual military justice reports

disparities dating back to 1973. The findings of these studies and associated proposed recommendations often did not identify root causes, often did not compel follow-through, often lacked mechanisms to measure effectiveness over time, and broadly lacked accountability for progress.”); Barry K. Robinson & Edgar Chen, *Déjà vu All Over Again: Racial Disparity in the Military Justice System*, JUST SEC. (Sept. 14, 2020), <https://www.justsecurity.org/72424/deja-vu-all-over-again-racial-disparity-in-the-military-justice-system/>.

⁹⁶ See Daniel Lam, *They Faced Racial Bias in Military Discipline. That Can Impact National Security*, NPR (Aug. 22, 2021), <https://www.npr.org/2021/08/22/1028765938/racial-bias-military-discipline-national-security-combat-readiness>.

⁹⁷ See *Racial Disparity in the Military Justice System- How to Fix the Culture: Hearing Before the Subcomm. on Mil. Personnel of the H. Comm. on Armed Services*, 116th Cong. (2020), <https://armedservices.house.gov/2020/6/subcommittee-on-military-personnel-hearing-racial-disparity-in-the-military-justice-system-how-to-fix-the-culture>.

⁹⁸ See *id.*

⁹⁹ *Id.*

¹⁰⁰ See *id.*

of the Armed Forces.¹⁰¹ In addition, the DoD now requires regular reports outlining racial bias statistics with respect to military justice, promotions, and adverse administrative actions.¹⁰²

Moreover, on June 29, 2020 the U.S. Army announced, “Project Inclusion,” a new initiative to improve DEI across the force.¹⁰³ Likewise, in July 2020, the U.S. Navy established Task Force One to address the issues of racism, sexism and other destructive biases and their impact on naval readiness. Task Force One’s mission is “to promptly address the full spectrum of systemic racism, advocate for the needs of underserved communities, work to dismantle barriers and equalize professional development frameworks and opportunities within the Navy.”¹⁰⁴

On June 9, 2020, the United States Air Force officially stood up its Diversity and Inclusion task force.¹⁰⁵ Additionally, in December 2020, the Inspector General Department of the Air Force conducted a comprehensive Independent Review study and “confirmed racial disparity exists for black service members in the following areas: law enforcement apprehensions, criminal investigations, military justice, administrative separations, placement into occupational career fields, certain promotion rates, professional military educational development, and leadership opportunities.”¹⁰⁶ Following the release of the Independent Review, the Air Force committed

¹⁰¹ National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 540I, 133 Stat. 1204 (2019).

¹⁰² See e.g., U.S. AIR FORCE, INSTR. 36-2907, ADVERSE ADMINISTRATIVE ACTIONS, U.S. AIR FORCE (April 27, 2022), Chapter 5, https://static.e-publishing.af.mil/production/1/af_a1/publication/dafi36-2907/dafi36-2907.pdf (requiring demographic reporting requirement for certain previously unreported adverse administrative actions).

¹⁰³ U.S. Army Project Inclusion, U.S. ARMY (June 29, 2020), <https://www.army.mil/standto/archive/2020/06/29/>.

¹⁰⁴ Task Force One Navy Established to Combat Discrimination in the Navy, U.S. NAVY (June 30, 2020), <https://www.navy.mil/Press-Office/Press-Releases/display-pressreleases/Article/2298130/task-force-one-navy-established-to-combat-discrimination-in-the-navy/>.

¹⁰⁵ See Sec’y of the Air Force Pub. Affs., *Department of the Air Force stands up Diversity and Inclusion Task Force*, U.S. AIR FORCE (July 8, 2020), <https://www.af.mil/News/Article-Display/Article/2267953/department-of-the-air-force-stands-up-diversity-and-inclusion-task-force/> (“Clearly we have to acknowledge our Air and Space Forces are not immune from racism and the challenges of inequity. As a force that depends on unity, inclusion, and a common strength of purpose, we are committed to being better every day until all within our ranks feel a true sense of belonging that allows them to maximize their talents,” said Lt. Gen. Brian Kelly, deputy chief of staff for Manpower, Personnel and Services. “This is why we stood up the task force, to move out quickly and deliver immediate improvements for our services.”).

¹⁰⁶ See INSPECTOR GEN. DEP’T OF THE AIR FORCE, REPORT OF INQUIRY (S8918P): INDEPENDENT RACIAL DISPARITY REVIEW 3 (2020).

to implement “systemic action plans”¹⁰⁷ similar to those pursued by its sister services. Moreover, in September 2021, the Air Force released the data from both the Six-Month Assessment of the initial Racial Disparity Review as well as a broader Disparity Review which focused on gender, racial, and ethnic challenges within the Air Force.¹⁰⁸ While the initial review from 2020 was solely focused on the disparities affecting Black/African-American service members, the follow-up review expanded to include the disparities across genders as well as all races and ethnicities.¹⁰⁹ The report identified 16 discrepancies requiring careful appraisal.¹¹⁰

From Project Inclusion to Task Force One, these initiatives are some of the first tangible policy actions that acknowledge systemic racism and racial disparity within the U.S. Armed Forces. These are much needed changes, as the numbers show more than 750 complaints of racial and ethnic discrimination from services members in the fiscal year 2020, along with 900 complaints of racial discrimination and over 350 complaints of discrimination by skin color coming from civilians working with the military.¹¹¹ This recognition has detractors who argue that such emphasis on race is contrary to national security prerogatives.¹¹² In fact, however, the

¹⁰⁷ *See id.* at 132.

¹⁰⁸ *See* INSPECTOR GEN. DEP’T OF THE AIR FORCE, REPORT OF INQUIRY (S8918P): DISPARITY REVIEW (2021).

¹⁰⁹ *Id.* at 1.

¹¹⁰ Examples include: (1) the racial disparity in substantiated Military Equal Opportunity (MEO) sexual harassment complaints, (2) the racial disparity in Air Force Specialty Codes (AFSCs), especially as it relates to operational versus support career fields, (3) the racial disparity in the officer Intermediate Developmental Education (IDE) and Senior Developmental Education (SDE) process, given that analysis shows Black/African American officers are being nominated for IDE/SDE at higher than the overall nomination rate but designated to attend at a lower rate, (4) the racial disparity in the civilian IDE and SDE selection process given Black/African American civilians are identified to meet the Civilian Developmental Education Board (CDEB) at a consistently lower rate than white civilians, (5) the racial disparities in promotions to E5-E7 and O4-O6, (6) the racial disparities in civilian leadership representation from GS-13 to SES, (7) the lack of thorough Barrier Analysis among some Developmental Teams, (8) the racial disparity in wing command and equivalent positions, and (9) the lack of satisfaction service members expressed regarding IG and EO, with special emphasis on the process of referring cases back to the chain of command. *See* Inspector Gen. DEP’T OF THE AIR FORCE, ASSESSMENT REPORT (S8918P): INDEPENDENT RACIAL DISPARITY REVIEW SIX-MONTH ASSESSMENT (2021).

¹¹¹ *See* LaPorta et al., *supra* note 90.

¹¹² *See, e.g.*, Thomas Spoehr, *Don’t Let the Department of Defense Become the Department of Distraction*, HERITAGE FOUND. (Mar. 17, 2021), <https://www.heritage.org/defense/commentary/dont-let-the-department-defense-become-the-department-distraction> (“[T]he White House recently published a 24-page guidance document on the interim national security strategy. Unfortunately,

opposite is true. As the next section describes, in the Era of Renewed Great Power Competition, continued racial bias within the United States Armed Forces, both implicit and explicit and at micro and macro levels, is a threat to national security.

III. RACIAL BIAS IN THE UNITED STATES ARMED FORCES AS A THREAT TO NATIONAL SECURITY

The National Security Strategy (NSS) outlines the United States' national security prerogatives.¹¹³ Former President Donald Trump delivered the last NSS on December 18, 2017.¹¹⁴ It named Russia and China as “revisionist powers” and emphasized neorealist, competition-based international politics, as opposed to prior neoliberal institutionalist rhetoric of the “community of nations”.¹¹⁵ On March 4, 2021, President Biden released Interim National Security Strategic Guidance, which, *inter alia*, to a large extent rejected the isolationist rhetoric of the 2017 NSS.¹¹⁶

The whiplash between fundamental national security tenants between American administrations should not come as a surprise given the fluid

if you were the secretary of defense hoping to glean insights on how the administration wants you to shape the nation's defenses, you would come away unfulfilled after reading this document ... COVID-19 gets a shout-out nine times, and racial justice or equity—three times. Keep in mind, this is national security guidance.”).

¹¹³ See President Donald J. Trump, *National Security Strategy of the United States of America*, WHITE HOUSE (2017), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>.

¹¹⁴ See *id.*

¹¹⁵ See *id.* at 25; see also 2022 NDS SUMMARY, *supra* note 12; 2018 NDS SUMMARY, *supra* note 12 (“Today, we are emerging from a period of strategic atrophy, aware that our competitive military advantage has been eroding. We are facing increased global disorder, characterized by decline in the long-standing rules-based international order, creating a security environment more complex and volatile than any we have experienced in recent memory. Inter-state strategic competition, not terrorism, is now the primary concern in U.S. national security.”); Anthony Cordesman, *Giving the New National Security Strategy the Attention It Deserves*, CTR. FOR STRATEGIC & INT’L STUD. (Dec. 21, 2017), <https://www.csis.org/analysis/giving-new-national-security-strategy-attention-it-deserves>.

¹¹⁶ See President Joseph R. Biden, Jr., *Renewing America's Advantages-Interim National Security Strategic Guidance*, NAT’L SEC. STRATEGY ARCHIVE (Mar. 4, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/03/NSC-1v2.pdf> [hereinafter Interim NSS]. While President Biden’s NSS was due early 2022, the Russian invasion of Ukraine has delayed its release. See Nahal Toosi et al., *Putin is delaying the National Security Strategy*, POLITICO (Feb. 20, 2022), <https://www.politico.com/newsletters/national-security-daily/2022/02/10/putin-delaying-national-security-strategy-00007916>.

nature of the concept of national security.¹¹⁷ In academic parlance, national security “is the condition provided by (1) military or defense advantage over any foreign nation or group of nations; (2) favorable foreign relations position; or (3) defense posture capable of successfully resisting hostile or destructive action from within or without.”¹¹⁸ Of course, we now understand that a variety of existential threats implicate the national security: “They include economic security; energy security; environmental security; and even health and food security.”¹¹⁹

One such existential threat, as this section will argue, is racial bias in the United States Armed Forces. Specifically, racial bias within the military is a threat to U.S. national security with respect to military dominance, renewed ideological competition, and rapid technological changes across MDOs.

A. Racism in the Ranks as a Challenge to U.S. Military Dominance

The “reemergence of long-term, strategic competition” and a “resilient, but weakening, post-WWII international order defined the Era of Renewed Great Competition.”¹²⁰ Consequently, good order and discipline, as well as public trust in the military, will be critical to U.S. military dominance. Racial bias, particularly micro-level explicit bias, is a threat to U.S. military dominance. And while racial minorities have been present in the U.S. military since it was founded, the U.S. military has a long history of under-policing racism in the ranks.¹²¹ The military is undeniably a microcosm of society writ large,¹²² and “[a]lthough minorities have been involved in all armed conflicts, their experiences in the military did not vary

¹¹⁷ See Arnold Wolfers, *National Security as an Ambiguous Symbol*, 57 POL. SCI. Q. 481 (1952).

¹¹⁸ Lisa A. Rich, *Introduction to The Symposium Edition: New Technology And Old Law: Rethinking National Security*, 2 TEX. A&M L. REV. 581, 582 (2015); see also WILLIAM M. ARKIN ET AL., *ENCYCLOPEDIA OF THE U.S. MILITARY* 444 (1990).

¹¹⁹ See Kim R. Holmes, *What is National Security?*, HERITAGE FOUND. (Oct. 7, 2014), <https://www.heritage.org/military-strength-topical-essays/2015-essays/what-national-security>.

¹²⁰ See 2018 NDS SUMMARY, *supra* note 12, at 2.

¹²¹ See Mark Thompson, *Racism in The Ranks*, POGO (July 8, 2020), <https://www.pogo.org/analysis/2020/07/racism-in-the-ranks/>; see also Andrea Mazzarino, *The US Military Also Has a Racism Problem*, NATION (June 23, 2020), <https://www.thenation.com/article/society/black-lives-matter-military/>.

¹²² “If it exists in society, it exists in the military.” Bryan Bender, *The Military Has a Hate Group Problem. But It Doesn’t Know How Bad It’s Gotten*, POLITICO (Jan. 11, 2021), <https://www.politico.com/news/2021/01/11/military-right-wing-extremism-457861>(quoting former Marine Corps Commandant General James Jones).

significantly from the disparate treatment and segregation characteristic of American society.”¹²³

Ultimately, explicit bias at the micro-level can manifest as extremism, supremacy, and overt racism. While many understand this sort of racial bias to be minimal, the experience of racial minorities in the armed forces begs to differ. The effect of micro-level explicit bias on U.S. military dominance is twofold. First, the perpetuation of such bias undermines good order and discipline.¹²⁴ Second, a culture of racial bias radicalizes certain service members, resulting in their embrace of extremism and supremacy.

With respect to good order and discipline, an alarming number of service members have observed racism. Specifically, around 57% of racial minorities have said they have personally experienced racism.¹²⁵ This statistic is consistent with the history of the U.S. Armed Forces.¹²⁶ This poses a serious threat to the future of the U.S. military’s strength and numbers. Air Force Colonel Don Christensen (ret.), president of Protect Our Defenders,¹²⁷ is forthcoming that “we cannot operate our military without service members of color being willing and able to come in and serve.”¹²⁸ A recent report shows that roughly 413,000 active-duty service members are people of color.¹²⁹ Unchecked and unsolved racial inequality has the potential to drive service members of color out of the military, and create barriers for people of color who wish to join the ranks.

¹²³ See WEBB & HERRMANN, *supra* note 45, at 19.

¹²⁴ For a definition of good order and discipline, see, e.g., Master Chief Petty Officer of the Navy Mike Stevens, *Zeroing in On Excellence: Good Order and Discipline (Part 4)*, U.S. NAVY (Nov. 23, 2012), <http://navylive.dodlive.mil/2012/11/23/zeroing-in-on-excellence-good-order-and-discipline-part-4/> (“Good Order & Discipline is something difficult to define but easy to sense. To me, it is about establishing, sustaining and enforcing professional standards that set the condition for individual and unit success. Anything that interferes with or detracts from those conditions is contrary to Good Order & Discipline.”); *but see generally* COLONEL JEREMY S. WEBER, *THE DISORDERLY, UNDISCIPLINED STATE OF THE ‘GOOD ORDER AND DISCIPLINE’ TERM* (2016) (finding that there is not a clear, consistent definition of Good Order and Discipline).

¹²⁵ See Leo Shane III, *Troops: White Nationalism a National Security Threat Equal to ISIS, al-Qaida*, MIL. TIMES (Sept. 3, 2020), <https://www.militarytimes.com/news/pentagon-congress/2020/09/03/troops-white-nationalism-a-national-security-threat-equal-to-isis-al-qaeda/>.

¹²⁶ See *generally supra* Section I.

¹²⁷ A military reform advocacy organization that works to combat sexual assault and racism in the military.

¹²⁸ See Daniel Lam, *They Faced Racial Bias in Military Discipline. That Can Impact National Security*, NPR (Aug. 22, 2021), <https://www.npr.org/2021/08/22/1028765938/racial-bias-military-discipline-national-security-combat-readiness>.

¹²⁹ *Id.*

Furthermore, a culture of racial bias hinders minorities “from developing their full potentials and growth [compromising] the mission of the military in general and the command or installation in particular.”¹³⁰ If racial minorities within the U.S. Armed Forces do not trust their institutions or their leadership to treat their members in an even-handed manner, they will have reason to doubt the integrity of orders, the unit, and the mission. As one retired Army Lieutenant General aptly stated: “Racism affects our nation’s soldier by weakening unit cohesion and, ultimately, is self-defeating.”¹³¹ Once unit cohesion is weakened, “you become slow, you become predictable, you become vulnerable”¹³²

With respect to extremism and supremacy, around 31% of troops said they have seen signs of extremist behavior in the military.¹³³ Extremism and supremacy in the military has been well documented, whether it is Maj Nidal Hasan’s act of terrorism at Ft. Hood, Texas¹³⁴ or the January 6, 2021 insurrectionists that killed five people and among whom military affiliation was overrepresented.¹³⁵

This is well-founded as data from the FBI shows “between 2001 and today right wing-extremists are responsible for more deaths in this country than any other extremist group.”¹³⁶ A recent Defense Department report researching the topic of extremism warns that even a small number of these individuals in the military poses a concern because those with “extremist affiliations and military experience” have “proven [the] ability to

¹³⁰ See WEBB & HERRMANN, *supra* note 45, at 19.

¹³¹ See Thomas P. Bostick, *Army General: Racism Affects Our Nation’s Soldiers*, CNN (July 10, 2020), <https://www.cnn.com/2020/07/10/opinions/racism-in-the-military-danny-chen-bostick/index.html>.

¹³² Lam, *supra* note 28 (quoting Jason Lyall, associate professor of government and the James Wright Chair in Transnational Studies at Dartmouth College).

¹³³ Shane, *supra* note 125.

¹³⁴ See Katharine Poppe, *Nidal Hasan: A Case Study in Lone-Actor Terrorism*, GEO. WASH. PROGRAM ON EXTREMISM (2018), <https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/Nidal%20Hasan.pdf>.

¹³⁵ See Tom Dreisbach & Meg Anderson, *Nearly 1 In 5 Defendants In Capitol Riot Cases Served In The Military*, NPR (Jan. 21, 2021), <https://www.npr.org/2021/01/21/958915267/nearly-one-in-five-defendants-in-capitol-riot-cases-served-in-the-military>.

¹³⁶ See Meghann Myers & Leo Shane III, *The Military Knows It Has a Problem With Domestic Extremists, White Supremacists*, MIL. TIMES (Jan. 14, 2021), <https://www.militarytimes.com/news/your-military/2021/01/14/the-military-knows-it-has-a-problem-with-domestic-extremists-white-supremacists/>. See also Christopher Wray, *Worldwide Threats to the Homeland: 20 Years After 9/11*, FBI (Sept. 22, 2021), <https://www.fbi.gov/news/testimony/worldwide-threats-to-the-homeland-20-years-after-911-wray-092221> (“Since the spring of 2020—so about 16, 17 months ago—we’ve more than doubled our domestic terrorism caseload, from about a thousand to around 2,700 investigations. And we’ve surged personnel to match, more than doubling the number of people working the threat from a year before.”).

execute high-impact events.”¹³⁷ The same report cited “murders, foiled terrorist plots and other incidents linked to white supremacists in the ranks over the past decade.”¹³⁸

Mark Pitcavage, a specialist on far-right groups for the Anti-Defamation League, spoke with the House Armed Services Committee last year about the issue of extremists in the U.S. Military. He testified that “the vast majority of them actually became extremist after they were in the military.”¹³⁹ And while there are certainly individuals with pre-existing extremist and supremacist views who then enter the military, Pitcavage believes that most are exposed to the ideas once inside the military, and are recruited by right-wing extremist groups.¹⁴⁰ Members of the military are considered “high-value recruitment targets for extremist groups” because “[t]hey bring social capital, legitimacy, specialized weapons training, leadership skills and an increased capacity for violence to these groups.”¹⁴¹ Army Colonel George Reed (ret.) has emphasized that when a member of the military with extremist views is identified, “there were plenty of signals that there were problems Those signals range from statements to tattoos and symbology and subscriptions to certain publications to internet activity.”¹⁴²

This threat is not academic. At the tactical level, service members themselves overwhelming rate white nationalism, a form of extremism, as a national security threat equal to the threat of ISIS or al-Qaida.¹⁴³ Concerning examples include “troops offering to teach how to make explosives and target left-wing activists, joining pro-Nazi organizations and traveling to Ukraine without orders to train with a right-wing militia.”¹⁴⁴

Moreover, in addition to being a threat within the military, “extremism is a long-term problem, and extremism in the military ranks could have a devastating effect on public trust in the armed forces.”¹⁴⁵ There is no stronger evidence of this dynamic than the recent attack on the U.S. Capitol on January 6, 2021. Given the public scrutiny, *inter alia*, the DoD

¹³⁷ See Dan De Luce, *Pentagon Report Warns of Threat From White Supremacists Inside The Military*, NBC NEWS (Feb. 25, 2021), <https://www.nbcnews.com/news/military/pentagon-report-warns-threat-white-supremacists-inside-military-n1258871>.

¹³⁸ See *id.*

¹³⁹ See Bender, *supra* note 122.

¹⁴⁰ *Id.*

¹⁴¹ See Brooks, *supra* note 59.

¹⁴² Bender, *supra* note 124.

¹⁴³ Shane, *supra* note 125 (referencing a poll of 1,018 active-duty troops conducted in partnership with Syracuse University’s Institute for Veterans and Military Families).

¹⁴⁴ Bender, *supra* note 122.

¹⁴⁵ See Doyle Hodges, *Bureaucratizing to Fight Extremism In The Military*, WAR ON THE ROCKS (Feb. 10, 2021), <https://warontherocks.com/2021/02/bureaucratizing-to-fight-extremism-in-the-military/>.

ordered stand downs in order to discuss the problem of extremism within the ranks of the U.S. military.¹⁴⁶ The DoD recognizes that while “[s]ervice members enjoy the right to free speech protected by the First Amendment, the unique character of the military community and of the military mission requires a balancing of those rights with the important purpose of the military.”¹⁴⁷ On April 9, 2021, Secretary Austin further directed the DoD’s Countering Extremist Activity Working Group (CEAWG) to review DoD policy and provide recommendations.¹⁴⁸ Finally, on December 20, 2021, the DoD updated Department of Defense Instruction (DoDI) 1325.06, *Handling Protest, Extremist, and Criminal Gang Activities Among Members of the Armed Forces*.¹⁴⁹ In an attempt to balance the First Amendment right of free expression with the compelling national security concerns of extremism in the DoD,¹⁵⁰ the update clarifies what constitutes prohibited *active* participation, such as recruiting, fundraising, and organizing, versus permitted *passive* participation, such as mere membership in an extremist organization.¹⁵¹ This focus on extremism is not lost on the U.S. Congress either. For example, the National Defense Authorization Act for Fiscal Year 2022 (FY2022 NDAA), enacted on December 27, 2021, requires the DoD to submit a report containing recommendations with respect to the establishment of a separate punitive article in the Uniform Code of Military Justice with respect to violent extremism.

¹⁴⁶ See Jim Garamone, *Austin Orders Military Stand Down to Address Challenge of Extremism in the Ranks*, DOD NEWS (Feb. 3, 2021), <https://www.defense.gov/Explore/News/Article/Article/2492530/austin-orders-military-stand-down-to-address-challenge-of-extremism-in-the-ranks/>; See *Stand-Down Training Material to Address Extremism in the Ranks*, U.S. DEP’T OF DEF. (Feb. 26, 2021), <https://www.defense.gov/Newsroom/Releases/Release/Article/2517651/stand-down-training-material-to-address-extremism-in-the-ranks/>.

¹⁴⁷ OFF. OF THE SEC’Y OF DEF., *supra* note 9, at 4 (citing *Parker v. Levy*, 417 U.S. 733 (1974)).

¹⁴⁸ See, e.g., COUNTERING EXTREMIST ACTIVITY WORKING GRP., *supra* note 10; Memorandum from Sec’y of Def. Lloyd Austin on Countering Extremist Activities within the Dep’t of Def. (Dec. 20, 2021), <https://media.defense.gov/2021/Dec/20/2002912574/-1/-1/0/secretary-of-defense-memorandum-on-countering-extremist-activities-within-the-department-of-defense.pdf>.

¹⁴⁹ U.S. DEP’T OF DEF., INSTR. 1325.06, *supra* note 11.

¹⁵⁰ See *id.* at para. 8.a (“Active participation in extremist activities as defined below is prohibited and, as appropriate, may be punished in the military context for several overlapping, compelling reasons. First, such active participation undermines morale and reduces combat readiness. Second, it calls into question the individual’s ability to follow orders from, or effectively lead and serve with, persons of diverse backgrounds, preventing maximum utilization and development of the Department’s most valuable asset: its people. Finally, such behavior damages the Nation’s trust and confidence in the Department as an institution and the military as a professional fighting force.”).

¹⁵¹ See *id.* at para. 8.c.

What is absent from these reforms—and indeed Secretary Austin’s December 20, 2021 Memorandum on Countering Extremist Activities within the DoD¹⁵²—is any mention of racial disparity, inequity, or bias within the DoD. Ultimately, extremism and supremacy only represents a small subsection of the larger issue of racial bias in the DoD. This connection is not lost on America’s leading national security experts. For example, Admiral (ret.) Stavridis suggests those in leadership roles be more decisive when taking corrective actions against extremism, supremacy, *and* racism.¹⁵³ Ultimately, without clear commitments from the highest levels of government, many members of the Armed Forces are not likely to take the overarching threat of racial bias seriously. Consequently, as Section **Error! Reference source not found.** of this Article argues, recognizing the threat of racial bias and incorporating broad DEI commitments within the NSS will provide DoD leaders with the necessary foundational backing to confront the threat of extremism, supremacy, *and* racism.

B. Racial Bias as a Disadvantage to Renewed Ideological Competition

The Era of Renewed Great Power Competition is further defined by “[r]enewed ideological competition.”¹⁵⁴ Racial bias, and specifically systemic racism and racial disparity (*i.e.*, macro-level, implicit bias), in the U.S. Armed Forces hamstring American ideological might in two key respects. First, racial bias in the military undermines the ability for the United States to project its soft power.¹⁵⁵ The great 21st century ideological fault lines between illiberal authoritarianism and liberal democracy will play as important or even a more important role than pure military capability in international relations.¹⁵⁶ As the United States attempts to emerge from its flirtation with isolation, it will need to rely on multilateral

¹⁵² Memorandum from Sec’y of Def. Lloyd Austin, *supra* note 148.

¹⁵³ James Stavridis, *The U.S. Military Needs to Fight Extremism in Its Own Ranks. Here’s How*, TIME (Feb. 5, 2021), <https://time.com/5936355/u-s-military-extremists/>.

¹⁵⁴ O’ROURKE, *supra* note 13, at 22.

¹⁵⁵ For a primer on soft power see ROBERT KAGAN, *THE WORLD AMERICA MADE* (2012); *but see* Joseph M. Grieco, *Anarchy and the limits of cooperation: a realist critique of the newest liberal institutionalism*, 42 INT’L ORG. 485 (1988) (“States in anarchy are preoccupied with power and security, are predisposed toward conflict and competition, and often fail to cooperate even in the face of common interests.”).

¹⁵⁶ *See generally* Colin S. Gray, *Hard Power and Soft Power: The Utility Of Military Force As An Instrument Of Policy In The 21st Century*, STRATEGIC STUD. INST. (Apr. 1, 2011), https://www.jstor.org/stable/resrep11431?seq=1#metadata_info_tab_contents (finding that military force has less utility as an instrument of policy in the 21st century than it did in times past).

efforts to contain China and Russia.¹⁵⁷ Indeed, the bedrock of transatlantic cooperation will be a set of shared liberal values, espousing equal justice under the law.¹⁵⁸ Racial bias within its military will undermine the United States' moral legitimacy, particularly as it confronts both authoritarianism and illiberal democracies abroad.¹⁵⁹

Second, in addition to soft power projection, rooting out racial bias in the military will empower the United States to rebuff propaganda efforts more freely from nations such as Russia and China.¹⁶⁰ Foreign attempts to create division in the United States can be traced as far back as the Great Depression. As professor of history at the University of Texas at Austin, Dr. Peniel E. Joseph, stated: "During the Great Depression era, the Soviet Union trumpeted naked displays of Jim Crowe injustice as proof of the insincerity of American claims of freedom and democracy."¹⁶¹ The KGB also conducted influence operations during the 1960s that were aimed at

¹⁵⁷ See Will Moreland, *To complete with China and Russia, America needs a new era of multilateralism*, VOX (Oct. 27, 2020), <https://www.vox.com/world/21536158/trump-withdrawal-who-china-russia-multilateralism-us-election-2020>.

¹⁵⁸ See Bishop Garrison & Jon B. Wolfsthal, *An Appeal to The National Security Community To Fight Racial Injustice*, FOREIGN POL'Y (June 2, 2020), <https://foreignpolicy.com/2020/06/02/race-relations-police-violence-national-security-community/> ("The United States cannot claim to be a beacon of freedom in the world if it continues to witness and accept the ongoing murder of innocent black people.").

¹⁵⁹ See Rishika Dugyala, *Foreign Foes Taking Advantage Of Divide Over Race, National Security Adviser*, POLITICO (May 31, 2020), <https://www.politico.com/news/2020/05/31/obrien-foreign-foes-racial-unrest-292147> (finding that Russia and China have used racial division in the United States to advance their own interests); Ebony Carroll, *Racism Is A National Security Problem*, OZY (June 16, 2020), <https://www.ozy.com/news-and-politics/racism-is-a-national-security-problem/341065/> ("To defend ourselves against election interference, we need to care about resolving racism as much as we care about making internet and social media safe places to participate. Until we do, foreign adversaries will mount similar campaigns, with a good prospect of success, and covert actors like the [Russian backed Internet Research Agency] IRA will be able to damage our social fabric and, ultimately, our national security.").

¹⁶⁰ See 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 ("Today, we need a similar understanding that our failure to ensure equal justice for all has grave implications for U.S. national security.").

¹⁶¹ Peniel Joseph, *America's Racism Has Long Been Russia's Secret Weapon*, CNN (July 2, 2018), <https://www.cnn.com/2018/07/02/opinions/philando-castile-russia-history-of-infiltration-joseph-opinion/index.html>.

discrediting Martin Luther King Jr.,¹⁶² which contributed to racial strife inside and outside the U.S. military.

For example, talks between the U.S. and China, which Secretary of State Blinken led, broke down after the U.S. elevated the issue of the Uyghur genocide.¹⁶³ The Chinese delegation was quick to point to the challenges the U.S. has over the issue of racial bias.¹⁶⁴ Furthermore, in attempting to interfere in the 2016 election, Russian operatives have stoked divisions in our society by exploiting racial controversy.¹⁶⁵ Indeed, former national security advisor Susan E. Rice has argued that racial polarization is a force multiplier for our enemies in that it deepens other national security threats and cripples our ability to combat them.¹⁶⁶ She notes: “Our own fissures also create [an] easy opening[] for Russia to inflame Americans’ fears of one another and to erode our faith in democracy by using social media to spread disinformation and sow distrust.”¹⁶⁷ As these propaganda techniques become more targeted and more sophisticated, the U.S. Armed Forces will have to grapple with the possibility that these operations could come to corrode good order and discipline within our military institutions.¹⁶⁸

¹⁶² Marc H. Morial, *Racism Leaves America Vulnerable to Foreign Manipulation and Exploitation Of The Threat Of Violent Voter Intimidation*, NAT’L URBAN LEAGUE (Oct. 27, 2020), http://www.stlamerican.com/news/columnists/guest_columnists/racism-leaves-america-vulnerable-to-foreign-manipulation-and-exploitation-of-the-threat-of-violent-voter/article_6d4579de-187c-11eb-b364-83ff3f792df9.html.

¹⁶³ Mark Moore, *US sanctions China over Uighur genocide as White House mulls ‘next steps’*, NY POST (Mar. 22, 2021), <https://nypost.com/2021/03/22/us-hits-china-with-sanctions-over-uighur-genocide/>.

¹⁶⁴ Ken Moritsugu, *China bashes US over racism, inequality, pandemic response*, ABC NEWS (Mar. 24, 2021), <https://abcnews.go.com/US/wireStory/china-bashes-us-racism-inequality-pandemic-response-76648636>.

¹⁶⁵ See Faiza Patel & Raya Koreh, *New Method, Same Strategy: Russia Has Long Exploited U.S. Racial Divisions*, JUST SEC. (Oct. 19, 2018), <https://www.justsecurity.org/61142/tactic-strategy-russia-long-exploited-u-s-racial-divisions/>.

¹⁶⁶ Susan E. Rice, *A Divided America Is a National Security Threat*, N.Y. TIMES (Sept. 22, 2020), <https://www.nytimes.com/2020/09/22/opinion/trump-national-security.html>.

¹⁶⁷ *Id.*

¹⁶⁸ See, e.g., Jerrold D. Green & Michael A. Lawson, *Institutionalized Racism Is a National Security Threat*, PAC. COUNCIL OF INT’L POL’Y (May 5, 2020), <https://www.pacificcouncil.org/newsroom/institutionalized-racism-national-security-threat> (“Racism is not only a blight in a democratic society, it constitutes a national security threat.”).

C. Sustained Racial Cohesion as a Means to Harness Rapid Technological Changes

Finally, rapid technological changes across MDOs defined the Era of Renewed Great Power Competition.¹⁶⁹ As a result, there is an ongoing need to encourage DEI initiatives to prepare our soldiers for rapid technological changes. This need has been recognized by the various branches of the DoD.

For example, on June 25, 2020, the United States Navy announced the creation of Task Force One, created to analyze and evaluate issues in our society and military that detract from Navy readiness, such as racism, sexism and other structural interpersonal biases. The Navy recognized that sustained DEI is key to harnessing rapid technological changes, stating: “Without inclusion and connectedness, diverse perspectives can lead to friction and conflict in thoughts and opinions. Military and civilian perspectives must be actively included to harness the creative power of diversity, accelerating our Navy’s warfighting advantage.”¹⁷⁰

Likewise, on June 9, 2020, the United States Air Force officially established its Diversity and Inclusion task force.¹⁷¹ Recognizing the need to harness the abilities of diverse members, the Air Force stated: “Across the force, diversity of background, experience, demographics, perspectives, thought and organization are essential to our ultimate success in an increasingly competitive and dynamic global environment.”¹⁷²

These efforts rely on well-documented evidence: Resolving racial bias supports racial diversity in the military.¹⁷³ Racial diversity, in turn,

¹⁶⁹ See 2018 NDS SUMMARY, *supra* note 12, at 3.

¹⁷⁰ H.L. PHILLIPS & A. HOLSEY, TASK FORCE ONE NAVY 12 (2021), <https://media.defense.gov/2021/Jan/26/2002570959/-1/-1/1/task%20force%20one%20navy%20final%20report.pdf>.

¹⁷¹ *Department of the Air Force stands up Diversity and Inclusion Task Force*, U.S. AIR FORCE (July 8, 2020), <https://www.af.mil/News/Article-Display/Article/2267953/departement-of-the-air-force-stands-up-diversity-and-inclusion-task-force/> (“Clearly we have to acknowledge our Air and Space Forces are not immune from racism and the challenges of inequity. As a force that depends on unity, inclusion, and a common strength of purpose, we are committed to being better every day until all within our ranks feel a true sense of belonging that allows them to maximize their talents,” said Lt. Gen. Brian Kelly, deputy chief of staff for Manpower, Personnel and Services. “This is why we stood up the task force, to move out quickly and deliver immediate improvements for our services.”).

¹⁷² Air Force Diversity & Inclusion Off., *Diversity & Inclusion: United States Air Force*, <https://www.af.mil/Diversity.aspx> (last visited Apr. 12, 2022); see NELSON LIM, AIR FORCE COMMANDER’S GUIDE TO DIVERSITY AND INCLUSION (2015), <https://www.rand.org/pubs/tools/TL189.html>.

¹⁷³ See Phil Stewart, *Exclusive: Long-withheld Pentagon survey shows widespread racial discrimination, harassment*, REUTERS (Jan. 14, 2021), <https://www.reuters.com/article/us-usa-military-civilrights-exclusive/exclusive->

promotes creativity, inhibits groupthink, mitigates mirror imaging, demystifies other cultures, penetrates targets, increases language capabilities, and solves intelligence problems.¹⁷⁴ General David Berger of the Marine Corps shared a similar thought at the Marine Corps Association's annual Modern Day Marine expo, stating: "Too much similarity, too much that we look all the same, think the same, got the same background – we're going to get killed because we're going to end up with solutions that we're all familiar with, but they're easy to counter"¹⁷⁵ Not only does diversity enable an organization to better handle abrupt changes, it also has a direct positive impact on organizational performance. A study encompassing more than 1,000 large companies from 15 countries found that gender-diverse organizations are 15% more likely to outperform other organizations and diverse organizations are 35% more likely to outperform their non-diverse counterparts.¹⁷⁶

Lastly, parallels can be drawn from the U.S. technology industry when confronting rapid technological changes across MDOs. In the technology industry, it has been found that diverse groups are more likely to generate solutions to unique technological problem when compared to homogeneous groups.¹⁷⁷ Additionally, diverse groups in the technology industry have lower project costs and higher performance ratings while also adhering to schedules more strictly.¹⁷⁸ Not only do diverse teams perform more

long-withheld-pentagon-survey-shows-widespread-racial-discrimination-harassment-idUSKBN29J1N1 ("Unpunished discrimination and racial harassment play a role in pushing out minorities."); *see also* Stephen Losey, *Consistent, widespread racial disparities hurt Black airmen, IG study finds*, AIR FORCE TIMES (Dec. 21, 2020), <https://www.airforcetimes.com/news/your-air-force/2020/12/21/consistent-widespread-racial-disparities-hurt-black-airmen-ig-study-finds/> ("African Americans are regularly promoted at disproportionately lower rates than would be expected.").

¹⁷⁴ *See* William Y. Chin, *Diversity in the Age of Terror: How Racial and Ethnic Diversity in the U.S. Intelligence Community Enhances National Security*, 6 FLA. A&M U. L. REV. 49 (2010) ("Lowering barriers to the intelligence field will better achieve equality and better defend America.").

¹⁷⁵ *See* Kat Stafford et al., *Deep-rooted Racism, Discrimination Permeate US Military*, AP NEWS (May 27, 2021), <https://apnews.com/article/us-military-racism-discrimination-4e840e0acc7ef07fd635a312d9375413>.

¹⁷⁶ *See* Vivian Hunt et al., *Why Diversity Matters*, MCKINSEY & COMPANY (Jan. 1, 2015), <https://www.mckinsey.com/business-functions/people-and-organizational-performance/our-insights/why-diversity-matters>.

¹⁷⁷ *See* VIVIAN HUNT ET AL., MCKINSEY & COMPANY, *DELIVERING THROUGH DIVERSITY* (2018), https://www.mckinsey.com/~media/mckinsey/business%20functions/organization/our%20insights/delivering%20through%20diversity/delivering-through-diversity_full-report.ashx.

¹⁷⁸ *See* Lewis Stowe, *Why Diversity in Tech is Important*, DEVSKILLER (Oct. 18, 2018), <https://devskiller.com/diversity-in-tech/>; *see also* *The Benefits of Diversity in Tech*, DIVERSITY IN TECH & IT, <https://www.diversityintech.co.uk/the-benefits-of-diversity-in-tech> (last visited Apr. 13, 2021).

efficiently, but these teams also experiment creatively and share the knowledge necessary to harness rapid technological change.¹⁷⁹

IV. COMBATting EXTREMISM AND SUPREMACY, AND ENHANCING DEI COMMITMENTS WITHIN THE NSS

National security discussions typically do not address the concept of DEI,¹⁸⁰ but incorporating DEI commitments within the NSS is necessary to provide a clear strategic framework to confront racial bias generally within in the Executive Branch and particularly the U.S. Armed Forces. Moreover, such a commitment would provide DoD leaders with institutional backing and legitimacy when addressing racial bias.

While the Biden Administration has not yet prepared an NSS, it has published Interim National Security Strategic Guidance.¹⁸¹ The Guidance does address extremism (*i.e.*, aspects of micro-level explicit bias), stating: “Domestic violent extremism challenges core principles of our democracy and demands policies that protect public safety while promoting our values and respecting our laws.”¹⁸² The focus on domestic violent extremism, however seems to be a reaction to the January 6, 2021 insurrection—as the DoD-wide stand down,¹⁸³ working groups,¹⁸⁴ and changes in DoD regulations¹⁸⁵ addressed—and fails to address supremacist ideology let alone racial bias. The Defense Department has openly acknowledged that “efforts to stamp out extremist views from the rank-and-file have historically been reactive versus proactive until recently.”¹⁸⁶ If racism is omitted from the conversation, the threat of extremism and supremacy is only a partial articulation of the threat of micro-level explicit racial bias, to say nothing of the larger threat of racial bias (*i.e.*, macro-level explicit bias, as well as micro- and macro-level implicit bias).

With that said, the Guidance does state: “As we get the COVID-19 pandemic under control, we will ensure our national security workforce can continue to operate safely and effectively. . . . We will enhance diversity, equity, and inclusion, and prioritize flexibility and improve training

¹⁷⁹ See David Rock & Heidi Grant, *Why Diverse Teams Are Smarter*, HARV. BUS. REV. (Nov. 4, 2016), <https://hbr.org/2016/11/why-diverse-teams-are-smarter>.

¹⁸⁰ See James Thuo Gathii, *Beyond Color-Blind National Security Law*, JUST SEC. (Aug. 3, 2020), <https://www.justsecurity.org/71769/beyond-color-blind-national-security-law/>.

¹⁸¹ See Interim NSS, *supra* note 116.

¹⁸² *Id.* at 19.

¹⁸³ See OFF. OF THE SEC’Y OF DEF, *supra* note 9.

¹⁸⁴ See, e.g., COUNTERING EXTREMIST ACTIVITY WORKING GRP., *supra* note 10; Memorandum from Sec’y of Def. Lloyd Austin, *supra* note 148.

¹⁸⁵ See U.S. DEP’T OF DEF., INSTR. 1325.06, *supra* note 11.

¹⁸⁶ See LaPorta et al., *supra* note 90.

across our national security workforce.”¹⁸⁷ Moreover, the Biden Administration has not shied away from DEI commitments outside the national security context.¹⁸⁸ As the Administration prepares its NSS, it should go one step further and state unequivocally that racial bias (and other problematic biases) are a threat to national security and commit to greater DEI efforts to mitigate it.

Consequently, the NSS should focus on three distinct strategies. First, DoD sanctioned studies on racial disparity have shied away from determining the root cause of disparity, that is moving beyond correlative conclusions and presenting causal analysis. For example, the December 2020 Department of the Air Force Inspector General Independent Racial Disparity Review stated: “[T]his Review was not chartered to determine whether or not racial bias or discrimination is present. Such an examination would require considerable social sciences expertise, a broader look at American society in general, and was outside the defined scope.”¹⁸⁹ However, when discussing potential root causes to racial disparity in the U.S. Air Force, the Review does later state: “[W]hat is typically not checked and balanced is whether the commander and supervisor have given similar administrative disciplinary actions and discharge recommendations for other unit members of other races for similar misconduct.”¹⁹⁰ In any case, better understanding racial disparity requires a systematic root cause analysis within the U.S. Armed Forces.

Second, while racial bias training courses have been available in the past through each branches Equal Opportunity (EO) office, offerings were never consistent across the branches, not least due to the hiatus order by

¹⁸⁷ See Interim NSS, *supra* note 118, at 19.

¹⁸⁸ See, e.g., Exec. Order No. 13,988, 86 Fed. Reg. 7,023 (Jan. 25, 2021) (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation); Exec. Order No. 13,985, 86 Fed. Reg. 7,009 (Jan. 25, 2021) (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government); Exec. Order No. 14,021, 86 Fed. Reg. 13,803 (Mar. 11, 2021) (Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity); Exec. No. 14,020, 86 Fed. Reg. 13,797 (Mar. 11, 2021) (Establishing the White House Gender Policy Council); Exec. Order No. 14,031, 86 Fed. Reg. 29,675 (June 3, 2021) (Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders); Exec. Order No. 14,035, 86 Fed. Reg. 34,593 (June 30, 2021) (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce); Exec. Order No. 14,041, 86 Fed. Reg. 50,443 (Sept. 9, 2021) (Advancing Educational Equity, Excellence, and Economic Opportunity Through Historically Black Colleges and Universities); Exec. Order No. 14,045, 86 Fed. Reg. 51,581 (Sept. 16, 2021) (Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics).

¹⁸⁹ DEP’T OF THE AIR FORCE INSPECTOR GEN., *supra* note 95, at 1; see also DEP’T OF THE AIR FORCE INSPECTOR GEN., *supra* note 108, at 1, n.2 (suggesting follow-up studies to determine root cause of disparity in the Air Force).

¹⁹⁰ *Id.* at 20.

the Trump Administration. Consequently, the NSS should contain a mandate for DoD-wide standardized training in relation to racial bias in the armed forces, specifically including unconscious or implicit biases. The Office for Diversity, Equity, and Inclusion (ODEI), an organization aligned under the Office of the Under Secretary of Defense (Personnel and Readiness), should facilitate such training.¹⁹¹ ODEI is a model that has not necessarily been replicated throughout the branches. ODEI, which used to be named Office of Diversity Management and Equal Opportunity, leads an integrated approach to DEI which includes an Equal Opportunity (EO) focus to address discrimination in the work place; discrimination concerning race, color, sex, religion, national origin, age, disability, sexual orientation, genetic information or reprisal.¹⁹² The goal of EO programs are to provide equality of opportunity to all, while prohibiting discrimination in employer's personnel policies, practices, and operations.¹⁹³ While Equal Opportunity provides a necessary resource, in allowing people opportunities to seek employment free from harmful discrimination, the Office of Diversity, Equity, and Inclusion takes an integrated approach. The mission of the ODEI is to ensure that the future of military leadership reflects the demographic changes of America.¹⁹⁴ The office is tasked with developing and executing diversity management as well as equal opportunity policies and programs affecting active duty and reserve component military personnel, and DoD civilian employees.¹⁹⁵ A driving force in the ODEI is the congressionally-mandated Military Leadership Diversity Commission (MLDC) Final Report, which consists of 20 policy and practice recommendations.¹⁹⁶ These recommendations support two related objectives: “[First, t]hat the Armed Forces systematically develop a demographically diverse leadership that reflects the public it serves and the forces it leads. [Second, t]hat the Services pursue a broader approach to diversify that includes the range of backgrounds, skill sets, and personal attributes that are necessary to enhancing military performance.”¹⁹⁷

¹⁹¹ While Exec. Order No. 13583, 3 CFR 13583 (Aug. 18, 2011), which focused on establishing a coordinated Government-wide initiative for civilian personnel to promote diversity and inclusion, ODEI was created to address similar concerns for service members. See *About ODEI*, OFF. FOR DIVERSITY, EQUITY, & INCLUSION (Sept. 20, 2021), <https://diversity.defense.gov/About-ODEI/>.

¹⁹² See, e.g., *About EEOC: Overview*, U.S. EEOC (Sept. 20, 2021), <https://www.eeoc.gov/overview>.

¹⁹³ See *id.*

¹⁹⁴ See *About ODEI*, *supra* note 191.

¹⁹⁵ See *id.*

¹⁹⁶ See *id.*

¹⁹⁷ MIL. LEADERSHIP DIVERSITY COMM'N, FROM REPRESENTATION TO INCLUSION: DIVERSITY LEADERSHIP FOR THE 21ST-CENTURY MILITARY xiii (2011), https://diversity.defense.gov/Portals/51/Documents/Special%20Feature/MLDC_Final_Report.pdf.

Consequently, the ODEI should be tasked with standardizing training in relation to racial bias in the armed forces, specifically including unconscious or implicit biases, standardized among the branches.

Third, the NSS needs to take a hard stance on combating extremism within the military. U.S service members from all races sacrifice their lives to protect this country and those with extremist and supremacist views pose a threat to the safety and well-being of all those around them. The Biden Administration has the opportunity to take a stand and protect our service members from potential threats coming from within the ranks. Allowing extremist views to linger in the military will only further disturb the ability for leadership to maintain good order and discipline, while also driving racial minorities out of the ranks, building additional barriers for those who wish to join.

Consequently, the NSS should include the following language (original Interim NSS language italicized):

Enhancing Diversity, Equity, and Inclusion and Combatting Extremism

We will enhance diversity, equity, and inclusion, and prioritize flexibility and improve training across our national security workforce. We will further combat extremism and supremacy within the United States Armed Forces. To do so we advance three distinct strategies.

Root Cause Analysis: We direct the Department of Defense Office of Inspector General, in consultation with the Department of Homeland Security, to study and provide a report no later than 120 days from issuance of this National Security Strategy to ascertain the root cause of racial bias within the United States Armed Forces.

Standardized Training: We direct the Department of Defense Office for Diversity, Equity, and Inclusion, in consultation with the Defense Equal Opportunity Management Institute, to develop standardized training related to racial bias, to include unconscious or implicit bias which will be disseminated amongst offices of Diversity, Equity, and Inclusion within the United States Armed Forces.

Combatting Extremism within the Ranks: *Domestic violent extremism, including white supremacist ideology, challenges core principles of our democracy and demands policies that protect public safety while promoting our values and respecting our laws.* To that end, we direct all Department of Defense and U.S. Military investigatory units to create task forces within their counterintelligence sections, for the purpose of identifying, locating, and prosecuting service members who pose a threat of

domestic violent extremism. This includes the Defense Criminal Investigative Service, Air Force Office of Special Investigations, Army Counterintelligence, Army Criminal Investigation Command, Marine Corps Criminal Investigation Division, Coast Guard Investigative Service, and Navy Criminal Investigative Service.

Such an NSS would provide a framework to confront racial bias in the U.S. Armed Forces within the NDS¹⁹⁸ and the National Military Strategy (NMS),¹⁹⁹ neither of which directly address the topic. Whereas laudable efforts have been made at the tactical and organization level,²⁰⁰ efforts among the branches have been uneven and uncoordinated.²⁰¹ A clear strategic commitment will ensure coherence in the U.S. Armed Forces' approach to addressing racial bias and its DEI efforts.

* * *

The Era of Renewed Great Power Competition will be defined by challenges to U.S. military advantage, renewed ideological competition, and rapid technological advancements. Racial bias in the U.S. Armed Forces poses a key threat to these features of our contemporary security environment.

Specifically, various permutations of racial bias, both explicit and implicit manifested at the individual, micro-level as well as the organizational, macro-level, pose threats to U.S. national security. First, racism (*i.e.*, micro-level, explicit bias) undermines U.S. military dominance by weakening good order and discipline and may serve to radicalize service members towards extremism and supremacy. Second, systemic racism and racial disparity (*i.e.*, macro-level, implicit bias) challenge U.S. soft power projection and the ability to rebuff propaganda efforts from illiberal ideological competitors. Third, all forms of racial bias, both explicit and implicit at individual and organizational levels, disadvantages DEI efforts by the U.S. Armed Forces, a necessity to harness rapid technological changes across MDOs.

We should laud the tactical and organizational efforts by the DoD to combat racial bias. However, the U.S. has failed to confront the wrought

¹⁹⁸ See 2022 NDS SUMMARY, *supra* note 12.

¹⁹⁹ See THE JOINT STAFF, DESCRIPTION OF THE NATIONAL MILITARY STRATEGY (2018), https://www.jcs.mil/Portals/36/Documents/Publications/UNCLASS_2018_National_Military_Strategy_Description.pdf.

²⁰⁰ See CURTIS E. LEMAY CTR. FOR DOCTRINE DEV. & EDUC., VOLUME I: BASIC DOCTRINE (Feb. 27, 2015), <https://www.airforcemag.com/app/uploads/2021/04/Volume-1-Basic-Doctrine.pdf> (“[T]he strategic level of war addresses the issues of WHY and WITH WHAT we will fight and WHY the enemy fights against us ... [T]he operational level of war determines WHAT we will affect, with WHAT courses of action, in WHAT order, for WHAT duration, and with WHAT RESOURCES ... [T]he tactical level of war deals with HOW we fight.”) (emphasis in original).

²⁰¹ See discussion *supra* Section II.C.

issue of racial bias at the national security strategic level. Acknowledging the threat of racial bias and incorporating DEI commitments specifically within the NSS is necessary to ensure a coherent strategy and provide DoD leaders with institutional backing to confront racial bias within the U.S. Armed Forces.
