

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**DONALD A. KING and THE  
DUSTIN INMAN SOCIETY, INC.,** )

**Plaintiffs,** )

**v.** )

**THE SOUTHERN POVERTY  
LAW CENTER, INC.,** )

**Defendant.** )

**CIVIL ACTION NO.**

**2:20-cv-120-ECM-SMD**

**DEFENDANT SOUTHERN POVERTY LAW CENTER, INC.'S  
MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(B)(6)  
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

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COMES NOW Defendant the Southern Poverty Law Center, Inc., and moves this Honorable Court to dismiss Plaintiffs' First Amended Complaint (Doc. 3) ["Am. Compl."<sup>1</sup>] in its entirety pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted. Because any amendment would be futile, Defendant further moves that dismissal be with prejudice. In support of this Motion, Defendant submits the following Memorandum of Law.

### **PRELIMINARY STATEMENT**

Plaintiff the Dustin Inman Society, Inc. ("DIS"), led by Plaintiff Donald A. King ("King"), is a public advocacy organization based in Georgia which attempts to influence the public discourse on United States immigration policy. DIS and King lobby; organize and conduct rallies; and distribute their opinions broadly through both traditional media, including CNN and *The New York Times*, and social media, including their own blog. (See Am. Compl. ¶¶ 11–13.) Those opinions, which are fully protected by the First Amendment, are broadly hostile to immigration and immigrants, particularly undocumented immigrants; they include describing undocumented immigrants as "here to blow up your buildings and kill your children" and as a "third world horde that is allowed to swarm over our border with Mexico," as well as describing the United States as a country "being invaded and colonized" by immigrants. (See generally pp. 8–11, *infra*.)

Defendant the Southern Poverty Law Center, Inc. ("SPLC") is an Alabama-based public advocacy organization attempting to influence public discourse on, among other

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<sup>1</sup> All references herein to the "Complaint," "Amended Complaint," or "Am. Compl." refer to Plaintiffs' First Amended Complaint, which is the operative pleading.



things, United States immigration policy. As part of this effort, SPLC monitors and informs the public of groups that, in its opinion, are trafficking in hateful rhetoric and promoting various types of bias—typically against a class of people on the basis of their immutable characteristics—both with regard to immigration and more generally. In part, it does this by conducting research and publishing an annual census of active “hate groups” in the United States, designating groups as “hate groups” under various categories, including “anti-immigrant.”<sup>2</sup> (See Am. Compl. ¶¶ 9–10, 18.) After considering DIS and King’s own statements, activities, and associations, SPLC decided that those descriptions applied and designated DIS as an “anti-immigrant hate group.” (See generally pp. 5, 7–15, *infra*.)

All of the above is traditional, core First Amendment activity that properly belongs to the court of public opinion, not a court of law. DIS and King are entitled to thrust their opinions into the public eye, no matter how repugnant, and SPLC is entitled to counter those opinions forcefully and vehemently, with the intent of discrediting and displacing them in the public estimation in favor of SPLC’s contrary opinions—to remedy, in SPLC’s view, “evil counsels [with] good ones.” *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring). Anyone familiar with U.S. history knows that our public discourse is not a bake sale, nor does it proceed by Marquess of Queensberry rules—the “world of polemical charge and countercharge” can be “vehement” and “caustic” and even resort to “vilification.” *Harte-Hanks Commc’ns, Inc. v. Connaughton*, 491 U.S. 657, 692

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<sup>2</sup> See *Frequently Asked Questions About Hate Groups*, SPLC, <https://www.splcenter.org/20200318/frequently-asked-questions-about-hate-groups>, a copy of which is attached as Exhibit 6 to Exhibit A hereto (Declaration of Shannon L. Holliday).

n.37 (1989); *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270–71 (1964). In point of fact, SPLC’s rhetoric in this situation has been more reasonable and restrained than that. But, regardless, this is all part of the bargain we made when we embedded in our Constitution “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Sullivan*, 376 U.S. at 270.

DIS and King, however, appear to be unable abide by the terms of that bargain, as they now have brought this lawsuit claiming, essentially, that their opinions are protected, but SPLC’s aren’t. Specifically, they claim that they are entitled to tort damages for defamation, based on SPLC’s description of DIS as an “anti-immigrant hate group” (as well as a related statement to the same effect). (Am. Compl. ¶¶ 26–50.) They further ask this Court to sideline SPLC from publicly challenging DIS’s ideas by enjoining SPLC from maintaining or republishing the challenged statements on its website. (Am. Compl. ¶¶ 51–55.)

SPLC in the last few years has been subject to a series of materially similar defamation suits concerning its “hate group” designations and related political speech, brought by politically active plaintiffs like DIS and King who have voluntarily interjected their ideas and beliefs into the public discourse. Generally, these suits all suffer, at a minimum, from the following fatal problems:

- The hate group designations and related statements are protected opinion under the First Amendment because they are not, as a matter of law, susceptible to being proven true or false;

- The hate group designations and related statements are not capable of defamatory meaning under state law because they are opinions, and particularly because they are opinions based on disclosed facts;
- Plaintiffs who are individuals cannot state a claim based on “hate group” designations, because statements about the *group* are not “of and concerning” them as individuals; and
- The plaintiffs cannot plausibly allege actual malice—i.e., that SPLC made the hate group designations and related statements knowing they were false or with reckless disregard of their probable falsity.

For these and other reasons, the suits have generally been dismissed at an early stage.<sup>3</sup>

Nevertheless, even if the claims themselves are ultimately found to be meritless, the burden of litigation itself has the potential to deter speakers from engaging in protected speech, and to impede “the free flow of ideas and opinions on matters of public interest and concern,” *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988), that is a core concern of the First Amendment. For this reason, the Eleventh Circuit has emphasized that defendants are entitled to an early determination of First Amendment defenses, and to pre-discovery dismissal where application of the *Iqbal/Twombly* standard shows that the

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<sup>3</sup> See, e.g., *Ctr. for Immigration Studies v. Cohen*, 410 F. Supp. 3d 183 (D.D.C. 2019) (dismissing claim arising from “hate group” designation on preliminary motion), *aff’d*, No. 19-7122 (D.C. Cir. Apr. 24, 2020) (unpublished); *Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.*, 406 F. Supp. 3d 1258 (M.D. Ala. 2019) (No. 2:17-cv-566-MHT) (same), *appeal docketed*, No. 19-14125 (11th Cir. Oct. 18, 2019); see also *Allen v. Beirich*, No. 18-cv-3781, 2019 WL 5962676 (D. Md. Nov. 13, 2019) (granting motion to dismiss defamation and related tort claims premised on references to individual plaintiff in connection with publication associated with SPLC Hate Map), *appeal docketed*, No. 19-2419 (4th Cir. Dec. 11, 2019).

complaint fails to plead a defamation claim that can overcome First Amendment limitations. *See Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 702 (11th Cir. 2016).

This Court has already dismissed one such suit against SPLC, in a careful, thorough, and well-reasoned opinion by Judge Thompson. *See Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.*, 406 F. Supp. 3d 1258 (M.D. Ala. 2019). That opinion provides a roadmap for analysis of the same issues in this case, ultimately concluding, correctly, that any challenge to SPLC's hate group designation "should be in the court of public opinion, not a federal court." *Id.* at 1280.

As explained below, each of the fatal flaws listed above applies to the First Amended Complaint before the Court in this case. Therefore, for the separate and independently sufficient reasons that the challenged statements are protected opinion under the First Amendment, that they are non-defamatory opinion under state law, and that the Amended Complaint does not and cannot plausibly allege actual malice, and also because the challenged statements are not "of and concerning" Plaintiff King, this Court should dismiss the Complaint in its entirety and with prejudice.

## **FACTUAL BACKGROUND**

### **I. THE SOUTHERN POVERTY LAW CENTER**

Founded in 1971, the Southern Poverty Law Center is a nonprofit civil rights organization with a stated mission to fight hate and bigotry and to seek justice for the most vulnerable members of society. *See, e.g., What We Do*, SPLC, <https://www.splcenter.org/what-we-do>. SPLC, among other activities, monitors various groups and publishes on its website a Hate Map containing an annual census of groups it has designated as hate groups.

*Id.* (See also Am. Compl. ¶ 9.) SPLC does not characterize individuals as hate groups. (Am. Compl. ¶ 19.)

## **II. THE ALLEGEDLY DEFAMATORY STATEMENTS**

Plaintiff DIS asserts that a single statement was defamatory as to it—SPLC’s statement that the Dustin Inman Society is an “anti-immigrant hate group.” (See Am. Compl. ¶¶ 27, 32.) Plaintiff King alleges that both the designation of DIS as an anti-immigrant hate group and a second statement—that “[t]he Dustin Inman Society, led by D.A. King, poses as an organization concerned about immigration issues, yet focuses on vilifying all immigrants”—are defamatory as to him. (Am. Compl. ¶¶ 37, 42–43.)

## **III. THE ALLEGEDLY DEFAMATORY PUBLICATIONS**

Plaintiffs have alleged that two SPLC publications defamed them by designating DIS as an anti-immigrant hate group. The first is SPLC’s Hate Map beginning, they say, in 2018, and continuing with the 2019 edition. A copy of SPLC’s most current Hate Map, its 2019 Hate Map, along with the Georgia portion of the 2019 Hate Map, which lists DIS as a Georgia-based anti-immigrant hate group, are attached as Exhibit 1 to the Declaration of Shannon L. Holliday, which is Exhibit A hereto [ “Holliday Declaration” or “Holliday Decl.”]. Both are also available on SPLC’s website, at <https://www.splcenter.org/hate-map> and <https://www.splcenter.org/states/georgia>, respectively. A copy of the 2018 version of the Hate Map can be found at <https://www.splcenter.org/hate-map?year=2018> and is attached hereto as Exhibit 2 to the Holliday Declaration. The Georgia-specific portion of the 2018 Hate Map is no longer available on the SPLC site, but an archived copy is included within Exhibit 2.

In addition to the website version of the Hate Map, the SPLC also issues a print version of the hate group census each year in its *Intelligence Report*. A copy of the relevant pages from the 2019 Hate Map, published in the Spring 2020 edition of the *Intelligence Report*, is attached hereto as Exhibit 3 to the Holliday Declaration. That document, like the 2017 and 2018 versions of the Hate Map that were published in the Spring editions of the *Intelligence Report* in 2018 and 2019, respectively, lists DIS as an anti-immigrant hate group.

The final statement challenged as defamatory in the Amended Complaint—that “The Dustin Inman Society ... focuses on vilifying all immigrants”—is found on another web page on the SPLC’s website, a page about the Dustin Inman Society (“SPLC DIS Page”), which can be found at <https://www.splcenter.org/fighting-hate/extremist-files/group/dustin-inman-society>. A full copy of the SPLC DIS Page is attached hereto as Exhibit 4 to the Holliday Declaration.

#### **IV. SPLC’S DISCLOSED BASIS FOR CONCLUDING THAT DIS IS AN ANTI-IMMIGRANT HATE GROUP AND THAT IT FOCUSES ON VILIFYING IMMIGRANTS**

SPLC discloses prominently on its Hate Map its definition of a Hate Group: “All hate groups have beliefs or practices that attack or malign an entire class of people, typically for their immutable characteristics.” (See Exs. 1 & 2 to Holliday Decl. (2019 and 2018 Hate Maps).) The landing page for the Hate Map also provides a hyperlink labeled “Learn More About Hate Groups,” which links to a “Frequently Asked Questions” page that provides additional information about the criteria and methodology used by SPLC in conducting its annual census. (See Ex. 6 to Holliday Decl.; see also n.2, *supra*.) No further

information about DIS or King (or any other hate groups) is on the Hate Map itself, but the SPLC DIS Page, quoted by Plaintiffs in the Amended Complaint (*see* ¶¶ 25, 43), and included in the exhibits to this Memorandum (*see* Ex. 4 to Holliday Decl.), is hyperlinked from the Hate Map Georgia webpage and contains several pages of information about DIS.<sup>4</sup>

Support for SPLC's designation of DIS as an anti-immigrant hate group and its opinion that DIS vilifies immigrants is set out on the SPLC DIS Page and includes, but is not limited to, (a) statements by D.A. King, who is the self-proclaimed face of DIS (Am. Compl. ¶ 13), and DIS Board of Advisors member Fred Elbel; (b) Plaintiffs' associations with prominent anti-immigrant figures; and (c) Plaintiffs' associations with anti-immigrant groups and white nationalists groups that are also anti-immigrant. (*See* Ex. 4 to Holliday Decl. (SPLC DIS Page); *see also* Ex. 5 to Holliday Decl.)

**A. Statements by King and DIS Board of Advisors Member Fred Elbel Reflecting That King and DIS Both Vilify and Malign Immigrants**

SPLC reported the following statements by Plaintiff King that support SPLC's opinion that King and DIS both vilify and malign immigrants.<sup>5</sup>

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<sup>4</sup> By referring to and quoting from these SPLC online publications, including the Hate Maps, *Intelligence Reports*, and SPLC DIS Page, the Plaintiffs incorporate them into the pleadings for purposes of the instant motion. It is well-established that documents referred to in a complaint and central to a plaintiff's claims are properly considered on a motion to dismiss. *See, e.g., Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1368–69 (11th Cir. 1997). In addition, the full text of these articles, including their incorporated hyperlinks, are properly considered on a motion to dismiss a defamation claim because they constitute the necessary context in which the allegedly defamatory statements were made. *See, e.g., Adelson v. Harris*, 973 F. Supp. 2d 467, 483–86 (S.D.N.Y. 2013) (discussing at length legal and policy arguments for consideration of such materials), *aff'd*, 876 F.3d 413 (2d Cir. 2017).

<sup>5</sup> This Memorandum at times references news reporting about King and DIS that has been referred to, and quoted from, on SPLC's website. SPLC relies on these reports not for the truth of

1. King, at a Newton County, Georgia, Republican Party meeting in April 2007 said: “[Undocumented immigrants are] not here to mow your lawn—they’re here to blow up your buildings and kill your children, and you, and me.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 2 (brackets in original).)

2. King, in a blog post in July 2004, wrote: “We have become sadly acquainted with the absolute and brazen disregard for the law that comes from the third world horde that is allowed to swarm over our border with Mexico. ... It is clear that when the mostly Mexican mob illegally ‘migrates’ into our nation, it brings with it the culture of lawlessness and chaos that is responsible for the very conditions that they flee in the rapidly deteriorating example of Democracy without the rule of law that is Mexico.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 2 (ellipsis in original).)

3. King, according to the Anti-Defamation League, was quoted in 2008 as describing the United States as a country “being invaded and colonized” by immigrants and having its “way of life” destroyed. (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 2.)

4. In 2004, King stated, “Must the United States silently suffer the incursion of one million people a year because they are brown?” (Ex. 4 to Holliday Decl. (SPLC

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the information they contain, but because their existence provides the necessary context for evaluating the challenged designation of DIS as a hate group and for assessing whether Plaintiffs could plausibly plead that SPLC designated DIS as a hate group with the requisite actual malice. Federal courts properly take judicial notice of such press reports, videos, speeches, and other publicly available materials on a motion to dismiss in defamation cases, such as this one, where the broader context in which a given statement was disseminated is an important element of the legal analysis. *See, e.g., Lil’ Joe Wein Music, Inc. v. Jackson*, 245 F. App’x 873, 879 (11th Cir. 2007) (taking judicial notice of widespread distribution of a film based on newspaper articles); *Farah v. Esquire Magazine*, 736 F.3d 528, 534 (D.C. Cir. 2013) (taking judicial notice of prior news articles in considering motion to dismiss defamation claims).



DIS Page) at 2.)

5. King, in a 2010 blog entry on the anti-immigrant hate website VDARE, wrote the following about his experience at an event called March for Dignity: “[The march was composed of] mostly Hispanic demonstrators. ... I got the sense that I had left the country of my birth and been transported to some Mexican village, completely taken over by an angry, barely restrained mob. ... My first act on a safe return home was to take a shower.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 1–2 (alterations in original).)

6. King espouses support for the concept of attrition through enforcement. In March 2008, in promoting an anti-immigration rally, King wrote on the DIS site, “We support the concept of attrition of the illegal population through enforcement of existing laws.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 4.) SPLC explained that:

The “attrition through enforcement” concept mentioned by King was popularized in 2005 by the anti-immigrant hate group Center for Immigration Studies (CIS). Mark Krikorian, executive director of CIS, wrote in May 2005 that the United States needs to “shrink the illegal population through consistent, across-the-board enforcement of immigration law.” He explains attrition through enforcement as making it as difficult as possible for an immigrant to live so that they “self deport.”

(Ex. 4 to Holliday Decl. (SPLC DIS Page) at 4.)

7. King wrote in a June 2006 VDARE article, ““For me, while standing a few feet away from group after group, the impulse to reach out and personally deport these Third World invaders was nearly uncontrollable”” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.)

8. King also retweeted the vile anti-Muslim Voice of Europe Twitter account dozens of times in 2017. The tweets included statements such as:

“The beautiful Italy is rapidly being Islamised. This looks more like Tehran or Kabul”

“The usual suspects were rioting in Brussels. Sad, it was once a great city with wonderful people” ....

“Italian psychiatrist: Italy could soon look like Nigeria and could completely lose control”

(Ex. 4 to Holliday Decl. (SPLC DIS Page) at 6.)

In March 2018, King retweeted an account that shared a screenshot of a tweet that read: “Friendly reminder that Muslims murder gay people” and has continued to retweet the tweets of other anti-immigrant groups and individuals. (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 6.)

9. SPLC also reported the following 2004 statement of Fred Elbel, a DIS Board of Advisors member and former DIS webmaster: “Damned right. I hate ’em all—negroes, wasps, spics, eskimos, jews, honkies, krauts, ruskies, ethopians, pakis, hunkies, pollocks and marxists; there are way too many of them. I’m all for trout, elephants, bacteria, whales, wolves, birds, parrot fish, deciduous foliage and mollusks. Time to rebalance the planet, bleeding heart liberals be damned.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 2.)

These statements, in SPLC’s opinion, reflect both the maligning and vilifying of immigrants and support its opinion that DIS is a “hate group.”

**B. Plaintiffs’ Associations with Anti-Immigrant Activists and White Nationalists**

SPLC also documented various connections between King, DIS, and individuals who are also notoriously anti-immigrant, including white nationalists.

1. **John Tanton:** One long-time association is between King and John Tanton, “a Michigan ophthalmologist turned white nationalist who has created a network of anti-immigrant organizations.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 2.) As SPLC reported, “Tanton has a long track record of working with white nationalists and espousing racist rhetoric.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 2.) “In a radio interview, King said he was ‘proud’ of the relationship [with Tanton] and stated, ‘I am also very proud that John Tanton is a personal friend and a personal hero.’” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 2.) The SPLC DIS Page has various links to further information about Tanton and some of the organizations he started.

2. **Chris Simcox:** King has organized and participated in several rallies protesting legislation that would aid undocumented immigrants in any way. (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.) Chris Simcox, the former leader of the Minuteman Civil Defense Corp., “a nationwide anti-immigrant vigilante organization known for its armed-citizen border patrols,” spoke at a 2005 rally organized by King. (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.) Members of the group were also in attendance. King has also advertised the group on his website. (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.)

3. **Peter Brimelow:** King has written for the white nationalist SPLC-designated hate group VDARE. VDARE is an anti-immigration website founded by white nationalist Peter Brimelow that is “dedicated to preserving our historical unity as Americans into the 21st century.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.) “It is a hub for white nationalists and antisemites who write on the issue of immigration.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.)

**C. Plaintiffs' Associations with White Nationalist and Anti-Immigrant Groups**

1. **The Social Contract and The Social Contract Press (TSCP):** SPLC reported on its website page about DIS that “[b]oth Fred Elbel—who once served as DIS’s webmaster and sits on the group’s board—and King have written for *The Social Contract*, a quarterly journal founded by [John] Tanton known for routinely publishing race-baiting articles penned by white nationalists.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.) “On numerous occasions, King has spoken at The Social Contract Press’s (TSCP) Writer’s Workshop, an annual gathering of white nationalists and the anti-immigrant lobby.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.) TSCP is a SPLC-designated white nationalist hate group. (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.)

2. **VDARE:** As explained above, SPLC reported that “King has written for the white nationalist SPLC-designated hate group VDARE. VDARE is an anti-immigration website ‘dedicated to preserving our historical unity as Americans into the 21st century.’ It is a hub for white nationalists and antisemites who write on the issue of immigration.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.)

3. **Colorado Alliance for Immigration Reform (CAIRCO):** Fred Elbel, DIS’s board member, “also works for Colorado Alliance for Immigration Reform (CAIRCO), another anti-immigrant hate group.” (See Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.)

These associations with both the groups and individuals named above further support SPLC's opinion that DIS vilifies and maligns immigrants and meets its definition of a "hate group."

**D. Plaintiffs' Activities**

As Plaintiffs themselves acknowledge in the Amended Complaint, DIS is "an organization recognized under Section 501(c)(4) of the Internal Revenue Code with a stated mission and goal of promoting the enforcement of immigration laws in the United States." (Am. Compl. ¶ 11.) It has maintained the same activities since 2005. (Am. Compl. ¶ 12.) "Plaintiff King on behalf of Plaintiff DIS has testified to numerous legislative panels, including the U.S. House of Representatives, given speeches, written articles, and otherwise advocated for enforcement of immigration laws in the United States. Plaintiff King is the public face of Plaintiff DIS." (Am. Compl. ¶ 13.)

A dozen mainstream newspapers have printed King's articles. (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 4.) King has appeared on other mainstream media outlets, including "Lou Dobbs Tonight," "Anderson Cooper 360," and National Public Radio (NPR). (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 4.) CNN has labeled King an "anti-illegal immigration activist," and *The New York Times* has published a profile of King. (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 4.)

DIS and King have lobbied legislators in connection with anti-immigration legislation (*see* Ex. 4 to Holliday Decl. (SPLC DIS Page) at 5 (discussing lobbying activities)), and organized protests on immigration issues. In 2008, King led a rally to protest "Georgians for McCain" who King called "half" of the 'amnesty-again legislation

partnership.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 4.) As mentioned previously, “[i]n 2005, DIS hosted a ‘public education’ rally with anti-immigrant speakers.” (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.) In April 2007, King organized an anti-immigrant rally in Washington, D.C., as part of a “Hold Their Feet to the Fire” series of anti-immigrant events. The events were held ahead of the annual conference by the same name hosted by anti-immigrant group Federation for American Immigration Reform (FAIR). (Ex. 4 to Holliday Decl. (SPLC DIS Page) at 3.)

The SPLC DIS Page also contains other information on which SPLC relied in making its determination that DIS is a hate group that maligns immigrants and that it vilifies immigrants. In addition, the page has multiple links to other sources as further support for the information reported on the web page. SPLC adopts that information herein as if fully set forth in support of its Motion to Dismiss. (*See generally* Exhibit 4 to the Holliday Declaration (SPLC DIS Page), the online version of the SPLC DIS Page,<sup>6</sup> and the hyperlinked material therein.)

### **STANDARD OF REVIEW**

“To survive a motion to dismiss [for failure to state a claim], a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While this Court accepts the factual allegations in the complaint as true and construes them in the light most favorable to the plaintiff,

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<sup>6</sup> <https://www.splcenter.org/fighting-hate/extremist-files/group/dustin-inman-society>.

*Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1335 (11th Cir. 2012) (per curiam), these factual allegations must “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555; *see also Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 694 (11th Cir. 2016). Therefore, a “pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555); *see also Turner v. Wells*, 879 F.3d 1254, 1273 (11th Cir. 2018) (rejecting “conclusory” allegations in defamation case). Rather, “[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged” and making this determination is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 678–79.

Additionally, the Eleventh Circuit has held that where constitutional defenses involving protected speech are raised, rigorous application of the plausibility standard takes on particular importance. *Michel*, 816 F.3d at 702. This is because, in such cases, “there is a powerful interest in ensuring that free speech is not unduly burdened by the necessity of defending against expensive yet groundless litigation” and “[f]orcing publishers to defend inappropriate suits through expensive discovery proceedings in all cases would constrict” the “‘breathing space’ needed to ensure robust reporting on public figures and events.” *Id.* (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 271–72 (1964)). Moreover, pre-discovery evaluation of claims is often more feasible in defamation cases, because “unlike in most litigation, in a libel suit the central event—the communication about which suit has been brought—is ordinarily before the judge at the pleading stage. . . . He or she may assess

it upon a motion to dismiss, firsthand and in context.” 2 Robert D. Sack, *Sack on Defamation* § 16.2.1 (5th ed. 2017).<sup>7</sup>

## ARGUMENT

### **I. THE COMPLAINT FAILS TO STATE AN ACTIONABLE DEFAMATION CLAIM.**

Plaintiffs’ Amended Complaint alleges several counts, all based on state law defamation. Each of these claims fails as a matter of law for several independent reasons. The primary reasons, however, are: (1) that SPLC’s statements are not actionable as defamation because they express SPLC’s protected opinions about DIS; and (2) that, even *if* SPLC’s statements are not opinions, but instead factual assertions subject to being proven true or false, Plaintiffs cannot not plead or prove facts that would satisfy the heightened fault standard (“actual malice”) imposed by the First Amendment.

For these reasons, elaborated below, the entire Complaint must be dismissed.

#### **A. The “Anti-Immigrant Hate Group” Designation and Any Related Statements Are Not Actionable Because They Are Protected Opinions.**

In *Gertz v. Robert Welch, Inc.*, the Supreme Court explained that: “Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the

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<sup>7</sup> Judge Sack’s authoritative treatise demonstrates that courts not only can, but frequently do resolve defamation claims on a motion to dismiss. *See id.*; *see also Turner*, 879 F.3d at 1259 (affirming dismissal of defamation claims for failure to plausibly plead actual malice and because the challenged statements were non-actionable opinion); *Michel*, 816 F.3d at 706 (affirming dismissal of defamation claims where complaint failed to plausibly plead actual malice). Indeed, district courts have granted motions to dismiss in other defamation suits against SPLC and SPLC employees. (*See* n.3, *supra*.)



competition of other ideas.” 418 U.S. 323, 339–40 (1974). Subsequently, in *Milkovich v. Lorain Journal Co.*, the Court qualified this statement with regard to statements “susceptible to being proved true or false,” but reaffirmed that “a statement of opinion relating to matters of public concern which does *not* contain a provably false factual connotation will receive full constitutional protection.” 497 U.S. 1, 20–21 (1990) (emphasis supplied). Similarly, under the Georgia law applicable in this case, “a defamation action will lie only for a statement of fact. This is because a statement that reflects an opinion or subjective assessment, as to which reasonable minds could differ, cannot be proved false.” *Cottrell v. Smith*, 788 S.E.2d 772, 781 (Ga. 2016) (quoting *Gettner v. Fitzgerald*, 677 S.E.2d 149, 153 (Ga. Ct. App. 2009)). Whether a challenged statement is one of empirically provable fact or non-actionable opinion is a question of law for the court. *Turner*, 879 F.3d at 1262–63; *see Bergen v. Martindale-Hubbell, Inc.*, 337 S.E.2d 770, 772 (Ga. Ct. App. 1985).

SPLC’s challenged statements are fully protected under both federal and state law, and thus both sources of law require dismissal of all claims before the Court. However, while federal and state protections overlap substantially, the relevant analyses differ sufficiently that this Memorandum will address them separately in turn, as follows.

**1. The challenged statements are opinions protected by the First Amendment from being sanctioned as defamation.**

The United States District Court for the Middle District of Alabama has already held that SPLC’s hate group designation is an opinion protected by the First Amendment from defamation claims. *Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.*, 406 F. Supp.

3d 1258, 1277 (M.D. Ala. 2019). That decision, and the authority relied on therein, particularly *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990), is on point here and requires the dismissal of Plaintiffs' defamation claims.

As *Coral Ridge* makes clear, pursuant to the First Amendment, an opinion such as the one at issue here cannot be the basis for a defamation claim. "The immunity granted to opinions reflects, in part, the First Amendment principle that there can be no false ideas." *Michel*, 816 F.3d at 695 (citing *Gertz*, 418 U.S. at 339–40). The protection afforded to ideas, i.e., opinions, is strong:

At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern. "[T]he freedom to speak one's mind is not only an aspect of individual liberty—and thus a good unto itself—but also is essential to the common quest for truth and the vitality of society as a whole." ... We have therefore been particularly vigilant to ensure that individual expressions of ideas remain free from governmentally imposed sanctions.

*Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50–51 (1988) (alteration in original) (quoting *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 503–04 (1984)).

In *Milkovich*, the United States Supreme Court ruled that an opinion may be actionable as defamation, but only when the assertion "is sufficiently factual to be susceptible of being proved true or false." 479 U.S. at 21. In that case, the challenged assertion was that the speaker believed the plaintiff had lied under oath, i.e., committed perjury. The Court concluded that such an assertion could be tested for its veracity in, for example, a perjury prosecution. *Id.* at 21–22. The Court contrasted this "objectively verifiable" perjury allegation with a "subjective assertion" that "does not contain a

provably false factual connotation,” noting that the latter “will receive full constitutional protection.” *Id.* at 20, 22 (quoting *Scott v. News-Herald*, 496 N.E.2d 699, 707 (Ohio 1986)).

By contrast, the allegedly defamatory statement here, that DIS is an anti-immigrant hate group, is, in the words of the *Milkovich* Court—and as found by this Court in *Coral Ridge*—“not sufficiently factual to be susceptible of being proved true or false.” *Id.*; see *Coral Ridge*, 406 F. Supp. 3d at 1277. Unlike the question of whether a plaintiff committed perjury, which the *Milkovich* Court recognized could be decided by a jury “on a core of objective evidence by comparing,” for example, the plaintiff’s conflicting sworn statements, 497 U.S. at 21, there is no methodology by which one could prove that DIS, as a factual matter, is *not* an anti-immigrant hate group. There are no legally established elements that define what is or is not an anti-immigrant hate group—it is a subjective assertion. Nor did SPLC accuse DIS of having violated any statute or other objectively established criteria. *Cf. Milkovich*, 497 U.S. at 22 (“Unlike a subjective assertion the averred defamatory language is an articulation of an objectively verifiable event.”) (quoting *Scott*, 496 N.E.2d at 707). As a result, the term “‘hate group’ has a highly debatable and ambiguous meaning” and “suffers from ‘tremendous imprecision of ... meaning and usage ... in the realm of political debate.’” *Coral Ridge*, 406 F. Supp. 3d at 1275–77 (second ellipsis in original) (quoting *Buckley v. Littell*, 539 F.2d 882, 893 (2d Cir. 1976)).

SPLC’s “anti-immigrant hate group” designation constitutes subjective opinion, based on SPLC’s interpretation and review of materials produced, and positions espoused, by DIS and King on behalf of DIS, with respect to immigrants, and especially with regard

to undocumented immigrants. The subjectivity of SPLC's position is akin to various statements that have been deemed constitutionally protected opinions. *See, e.g., Turner v. Wells*, 879 F.3d 1254 1262–65, 1270 (11th Cir. 2018) (whether something constituted “homophobic taunting” was not objectively verifiable and whether someone was “unprofessional” was likewise non-actionable opinion); *see also Hamze v. Cummings*, 652 Fed. App'x 876, 881 (11th Cir. 2016) (quoting *Milkovich* and concluding that statement that plaintiff committed “brutal, senseless, road rage killing” that showed “disregard for human life” was opinion that could not support defamation claim); *cf. Bennet v. Hendrix*, 325 Fed. App'x 727, 740–41 (11th Cir. 2009) (campaign literature asserting plaintiff was “convicted criminal” deemed provable factual assertion and actionable); *Adventure Outdoors v. Bloomberg*, 519 F. Supp. 2d 1258, 1281-82 (N.D. Ga. 2007) (deeming “immoral and corrupt dealers,” “a scourge on society,” and “irresponsible gun dealers” protected statements of opinion; whereas “routinely ignore federal regulations” and “breaking the Federal laws regulating gun Sales” were defamatory assertions of fact capable of being proved false), *rev'd on other grounds*, 552 F.3d 1290 (11th Cir. 2008). And the subjective nature of SPLC's designation necessitates constitutional protection. *Milkovich*, 497 U.S. at 20–22; *Coral Ridge*, 406 F. Supp. 3d at 1277–78 (holding that hate group designation is protected under *Milkovich* because it is not provable as false).

The fact that SPLC expresses its opinion with the intention that others will be persuaded and agree with that opinion does nothing to alter the subjective nature of the opinion. *Cf. Gitlow v. State of New York*, 268 U.S. 652, 673 (1925) (Holmes, J., dissenting) (“Every idea is an incitement. It offers itself for belief ....”). Indeed, the attempt to

persuade others to join one's own opinion, particularly on matters of great public concern, is the core activity protected by the First Amendment. *E.g.*, *Gertz*, 418 U.S. at 339–40 (“[W]e depend for [the correction of pernicious opinions] not on the conscience of judges and juries but on the competition of other ideas.”); *Whitney v. California*, 274 U.S. 357, 375–76 (1927) (Brandeis, J., concurring) (“[The Founders] believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth .... and that the fitting remedy for evil counsels is good ones.”). Thus, there is a large and dispositive difference between a statement that the proponent believes is *correct* and a statement that can be proven or disproven as *true* in the context of a legal proceeding. (This is why, among other things, negative movie or restaurant reviews are not actionable as defamation.)

In addition, in evaluating whether a statement is entitled to protection under *Milkovich*, a court “must consider the circumstances in which the statement was expressed.” *Horsley v. Rivera*, 292 F.3d 695, 702 (11th Cir. 2002); *see also Milkovich*, 497 U.S. at 16–17 (discussing cases establishing that statements must be evaluated as reasonable readers would perceive them under circumstances). In this case, context only further supports categorization of SPLC's anti-immigrant hate group designation as a constitutionally protected opinion. The relevant circumstances include the following: SPLC is a non-profit corporation that, among a range of activities, disseminates a “Hate Map” that contains an annual census of groups that it designates as hate groups. (Am. Compl. ¶¶ 3, 9–10.) *See also Coral Ridge*, 406 F. Supp. 3d at 1269. Based on the documents relied on by the Amended Complaint, SPLC designated DIS as an anti-

immigrant hate group in part because of the denigrating comments of its leadership about immigrants (*see* Factual Background, Part IV.A, *supra*) and in part because of its association with other anti-immigrant hate groups and anti-immigrant advocates and its aggressive, public, and vocal activities lobbying for the harsh treatment of immigrant groups, especially undocumented immigrants (*see* Factual Background, Parts IV.B–D, *supra*; *see also* Ex. 4 to Holliday Decl. (SPLC DIS Page)). DIS advocates broadly and intends that its words and actions be persuasive in the political arena. (Am. Compl. ¶ 13; *see generally* Factual Background, Part IV, *supra*.) And SPLC intends that its designations be persuasive in countering groups like DIS in the political arena. (*See, e.g.*, Am. Compl. ¶¶ 28–29; *see also, e.g.*, Ex. 4 to Holliday Decl. (SPLC DIS Page) at 1.)

Considering these factors in the context of the current political climate, it is clear that DIS’s position was espoused, and the anti-immigrant designation made, within a politically charged national debate regarding immigration and the manner in which undocumented immigrants in the United States should be treated. In such a context, a reasonable recipient of SPLC’s statements would understand that each side of such a debate is expressing its opinion on these highly controversial matters, particularly when the medium of publication signals as much and is targeted toward those likely to be interested and informed on the relevant issues.

In a similar context involving charges of anti-Semitism and xenophobia, a United States District Court found the context of the statements extremely relevant:

Turning to the immediate context, the article describes the author ... as the director of an organization “dedicated to fighting anti-Semitism and xenophobia,” thereby “signaling that he was not a disinterested observer.”

The article appeared in ... a choice of publication that seems calculated “to draw the situation to the attention of interested parties,” who bring to the article a “well-developed understanding of the issues” raised.

*Egiazaryan v. Zalmayev*, 880 F. Supp. 2d 494, 507 (S.D.N.Y. 2012) (citations and alterations omitted) (quoting *Brian v. Richardson*, 660 N.E. 2d 1126, 1131 (N.Y. 1995), and *Immuno AG v. Moor-Jankowski*, 567 N.E.2d 1270, 1280 (N.Y. 1991)). In the same vein, the publication of SPLC’s hate group designations on its website, in the clear context of an organization dedicated to fighting discrimination and hate, serves to make even more clear to the reasonable reader that the statement represents a political opinion. *Cf. Sullivan*, 376 U.S. at 271 (“In the realm of ... political belief, sharp differences arise ... [and] the tenets of one man may seem the rankest error to his neighbor. ... [But] these liberties [to air political differences] are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.”) (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 310 (1940)).

Moreover, in addition to context, the nature of the statements themselves demonstrates their protected status. Allegations of prejudice, hatred, or political extremism are classic examples of opinions believed to be correct by the speaker, but not objectively verifiable as true or false. As one court explained, in holding that “allegations of hostility to labor” constituted protected speech:

To say that one is unfair to labor is not a statement of a fact, but of an opinion. Likewise to say of one: you are reactionary, you are undemocratic, you are a nationalist, you are an isolationist, you are a New Dealer, you are a Union Leaguer, you are opposed to labor, you are a coddler of labor, is similarly to express an opinion.

*Guilford Transp. Indus., Inc. v. Wilner*, 760 A.2d 580, 598 (D.C. 2000) (quoting *Montgomery Ward & Co. v. McGraw-Hill Publ'g Co.*, 146 F.2d 171, 176 (7th Cir. 1944)); see also, e.g., *Buckley v. Littell*, 539 F.2d 882, 893–95 (2d Cir. 1976) (description of plaintiff as “fascist” is “loose” and “ambiguous” and cannot be regarded as statement of fact because of “tremendous imprecision” of the term); *Ratajack v. Brewster Fire Dep't, Inc.*, 178 F. Supp. 3d 118, 165 (S.D.N.Y. 2016) (statement “that Plaintiff was a racist or a future threat to others” was “nonactionable opinion”); *Egiazaryan*, 880 F. Supp. 2d at 499 (holding that accusations of various types of bias, including “xenophob[ia],” were protected assertions of opinion incapable of being proved true or false); *Jackson v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union*, No. 2:07-cv-461, 2009 WL 10704261, at \*39 (N.D. Ala. Feb. 23, 2009) (statements that plaintiff was “racist” and “radical” were “non-fact-based name-calling and rhetoric that d[id] not sufficiently assert representations of actual facts”) (collecting cases).<sup>8</sup>

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<sup>8</sup> Indeed, this principle is well-established across the country. See, e.g., *Standing Comm. on Discipline v. Yagman*, 55 F.3d 1430, 1440 (9th Cir. 1995) (calling a judge “anti-Semitic” was a non-actionable opinion); *Squitieri v. Piedmont Airlines, Inc.*, No. 3:17-cv-441, 2018 WL 934829, at \*4 (W.D.N.C. Feb. 16, 2018) (“Statements indicating that Plaintiff is racist are clearly expressions of opinion that cannot be proven as verifiably true or false.”) (collecting cases); *Forte v. Jones*, No. 1:11-cv-718, 2013 WL 1164929, at \*6 (E.D. Cal. Mar. 20, 2013) (“[T]he allegation that a person is a ‘racist’ ... is not actionable because the term ‘racist’ has no factually-verifiable meaning.”); *Edelman v. Croonquist*, No. 09-cv-1938, 2010 WL 1816180, at \*6 (D.N.J. May 4, 2010) (“[The] characterization of [plaintiffs] as racists is a subjective assertion, not sufficiently susceptible to being proved true or false to constitute defamation.”); *Martin v. Brock*, No. 07-cv-3154, 2007 WL 2122184, at \*3 (N.D. Ill. July 19, 2007) (“[U]nder Illinois law, statements of opinion that someone is racist ‘fit comfortably within the immunity for name-calling’ unless they imply the existence of undisclosed, defamatory facts.”) (citation omitted); *Smith v. Sch. Dist. of Phila.*, 112 F. Supp. 2d 417, 429 (E.D. Pa. 2000) (“While ... a statement that plaintiff is ‘racist and anti-Semitic,’ if it was made, would be unflattering, annoying and embarrassing, such a statement does not rise to the level of defamation as a matter of law because it is merely non-fact based rhetoric.”); *Williams v. Kanemaru*, 309 P.3d 972



While SPLC continues to believe that its opinion that DIS is an anti-immigrant hate group is obviously *correct*—as a matter of the “political truth” envisioned by Justice Brandeis in *Whitney*, 274 U.S. at 375—the discussion above demonstrates that, nevertheless, SPLC’s opinion is *not* one that is susceptible to objective proof of truth or falsity as constitutionally required in a defamation context under *Milkovich*. To the contrary, the anti-immigrant hate group designation reflects SPLC’s constitutionally protected opinion regarding the nature of hate. *See Milkovich*, 497 U.S. at 20–21; *Coral Ridge*, 406 F. Supp. 3d at 1277. It necessarily follows that each of Plaintiffs’ defamation claims should be dismissed. Further, because the character of the challenged statements cannot be changed by amendment, the dismissal should be with prejudice. *See Coral Ridge*, 406 F. Supp. 3d at 1280.

**2. Under Georgia law, which applies in this case, the challenged statements are not actionable because they are non-defamatory expressions of opinion.**

Separately from the First Amendment, Georgia, as a matter of state defamation law, also provides protection for opinions such as the ones expressed by SPLC in this case.

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(Table), 2013 WL 4458887, at \*2 (Haw. Ct. App. 2013) (accusation of racism based on disclosed facts not actionable for defamation); *Ward v. Zelikovsky*, 643 A.2d 972, 983 (N.J. 1994) (accusation that plaintiffs “hate[d] ... Jews” non-actionable opinion); *see also, e.g., Condit v. Clermont Cnty. Review*, 675 N.E.2d 475, 478 (Ohio Ct. App. 1996) (“Numerous courts have concluded that allegations of fascism, anti-Semitism, or other accusations of ethnic bigotry are not actionable as defamation.”) (citing cases); *O’Neil v. Peekskill Faculty Ass’n*, 507 N.Y.S.2d 173, 180 (N.Y. App. Div. 1986) (holding that accusations of “bigotry” were “classic examples of pure opinions”). *See generally* 1 Robert D. Sack, § 2:4-7, at 2-48 & n.196 (5th ed. 2017).

Therefore, Georgia law provides an independent basis for dismissing the Amended Complaint with prejudice.<sup>9</sup>

*a. Georgia law applies.*

A district court sitting in diversity looks to the choice-of-law rules of the forum state. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941); *Rosa & Raymond Parks Inst. for Self Dev. v. Target Corp.*, 812 F.3d 824, 829 (11th Cir. 2016). In tort cases, Alabama generally applies the choice-of-law principle of “[*I*]ex loci delicti . . . the law of the state where the injury occurred.” *Fitts v. Minn. Mining & Mfg. Co.*, 581 So. 2d 819, 820 (Ala. 1991); accord *Target Corp.*, 812 F.3d at 829. Although Alabama courts have not specifically addressed the issue in the context of internet defamation, in the case of an “aggregate communication” such as one distributed over the internet, the primary place of injury in a defamation case is generally considered to be the domicile or primary place of business of the plaintiff—here, as to both Plaintiffs, Georgia. See, e.g., Restatement (Second) of Conflict of Laws, § 150(2)–(3) (2019); see also *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780 (1984) (noting that individuals endure the bulk of harm from torts like defamation in their home states). Therefore, except where preempted by the federal constitutional limitations discussed above, Georgia law governs the substance of each of Plaintiffs’ defamation claims.

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<sup>9</sup> If Alabama law applied, the result would be the same. See, e.g., *Bell v. Smith*, 281 So. 3d 1247, 1252–56 (Ala. 2019); *Sanders v. Smitherman*, 776 So. 2d 68, 74 (Ala. 2000).

b. *Under Georgia law, the challenged statements are opinions not capable of defamatory meaning.*

The challenged statements fail to support a claim not only for the constitutional reasons outlined above, but also as a matter of Georgia law. Under Georgia law, “[a]n assertion that cannot be proved false cannot be held libelous. A writer cannot be sued for simply expressing his opinion of another person, however unreasonable the opinion or vituperous the expressing of it may be.” *Bergen v. Martindale-Hubbell, Inc.*, 337 S.E.2d 770, 771–72 (Ga. Ct. App. 1985) (quoting *Hotchner v. Castillo-Puche*, 551 F.2d 910, 913 (2d Cir. 1977)). For the reasons explained above, SPLC’s anti-immigrant hate group designation is not capable of being proved false, but is an opinion expressed as part of a political debate, and thus it is non-actionable under Georgia law.

In a matter involving statements that were (one hopes) less political, but equally subjective, the Georgia Court of Appeals held that publication of attorney ratings by Martindale Hubbell was non-actionable as a matter of law, explaining: “The expression of opinion on ‘matters with respect to which reasonable men might entertain differing opinions’ is not libelous. The relative abilities of different lawyers is patently such a matter, wholly subjective and not capable of proof or disproof.” *Bergen*, 337 S.E.2d at 771–72 (citations omitted) (quoting *Grayson v. Savannah News-Press*, 139 S.E.2d 347, 352 (Ga. Ct. App. 1964)). Here, it is just as patent that the relative merits of opposing political positions regarding immigration, as well as whether or not certain such positions are anti-immigrant or hateful, are “subjective and not capable of proof or disproof.” *Id.*; see also *Webster v. Wilkins*, 456 S.E.2d 699, 700 (Ga. Ct. App. 1995) (statement that mother was

“unfit to have a kid” was pure opinion where it was “apparent from the context of the article that Wilkins did not use the phrase ‘unfit to have a kid’ in its legal sense or as a legal conclusion, but used it only to express his subjective opinion criticizing Webster’s parental abilities,” which was matter upon which reasonable people “might entertain differing opinions”).

Further, “Georgia law unquestionably excludes from defamation liability any statements that may be characterized as rhetorical hyperbole or are clearly recognizable as pure opinion because their factual premises are revealed.” *Monge v. Madison Cnty. Record, Inc.*, 802 F. Supp. 2d 1327, 1335 (N.D. Ga. 2011) (emphasis supplied) (quoting *800 Mktg. Solutions, Inc. v. GMAC Ins. Mgmt. Corp.*, No. 3:06-cv-038, 2008 WL 2777140, at \*6 (M.D. Ga. July 14, 2008)). Rather, “a statement of opinion is actionable only if it implies the allegation of *undisclosed* defamatory facts as the basis for the opinion.” *Jaillett v. Ga. Television Co.*, 520 S.E.2d 721, 726 (Ga. Ct. App. 1999) (emphasis in *Jaillett*) (quoting Restatement (Second) of Torts, § 566) (alterations omitted). “If an opinion is based upon facts already disclosed in the communication, the expression of the opinion implies nothing other than the speaker’s subjective interpretation of the facts.” *Id.*

Under this standard, the challenged statements in this case are clearly non-defamatory as a matter of law, because the facts upon which those statements were based are copiously disclosed. In the case of the anti-immigrant hate group designation, those facts are disclosed through hyperlinks from the Hate Map.<sup>10</sup> (*See* Ex. 1 to Holliday Decl.

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<sup>10</sup> As noted above (*see* n.4, *supra*), many courts have concluded that hyperlinked content is properly deemed part of a publication’s overall context in a defamation action,

(Hate Map); Holliday Decl. ¶ 4 (providing URLs for Hate Map on SPLC website.) In the case of the related statement that DIS “poses as an organization concerned about immigration issues, yet focuses on vilifying all immigrants,” which appears on the SPLC DIS Page, the underlying facts are disclosed on the same web page, immediately below the statement. (*See* Ex. 4 to Holliday Decl. (SPLC DIS Page).) There is no need to recite those facts—most of which consist of the Plaintiffs’ own statements, actions, and associations—again, as they are already described above in the Factual Background and in Part I.A.1 of the Argument and are also available for review in the above-cited Exhibits to this Memorandum. It suffices to say that, upon review of those facts, there can be no doubt that the challenged statements are protected under Georgia law.

In those disclosed facts, SPLC lays out the behavior of the Plaintiffs—none of which the Plaintiffs have specifically denied<sup>11</sup>—and expresses opinions based on that behavior. Under such circumstances, the opinions themselves would have no defamatory “impact on

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including in determining that a challenged statement constitutes a protected opinion based on disclosed facts. *See, e.g., Sandals Resorts Int’l Ltd. v. Google, Inc.*, 925 N.Y.S.2d 407, 416 (N.Y. App. Div. 2011) (allegedly defamatory statement in email was “supported by links [in the email] to the writer’s sources”); *Boley v. Atl. Monthly Grp.*, 950 F. Supp. 2d 249, 262 (D.D.C. 2013) (hyperlink to earlier article was sufficient to “incorporat[e] that article by reference and provid[e] the necessary context for the allegedly defamatory remark”); *Rehak Creative Servs., Inc. v. Witt*, 404 S.W.3d 716, 732 (Tex. Ct. App. 2013) (“[T]he linked documents are part of the context that must be taken into consideration when assessing what the website actually conveyed ....”), *disapproved on other grounds, In re Lipsky*, 460 S.W.3d 579 (Tex. 2015); *see also Adelson*, 973 F. Supp. 2d at 484 (“The hyperlink is the twenty-first century equivalent of the footnote for purposes of attribution in defamation law .... [Indeed,] a hyperlink provides benefits that a footnote does not.... [It] instantaneously permits the reader to verify an electronic article’s claims.”).

<sup>11</sup> Plaintiffs claim, conclusorily, that unspecified statements were taken “out of context” (Am. Compl. ¶ 22) but do not deny making the statements.

readers” because they do not “reasonably appear[ to be] factual,” and they are therefore protected under Georgia law. *Jaillett*, 520 S.E.2d at 726 (quoting *Phantom Touring v. Affiliated Publ’ns*, 953 F.2d 724, 731, n. 13 (1st Cir. 1992)); *see also, e.g., Collins v. Cox Enters., Inc.*, 452 S.E.2d 226, 227 (Ga. Ct. App. 1994) (“Cox’s editorial opinion that Collins hoped to fool voters by running for public office under the name John Frank Collins while Joe Frank Harris was governor does not imply an assertion of objective fact that might be proved false; rather, it is merely speculation as to Collins’ motive based on his behavior.”) (emphasis supplied).

Accordingly, where these defects again apply to every count in the Amended Complaint, Georgia law supplies a separate and independent basis for dismissing the entire Complaint.

**B. The Anti-Immigrant Hate Group Designation and Related Statements Are Not “Of and Concerning” Plaintiff King.**

Under Georgia law, “[t]o sustain an action for libel the allegedly defamatory words must refer to some ascertained or ascertainable person, and that person must be the plaintiff.” *Cox Enters., Inc. v. Bakin*, 426 S.E.2d 651, 653 (Ga. Ct. App. 1992) (alterations omitted) (quoting *Fiske v. Stockton*, 320 S.E.2d 590, 592 (Ga. Ct. App. 1984)); *see also Sullivan*, 376 U.S. at 288 (statements must be “of and concerning” plaintiff). Moreover, where, as here, the alleged defamation involves a matter of public concern, the First Amendment requires the plaintiff to demonstrate that he or she was “clearly identifiable” as the challenged statement’s subject. *Abramson v. Pataki*, 278 F.3d 93, 102 (2d Cir. 2002) (citing *Sullivan*, 376 U.S. at 288–89).

The designation of DIS as an “anti-immigrant hate group” is obviously not “of and concerning” Plaintiff King in a literal sense; it is, by its express terms, about an organization, DIS, and not an individual. In addition, the Amended Complaint itself acknowledges that SPLC “does not place this [hate group] classification on individuals.” (Am. Compl. ¶ 19), a fact which is also stated on SPLC’s website. (*See* Ex. 6 to Holliday Decl. at 2 (“We do not list individuals as hate groups, only organizations.”).) This disconnect is legally significant because an allegedly false statement about an entity is not actionable by those associated with it. As the D.C. Circuit has emphasized:

[D]efamation is personal; . . . [A]llegations of defamation by an organization and its members are not interchangeable. Statements which refer to individual members of an organization do not implicate the organization. By the same reasoning, statements which refer to an organization do not implicate its members.

*Jankovic v. Int’l Crisis Grp.*, 494 F.3d 1080, 1089 (D.C. Cir. 2007) (ellipsis in original) (quoting *Provisional Gov’t of New Afrika v. Am. Broad. Cos.*, 609 F. Supp. 104, 108 (D.D.C. 1985)); *see also* *Bakin*, 426 S.E.2d at 653.

In *Jankovic*, the court rejected the contention that “the namesake of a corporation can be defamed when false misdeeds are attributed to his company.” *Id.* And in *Armscorp of America, Inc. v. Daugherty*, the Georgia Court of Appeals held that it did not matter if there might be evidence that readers did, in fact, associate the challenged statements with the plaintiff, if the defamatory words themselves did not refer to that person. 380 S.E. 2d 729, 730 (Ga. Ct. App. 1989); *accord* *Fiske*, 320 S.E.2d at 603. The same reasoning governs this case. Designation of DIS as a hate group by its terms applies to the organization, and the law does not allow King to treat it as “of and concerning” him,

notwithstanding that he is the group’s founder, “principal,” or “public face.” (Am. Compl. ¶¶ 11–13.)

The “of and concerning” requirement is designed to weed out defamation claims, like this one, based on statements made not about the plaintiff, but about other persons or groups with which she is affiliated. *See, e.g., Jankovic*, 494 F.3d at 1089; *Bakin*, 426 S.E.2d at 653. Here, while the Amended Complaint alleges, prior to stating any cause of action, that SPLC makes allegations “almost exclusively” about King in order to *support* its designation of *DIS* as an “anti-immigrant hate group” (Am. Compl. ¶ 19), the Complaint does not actually allege a cause of action based on any statement that is actually about King. (*See* Am. Compl. ¶¶ 26–55.) In any case, the only statements in the challenged publications that are actually *about* King are factual and non-defamatory—for example, quotations from his own statements and writings, descriptions of activities he has engaged in, and the fact that he leads *DIS*—and King has not challenged any of those statements.

For these reasons, SPLC’s designation of *DIS* as an “anti-immigrant hate *group*” and the related statement that *DIS* is “*an organization ... [that] focuses on vilifying all immigrants*” (Am. Compl. ¶¶ 38, 43 (emphasis supplied)), are not “of and concerning” King as a matter of law. This provides a separate and independent reason for dismissing all claims with regard to Plaintiff King.



**C. Plaintiffs Are Public Figures Who Must Plead and Prove Actual Malice, but the Complaint Does Not Plausibly Allege Facts Supporting a Reasonable Inference of Actual Malice.**

Under First Amendment precedent, if a court determines that a plaintiff in a defamation action is “a public official, public figure, or limited-purpose public figure,” then the plaintiff must plead, and ultimately establish by clear and convincing evidence, that the defamatory statement was made with “actual malice.” *Sullivan*, 376 U.S. at 280. In the First Amendment context, actual malice is a term of art that does not denote personal spite or ill will, but rather that the defendant published the statement either with knowledge that it was false, or in reckless disregard of its possible falsity. *Id.* This standard is “not an objective one,” and therefore the beliefs or actions of a hypothetical reasonable person are irrelevant. *Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 702–03 (11th Cir. 2016) (citing *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968)). Instead, courts ask whether the defendant, rather than acting in good faith, *actually* entertained serious doubts as to the veracity of the published account, or was highly aware that the account was probably false. *Id.*; *Silvester v. Am. Broad. Cos. Inc.*, 839 F.2d 1491, 1493 (11th Cir. 1988).

Under this standard, even “the most repulsive speech enjoys immunity provided it falls short of a deliberate or reckless untruth.” *Old Dominion Branch No. 496, Nat’l Ass’n of Letter Carriers v. Austin*, 418 U.S. 264, 284 (1974) (quoting *Linn v. United Plant Guard Workers of Am., Local 114*, 383 U.S. 53, 63 (1966)). Moreover, the plaintiff’s heightened burden to ultimately prove actual malice by clear and convincing evidence must of necessity be taken into account when applying the *Iqbal/Twombly* plausibility pleading standard. *See Michel*, 816 F.3d at 702.

Obviously, SPLC contends that the Complaint should be dismissed precisely because the challenged statements are not even *capable* of truth or falsity (*see* Argument, Part I.A, *supra*), and it would be a non-sequitur to suggest that SPLC could somehow have “serious doubts” about the truth of something that is inherently incapable of being true or false. Nevertheless, even assuming that the challenged statements *were* susceptible to being proved false—as SPLC will do throughout this section of the argument—the Complaint is separately and independently due to be dismissed because (1) DIS and King are public figures and (2) they have not alleged plausible facts that could remotely support an inference of actual malice. *Cf. Coral Ridge*, 406 F. Supp. 3d at 1278–80 (holding that hate group designation was protected opinion but also holding in alternative that plaintiff had failed to “plausibly allege actual malice”).

**1. DIS and King are public figures.**

Public figures, for First Amendment purposes, are “[t]hose who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public’s attention,” assume a place on the public stage and thereby both “run[] the risk of closer public scrutiny” and achieve “access to the channels of effective communication” to correct alleged falsehoods published about them. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342–44 (1974). In light of our “profound national commitment” to the “uninhibited, robust, and wide-open” debate of controversial issues, such parties, having chosen to engage in public endeavors or participate in public debate, accept a greater risk of critical comment and scrutiny. *Sullivan*, 376 U.S. at 270. Determining whether a party is a public figure—and thus subject to the actual malice standard—is a question of law for the court. *Michel*, 816

F.3d at 702. A corporation can be a public figure for First Amendment purposes. *See, e.g., Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485 (1984) (applying actual malice standard to Bose Corporation’s defamation claim).

By their own admission, DIS, and King on behalf of DIS, have sought and received the public’s attention, particularly with regard to the political debate over immigration to the United States. In the Amended Complaint, they summarize their activities as follows:

Plaintiff Donald A. King ... is the principal of the nonprofit organization and Plaintiff The Dustin Inman Society, Inc., ... an organization ... with a stated mission and goal of promoting the enforcement of immigration laws in the United States.

[¶]

Plaintiff King chartered Plaintiff DIS in 2005 and has maintained the same or substantially similar activities in the fifteen years it has operated.

[¶]

Plaintiff King on behalf of Plaintiff DIS has testified to numerous legislative panels, including the U.S. House of Representatives, given speeches, written articles, and otherwise advocated for enforcement of immigration laws in the United States. Plaintiff King is the public face of Plaintiff DIS.

(Am. Compl. ¶¶ 11–13.)

Moreover, the Factual Background provided above serves to confirm and flesh out this summary, and leaves no doubt as to the status of the Plaintiffs. Among other things: twelve mainstream newspapers have printed King’s articles; as a representative of DIS, King has appeared on “Lou Dobbs Tonight,” “Anderson Cooper 360,” and National Public Radio (NPR); NPR has called King a “grassroots activist,” and CNN’s ‘Headline News’ has described him as an “anti-illegal immigration activist” and “columnist for the Marietta

Journal”; *The New York Times* has published a profile of King;<sup>12</sup> King, on behalf of DIS, has organized and participated in rallies protesting legislation that would aid undocumented immigrants in any way and which featured presentations by other well-known anti-immigrant speakers; and King publishes a frequently updated blog on DIS’s website<sup>13</sup> and is active on other forms of social media. (See Factual Background, Part IV.D, *supra* (describing above facts as well as additional facts regarding Plaintiffs’ public profile and advocacy); *see also* Ex. 4 to Holliday Decl. (SPLC DIS Page).)

This is more than enough to demonstrate both that Plaintiffs “vigor[ously] and success[fully] ... seek the public’s attention” and that they enjoy “access to the channels of effective communication” to air their views and attempt to rebut any criticism from SPLC or other speakers. *Gertz*, 418 U.S. at 342–44. Moreover, even if Plaintiffs were not public figures outright (they are), they would be limited-purpose public figures subject to the same actual malice standard for purposes of the anti-immigrant hate group designation. *See id.* at 345. Certainly, there can be no doubt, based on the extensive activities listed above, that Plaintiffs have attempted to “thrust themselves to the forefront of [the] public controvers[y]” over immigration in the United States “in order to influence the resolution of the issues involved.” *Id.* at 345.

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<sup>12</sup> As explained above (*see nn.4–5, supra*), these sources of information are subject to consideration by the Court on a 12(b)(6) motion either because they are media articles that can be noticed by the Court, because they are cited in the SPLC materials incorporated by the Amended Complaint, or both.

<sup>13</sup> *See* The Dustin Inman Society Blog, <https://www.thedustininmansociety.org>.

Therefore, whether public figures or limited-purpose public figures, in order to prevail Plaintiffs must allege facts that, if true, would constitute clear and convincing evidence of actual malice (i.e., of SPLC's knowledge of its statements' falsity or probable falsity). *Id.* at 342.

**2. DIS and King have failed to allege facts sufficient to give rise to a reasonable inference of actual malice.**

Plaintiffs claim they were defamed by SPLC's designation of the DIS as an "anti-immigrant hate group" and that King was defamed by SPLC's statement that DIS "poses as an organization concerned about immigration issues, yet focuses on vilifying all immigrants." (Am. Compl. ¶¶ 28, 33, 28, 43.) However, DIS and King have failed to adequately plead that SPLC published these statements with actual malice. To the contrary, the very documents relied on by Plaintiffs clearly demonstrate the opposite—that SPLC believed the allegedly defamatory statements to be correct, and that it disclosed its basis for this belief by extensively documenting Plaintiffs' own statements and actions. For this reason, not only are Plaintiffs' defamation claims due to be dismissed, but that dismissal should be with prejudice because the context in which the statements were made leaves it clear that Plaintiffs will never be able to prove actual malice.

As noted above, the Eleventh Circuit has specifically held that actual malice must meet the *Iqbal/Twombly* pleading requirements in defamation lawsuits involving public figures. *Michel*, 816 F.3d at 702. The Circuit Court explained this requirement as follows:

[E]very circuit that has considered the matter has applied the *Iqbal/Twombly* standard and held that a defamation suit may be dismissed for failure to state a claim where the plaintiff has not pled facts sufficient to give rise to a reasonable inference of actual malice. [Citing cases from First, Second,

Fourth, Seventh, and Tenth Circuits] Joining that chorus, we hold that the plausibility pleading standard applies to the actual malice standard in defamation proceedings.<sup>[14]</sup>

*Michel*, 816 F.3d at 702 (citations omitted). The Court went on to explain the special importance of enforcing this standard in public figure defamation suits:

In these cases, there is a powerful interest in ensuring that free speech is not unduly burdened by the necessity of defending against expensive yet groundless litigation. Indeed, the actual malice standard was designed to allow publishers the “breathing space” needed to ensure robust reporting on public figures and events. *Forcing publishers to defend inappropriate suits through expensive discovery proceedings in all cases would constrict that breathing space in exactly the manner the actual malice standard was intended to prevent.* The costs and efforts required to defend a lawsuit through that stage of litigation could chill free speech nearly as effectively as the absence of the actual malice standard altogether.

*Id.* (emphasis supplied) (quoting *Sullivan*, 376 U.S at 271–72).

The Court went on to conclude that the Plaintiff had failed to plausibly plead actual malice, and the reasoning set out in *Michel* applies equally—indeed, even more so—here. In *Michel*, the court noted that “[f]or starters, we can disregard the portions of the complaint where Michel alleges in a purely conclusory manner that the defendants were ‘reckless’ in publishing the article.” *Id.* at 703–04 (citing *Iqbal*’s rejection of “threadbare recitals” and “mere conclusory statements”). The court then went on to examine certain more detailed factual allegations made in the complaint, including that the defendant newspaper failed to use due diligence in investigating the story it published, but found that even those

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<sup>14</sup> The Eighth Circuit recently “join[ed] the chorus” as well. See *Nelson Auto Ctr., Inc. v. Multimedia Holdings Corp.*, 951 F.3d 952, 958 (8th Cir. 2020) (citing *Michel*).

allegations, taken as true, were not enough to support a reasonable inference of actual malice. *Id.* at 704–05.

The case now before this Court is even weaker. Here, the Court faces “purely conclusory” allegations not only for “starters,” but also for finishers, and for everything in between. There is nothing of substance in the Amended Complaint that goes beyond the following “threadbare recitals”:

[Paragraph 29:] “Defendant SPLC acted with malice in publishing libelous material intended to damage the reputation of Plaintiff DIS and neutralize the ability of Plaintiff DIS to pursue its mission.” ....

[Paragraph 34:] “Defendant SPLC acted with malice in publishing libelous material intended to damage the reputation of Plaintiff DIS and neutralize the ability of Plaintiff DIS to pursue its mission.” ....

[Paragraph 39:] “Defendant SPLC acted with malice in publishing libelous material intended to damage the reputation of Plaintiff King and neutralize his ability to effectively pursue the mission he shares with Plaintiff DIS.” ....

[Paragraph 44:] “Defendant SPLC acted with malice in publishing libelous material intended to damage the reputation of Plaintiff King and neutralize his ability to lead Plaintiff DIS.” ....

[Paragraph 49:] “Defendant SPLC published the libelous material regarding Plaintiffs knowing the matter was published was false or with reckless disregard of whether it was false or not.” ....

[Paragraph 54:] “Plaintiffs are being damaged by the [allegedly continued] publication of this content, which Defendant SPLC knows to be false and which is published for the express purpose of damaging Plaintiffs’ reputation and with malicious intent by Defendant SPLC.”

(Am. Compl. ¶¶ 29, 34, 39, 44, 49, 54 (emphasis supplied).)

These allegations clearly fail to support a claim under *Michel*. Plaintiffs’ rote recitation of the terms “malice,” “know[ledge],” and “reckless” are the very definition of

“‘mere conclusory statements,’ which are insufficient to support a cause of action.” *Michel*, 816 F.3d at 704 (quoting *Iqbal*, 556 U.S. at 678).<sup>15</sup>

Other than these formulaic recitations, the only facts offered in the Amended Complaint that could even remotely be considered relevant to actual malice fall woefully short of supporting such an inference. Specifically, the Complaint: (1) complains about what SPLC did *not* say—i.e., that SPLC did not state that DIS “maligned an entire class of people or at any time fit” SPLC’s definition of a hate group (Am. Compl. ¶ 20); (2) claims that its website reveals a diverse board of directors in terms of race and country of origin (Am. Compl. ¶ 21); and (3) claims that SPLC has taken Plaintiff King’s own statements out of context or imputed statements of others to him (Am. Compl. ¶ 22). Each of these allegations is conclusory, irrelevant, or implausible.

Allegation (1), in which Plaintiffs appear to be obliquely implying that SPLC knew its hate group designation was “false” because DIS does not meet SPLC’s definition of a hate group, at most amounts to a simple denial by DIS that it is an anti-immigrant hate group. Bare denials cannot, as a matter of law, establish actual malice. *See, e.g., Harte-Hanks Commc’ns, Inc. v. Connaughton*, 491 U.S. 657, 692 n.37 (1989) (“[D]enials ... are

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<sup>15</sup> Indeed, the first four allegations listed above (¶¶ 29, 34, 39, and 44), which reference only “malice,” do not amount even to “mere conclusory statements” of *constitutional* actual malice, as opposed to the separate concept of common law malice relevant under state tort law.

Nor do the allegations in those paragraphs that SPLC acted “with the intention of harming [Plaintiffs’] reputation” constitute plausible allegations that could support an inference of actual malice. It is commonplace, protected activity for disputants in the realm of public debate to criticize each other with intent to harm the other’s reputation. *See Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 51–52 (1988) (“[Protected] criticism, inevitably, will not always be reasoned or moderate; public figures as well as public officials will be subject to ‘vehement, caustic, and sometimes unpleasantly sharp attacks.’”) (quoting *Sullivan*, 376 U.S. at 270).



so commonplace in the world of polemical charge and countercharge that, in themselves, they hardly alert the conscientious [publisher] to the likelihood of error.”) (quoting *Edwards v. Nat’l Audubon Soc’y, Inc.*, 556 F.2d 113, 121 (2d Cir. 1977)). Moreover, the documents incorporated by the Amended Complaint make clear that, at a very minimum, SPLC *believed* that DIS met its definition of an “anti-immigrant hate group.” First of all, contrary to DIS’s allegation, SPLC *does* state that DIS “denigrates immigrants,” who are clearly a class of people. (See Ex. 4 to Holliday Decl. (SPLC DIS Page) at 1 (“[SPLC] lists [DIS] as an anti-immigrant hate group because it denigrates immigrants ....”).) Secondly, by designating DIS as an anti-immigrant hate group, and linking to its definitions of hate group and anti-immigrant, SPLC was, in fact, stating that DIS “fit” its definitions. Finally, by linking to extensive information on its DIS Page (see Ex. 4 to Holliday Decl.), SPLC provided its basis for believing that DIS “fit” its definitions.<sup>16</sup> These materials—which are cognizable on a motion to dismiss as explained above—demonstrate the basis for SPLC’s conclusion as to the hate group designation and thus completely defeat any reasonable inference that SPLC subjectively acted with actual malice. See *Michel*, 816 F.3d at 704 (holding that “conclusory statement [in the complaint] is rebutted by the article itself, which was included as an exhibit to the complaint” where article laid out defendants’ basis

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<sup>16</sup> The information cited by SPLC is detailed in the Factual Background above and includes quotes from Plaintiff King, on behalf of DIS, and from a member of the DIS Board of Advisors, as well as Plaintiffs’ associations with a long list of anti-immigration figures, including the founder of the white-nationalist VDARE website, and Plaintiff King’s own association with white-nationalist groups and publications, which in addition to being racist are also anti-immigrant. (See Factual Background, Part IV, *supra*.)

for challenged statements)<sup>17</sup>; *Coral Ridge*, 406 F. Supp. 3d at 1278–79 (rejecting argument that SPLC acted with actual malice because plaintiff did not, in fact, meet criteria for designation as hate group).

As to allegation (2), the composition of DIS’s board has no relevance to whether SPLC’s hate group designation was made with knowledge or recklessness as to the statement’s purported falsity. Moreover, even if it somehow did, Plaintiffs do not allege that SPLC had any knowledge of the board’s composition, and the law is clear that “the failure to investigate does not give rise to a finding of actual malice,” *Michel*, 816 F.3d at 705, particularly where the defendant did conduct some investigation. *Id.*

Finally, allegation (3) fails on its face for lack of specificity. It is wholly conclusory and fails to allege any particular statements that SPLC supposedly took out of context or where SPLC improperly imputed to King the statements of others. Moreover, even if the paragraph could be amended to allege specific statements, the SPLC publications subject to consideration on this motion clearly explain the subjective basis for the hate group designation—i.e., the statements attributed to King and others associated with DIS, as well as the relationships between King and other figures associated with anti-immigrant and hate group activities. Any possible quibbling about SPLC’s interpretation of King’s particular prior statements or DIS’s associations would fall far short of supporting a reasonable inference of actual malice, absent some plausible allegation that SPLC’s

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<sup>17</sup> Documents referred to in the complaint and central to the plaintiff’s claim are considered “part of the pleadings for purposes of Rule 12(b)(6)” as if they had been attached as exhibits to the complaint. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1368–69 (11th Cir. 1997), cited at n.4, *supra*.

articulated basis for its statements was not merely flawed or imperfect, but wholly “fabricated ... [or] the product of [it]s imagination.” *Michel*, 816 F.3d at 703 (quoting *St. Amant*, 390 U.S. at 732).

In summary, the Complaint’s allegations concerning actual malice amount to nothing more than boilerplate recitals of the legal standard and a few paragraphs where, if one squints hard enough, one may make out something tangentially related to SPLC’s knowledge about DIS and King. This is hardly sufficient to support a reasonable inference of actual malice. Ultimately, the Plaintiffs cannot overcome the fact that the actual malice standard is *subjective*, and that they must plausibly allege (and subsequently prove by clear and convincing evidence) that SPLC *actually* entertained at least a serious doubt as to the truth of its statements. Furthermore, the insufficient allegations that they have made—as well as any other allegations they might add by amendment—are conclusively rebutted by the challenged publications themselves, which extensively document why SPLC actually believes its statements to be correct (and also true, to the extent that such statements are capable of truth or falsity).

These defects apply to all six counts in the Amended Complaint. Therefore, because DIS has not and cannot allege facts sufficient for this Court to draw a reasonable inference that SPLC subjectively entertained “serious doubts,” *Michel*, 816 F.3d at 703, as to whether

DIS was “anti-immigrant” or as to whether DIS met its definition of “hate group,” the entire Complaint should be dismissed with prejudice.<sup>18</sup>

**CONCLUSION**

For the foregoing reasons, Defendant SPLC respectfully moves this Court for an order dismissing Plaintiffs’ First Amended Complaint in its entirety, with prejudice, and granting such other relief as it deems just and proper.

Dated: May 18, 2020

*s/ Benjamin W. Maxymuk*

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<sup>18</sup> The absence of actual malice also provides a basis for dismissing Count Five’s claim for punitive damages, whether or not Plaintiffs are public figures, *Gertz*, 418 U.S. at 349, although the Court need not reach this issue.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2020, I caused a copy of the foregoing, along with Exhibit A (Declaration of Shannon L. Holliday) and all Exhibits thereto, to be served upon all counsel of record by filing the same using the Court's CM/ECF system.

s/ Benjamin W. Maxymuk  
Of Counsel

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**DONALD A. KING and THE DUSTIN  
INMAN SOCIETY, INC.,** )

**Plaintiffs,** )

**v.** )

**THE SOUTHERN POVERTY LAW  
CENTER, INC.,** )

**Defendant.** )

**CIVIL ACTION NO.:**  
**2:20-CV-00120-ECM-SMD**

**DECLARATION OF SHANNON L. HOLLIDAY**

I, SHANNON L. HOLLIDAY, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner with the law firm Copeland Franco Screws and Gill, P.A. I am duly admitted to the practice of law before this Court and have entered my appearance on behalf of defendant Southern Poverty Law Center, Inc. (“SPLC”).

2. I submit this declaration to place before the Court certain publicly available information referenced in the Plaintiffs’ Amended Complaint (Doc. 3 in the above-styled case) or available on SPLC’s website in support of SPLC’s Motion to Dismiss the Amended Complaint.

3. The Amended Complaint in this action alleges four counts of defamation based on three distinct SPLC publications – the Hate Map, the *Intelligence Report*, and the SPLC web page discussing the Dustin Inman Society (DIS). *See generally* Doc. 3, Amended Compl. ¶¶ 27-28, 32 and 38 (paragraphs regarding libelous statements). The Amended Complaint does not attach those documents.

4. Attached hereto as Exhibit 1 is a true and correct copy of SPLC's 2019 Hate Map entry web page, as released in 2020, which is on its website at <https://www.splcenter.org/hate-map>, and a copy of the Georgia portion of the 2019 Hate Map, which is on SPLC's website at <https://www.splcenter.org/states/georgia>. The 2019 Hate Map was published by the SPLC in early 2020.

5. Attached hereto as Exhibit 2 is a true and correct copy of the 2018 Hate Map entry web page, released in 2019, which can be found at <https://www.splcenter.org/hate-map?year=2018>, and an archived version of the Georgia portion of the 2018 Hate Map, which can be viewed at <https://web.archive.org/web/20190327210436/https://www.splcenter.org/states/georgia>.<sup>1</sup>

The 2018 Hate Map was published by the SPLC in early 2019.

6. Attached hereto as Exhibit 3 is a true and correct copy of excerpts of the SPLC's 2019 *Intelligence Report*, released in 2020, which excerpts include the first page of the document, a page explaining the SPLC's definition of a hate group, and the page on which the Dustin Inman Society is listed. The listing of the Dustin Inman Society as an anti-immigrant hate group was similar in the prior editions of the *Intelligence Report* published in 2018 and 2019 which also categorized the Dustin Inman Society as an anti-immigrant hate group.

7. Attached hereto as Exhibit 4 is a true and correct copy of the web pages on the SPLC's website discussing the Dustin Inman Society, <https://www.splcenter.org/fighting-hate/extremist-files/group/dustin-inman-society>. The Georgia page of the SPLC's 2018 and 2019 Hate Maps have a link to this web page at the location where the Dustin Inman Society is listed as an anti-immigrant hate group. Plaintiffs quote from this web page (albeit without citing to it) in

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<sup>1</sup> The pdf version of the Georgia portion of the website contains the same content but is formatted somewhat differently than the content as viewed from the internet on the computer screen.

Paragraph 43 of the Amended Complaint (Doc. 3 in the above-styled case). This information can also be found by searching for “Dustin Inman Society” on the SPLC website.

8. The SPLC has also published other material about the Dustin Inman Society, including, for one example, the article, a true and correct copy of which, is attached hereto as Exhibit 5, titled “Georgia’s unchecked Immigration Enforcement Review Board,” published in March 2018, which could have been located by searching for “Dustin Inman Society” on the SPLC’s website. Also attached hereto is Exhibit 6, a web page referenced in the Amended Complaint (Doc. 3) at Par. 18, which can be found at [https://www.splcenter.org/20200318/frequently-asked-questions-about-hate-groups#hate group](https://www.splcenter.org/20200318/frequently-asked-questions-about-hate-groups#hate_group).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: Montgomery, Alabama  
May 18, 2020.

s/ Shannon L. Holliday  
Shannon L. Holliday



IN 2019, WE TRACKED 940 HATE GROUPS ACROSS THE U.S.

SEE HATE IN YOUR STATE

ALL HATE GROUPS HAVE BELIEFS OR PRACTICES THAT ATTACK OR MALIGN AN ENTIRE CLASS OF PEOPLE, TYPICALLY FOR THEIR IMMUTABLE CHARACTERISTICS.

HATE IN THE UNITED STATES

ALL HATE GROUPS HAVE BELIEFS OR PRACTICES THAT ATTACK OR MALIGN AN ENTIRE CLASS OF PEOPLE, TYPICALLY FOR THEIR IMMUTABLE CHARACTERISTICS.

ANTI-IMMIGRANT MOVEMENT HAS HISTORY OF POLITICIZING DISEASE

Eye-Planting New Media Report, But Their Actions Are Bold

Anti-LGBTQ Group Pushes Hate Speech Campaigns Through Amid COVID-19

Why White Supremacists Are Targeting Love Working? During the COVID-19 Pandemic

WATCH HATEWATCH

THE NUMBER OF HATE GROUPS

WHITE NATIONALISTS WANT TO REVERSE CHANGING DEMOGRAPHICS AND THE LOSS OF ABSOLUTE WHITE HEGEMONY.

BY THE NUMBERS

- 55 Percentage of hate groups with active members in 2019
- 43 Percentage of hate groups with active members in 2018
- 2,421 Number of hate group members in 2019

TELL YOUR LAWMAKER

CONTACT YOUR CONGRESSPERSON

CONTACT YOUR STATE LEGISLATOR

CONTACT YOUR LOCAL OFFICIALS

# IN 2019, 38 HATE GROUPS WERE TRACKED IN GEORGIA



There are 74 hate groups in Georgia as of August 1st, 2019.

- 1. **ANTIRACIST FRONT**
- 2. **ALL STEPS ONCE UPON A TIME**
- 3. **AMERICAN IDENTITY MOVEMENT**
- 4. **AMERICAN PATRIOTISM**
- 5. **AMERICAN VILION**
- 6. **ARIZONA FOLK ASSEMBLY**
- 7. **EFFICIENT PEOPLE'S MOVEMENT**
- 8. **BLACK BELLSTONE**
- 9. **BRUCE W. SMITH**
- 10. **IDENTITY CLIC**
- 11. **INTERNATIONAL KEYSTONE RIGHTS OF THE MIDDLE CLASS**
- 12. **INTERNATIONAL SOCIETY OF INDIGNANT OVERSIGHT**
- 13. **IRRATIONAL UNITED IN COMBAT**
- 14. **ISABELLE SCHOOL OF UNUSUAL PRACTICAL KNOWLEDGE**
- 15. **LEAGUE OF THE SOUTH**
- 16. **LATINA CULTURE**
- 17. **METHOD OF FELLOW**
- 18. **NATIONAL SOCIALIST LIGATION FRONT**
- 19. **NATIONALIST LIBERTY LEAGUE**
- 20. **NEW BLACK PANTHER PARTY**
- 21. **NEW BLACK PANTHER PARTY FOR SELF DEFENSE**
- 22. **ONE CENTRAL SOLUTION CHARLES HARTILL**
- 23. **PATRIOT FRONT**
- 24. **PROUD BOY**
- 25. **RICER 11/11**
- 26. **STRONG WOLF BAPTIST CHURCH**
- 27. **TORNSHAW ON GOVERNMENT LONG ALLIANCE**
- 28. **THE 888**
- 29. **THE SOUTH INDIAN SOCIETY**
- 30. **THE UNITED NORTHEASTERN BROTHERHOOD ALLIANCE ON LEFT**
- 31. **TRIC NATION BELLITE COMBINATION**
- 32. **UNITED NORTHEASTERN BROTHERHOOD RIGHTS OF THE MIDDLE CLASS**

SEE HATE NEAR GEORGIA

- ALABAMA
- FLORIDA
- SOUTH CAROLINA
- VIEW NATIONAL MAP

HAPPENING NOW



APRIL 2019

## ANTI-IMMIGRANT MOVEMENT HAS HISTORY OF POLITICIZING DISEASE

Just this week, the author has been asked to be part of a talk about it by medical professionals.

By Elinor Barclay | [View report](#) | [View on Facebook](#) | [View on Twitter](#)

## Two Protestant Neo-Nazis Recruit, but Their Actions See Doubt

Openly and publicly, the two men at the center of the 1991 case of neo-Nazi recruitment and activities in the South are now being investigated by the FBI.

By Michael Sauter | [View report](#) | [View on Facebook](#) | [View on Twitter](#)

## Anti-LGBTQ Group Pushes Voter Fraud Conspiracy Theories Amid COVID-19

The campaign used an article about the disease to help spread its message of voter fraud and to call for increased vigilance in the "fight against" the virus.

By Michael Sauter | [View report](#) | [View on Facebook](#) | [View on Twitter](#)

## Why White Supremacists Are Targeting Zoom Meetings During the COVID-19 Pandemic

Zoom has become a hotbed for hate groups and extremists, and the company is taking steps to address the issue.

By Michael Sauter | [View report](#) | [View on Facebook](#) | [View on Twitter](#)

BE INVOLVED IN **HATEWATCH**

STAY INFORMED. SIGN UP FOR SPIC UPDATES



<https://www.splcenter.org/states/georgia>  FEB MAR JUL  
◀ 27 ▶  
2018 2019 2020

9 captures  
20 Feb 2019 - 20 Mar 2020

📅 ? ✕  
f 🐦  
About this capture



  
VIEW NATIONAL MAP

  
DOWNLOAD DATA

  
FIND A STATE



## IN 2018, 41 HATE GROUPS WERE TRACKED IN GEORGIA

### GROUPS IN GEORGIA

*There are 9 statewide hate groups in Georgia not displayed on the map*

**AFFIRMATIVE RIGHT**  
https://www.splcenter.org/states/georgia  FEB MAR JUL  
WHITE NATIONALIST  
**9 captures** ATLANTA  
20 Feb 2019 - 20 Mar 2020 2018 **2019** 2020  
About this capture

**ALL EYES ON EGYPT BOOKSTORE**

BLACK NATIONALIST  
MACON

**AMERICAN VISION**

ANTI-LGBT  
POWDER SPRINGS

**AMERICAN WHITE KNIGHTS OF THE KU KLUX KLAN**

KU KLUX KLAN  
STATEWIDE

**ASATRU FOLK ASSEMBLY**

GENERAL HATE  
STATEWIDE

**ATOMWAFFEN DIVISION**

NEO-NAZI  
STATEWIDE

**BLOOD AND HONOUR SOCIAL CLUB**

RACIST SKINHEAD  
STATEWIDE

**CONFEDERATE HAMMERSKINS**

RACIST SKINHEAD  
STATEWIDE

**COVENANT PEOPLE'S MINISTRY**

CHRISTIAN IDENTITY  
BROOKS

**CREW 38**

RACIST SKINHEAD  
STATEWIDE

**DUSTIN INMAN SOCIETY, THE**

ANTI-IMMIGRANT  
MARIETTA

**GREAT MILLSTONE**

BLACK NATIONALIST  
ATLANTA

**HOUSE OF ISRAEL**

BLACK NATIONALIST  
ATLANTA

https://www.identitydive.com/states/georgia  FEB MAR JUL  
NEO-CONFEDERATE  
9 captures STATEWIDE  
20 Feb 2019 - 20 Mar 2020  
◀ 27 ▶  
2018 2019 2020  
About this capture

**IDENTITY EVROPA**

*2 chapters*

WHITE NATIONALIST  
SAVANNAH, ATLANTA

**INTERNATIONAL KEYSTONE KNIGHTS OF THE KU KLUX KLAN**

KU KLUX KLAN  
CEDARTOWN

**ISRAEL UNITED IN CHRIST**

*2 chapters*

BLACK NATIONALIST  
SAVANNAH, ATLANTA

**ISRAELITE SCHOOL OF UNIVERSAL PRACTICAL KNOWLEDGE**

BLACK NATIONALIST  
ATLANTA

**ISRAELITES SAINTS OF CHRIST**

BLACK NATIONALIST  
SAVANNAH

**LEAGUE OF THE SOUTH**

*2 chapters*

NEO-CONFEDERATE  
POWDER SPRINGS, CARTERSVILLE

**LUXOR COUTURE**

BLACK NATIONALIST  
ATLANTA

**NATION OF ISLAM**

*3 chapters*

BLACK NATIONALIST  
AUGUSTA, BRUNSWICK, ATLANTA

**NATIONALIST LIBERTY UNION**

GENERAL HATE  
AUGUSTA

**NEW BLACK PANTHER PARTY**

BLACK NATIONALIST  
ATLANTA

<https://www.spicenter.org/states/georgia>

 FEB MAR JUL  
 9 captures ATLANTA  
 20 Feb 2019 - 20 Mar 2020

2018 2019 2020

**OCCIDENTAL QUARTERLY/CHARLES MARTEL SOCIETY**

BLACK NATIONALIST  
ATLANTA

**PATRIOT FRONT**

WHITE NATIONALIST  
STATEWIDE

**PROUD BOYS**

*2 chapters*

GENERAL HATE  
GAINESVILLE, ATLANTA

**SICARII 1715**

BLACK NATIONALIST  
ATLANTA

**SUNSHINE ON GOVERNMENT (SONG) ALLIANCE**

ANTI-MUSLIM  
NEWTON

**THE UNITED NUWAUPIANS WORLDWIDE/ALL EYES ON EGIPT**

*2 chapters*

BLACK NATIONALIST  
ATHENS, LITHONIA

**TRADITIONALIST WORKER PARTY**

NEO-NAZI  
STATEWIDE

**UNITED NORTHERN AND SOUTHERN KNIGHTS OF THE KU KLUX KLAN**

KU KLUX KLAN  
ELLIJAY

**WILDMAN'S CIVIL WAR SURPLUS AND HERB SHOP**

NEO-CONFEDERATE  
KENNESAW

**SEE HATE NEAR GEORGIA**

ALABAMA

FLORIDA

<https://www.splcenter.org/states/georgia>  FEB MAR JUL  
SOUTH CAROLINA ◀ 27 ▶  
2018 2019 2020

9 captures  
20 Feb 2019 - 20 Mar 2020

VIEW NATIONAL MAP

HAPPENING NOW



MARCH 27, 2019

# WORLD CONGRESS OF FAMILIES LISTS SPEAKERS FOR UPCOMING GATHERING



h... The Infowars Crowd Finds Common Cause With New Zealand Terrorist  
 9 c... right Catholic, is a member of the right-wing Lega Party. He has spent year  
 20 F... Anti-Muslim Figure Brigitte Gabriel To Embark on Nationwide Tour In

upper cw ... conspiracy theory platform founded by Alex Jones, and  
 By Hatewatch Staff ... and guests cited mul

ANTI-LGBT WORLD CONGRESS OF FAMILIES  
 By Hatewatch Staff ... and ... WORLD CONGRESS OF FAMILIES  
 By Nick R. Martin and Hatewatch Staff ... ate group ACT for America, the  
 largest anti-Muslim group in the U.S.

READ MORE ON

**HATEWATCH**

\*\*\*

By Hatewatch Staff

ANTI-MUSLIM ACT FOR AMERICA

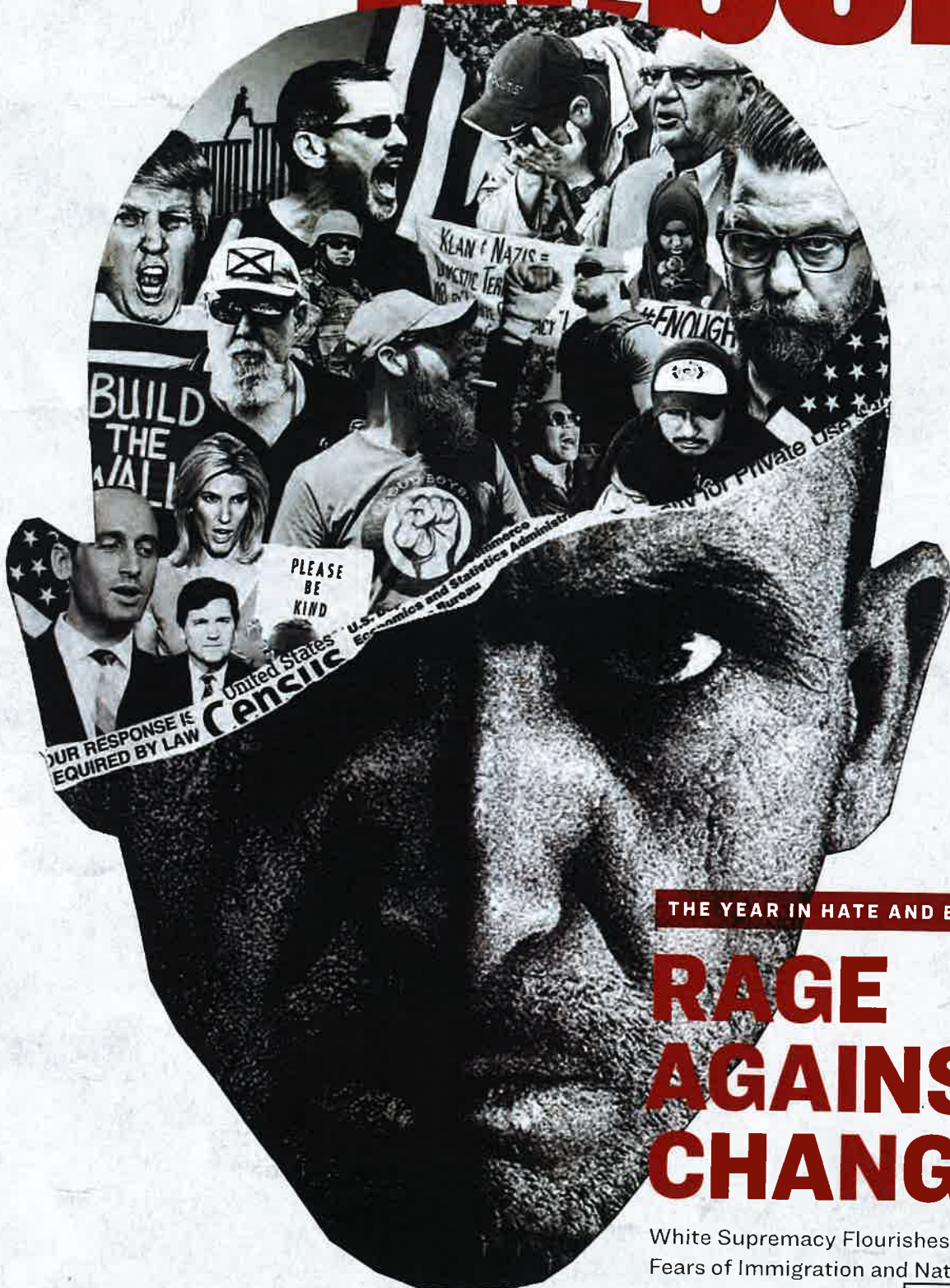
STAY INFORMED: SIGN UP FOR SPLC UPDATES

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# Intelligence Report

PUBLISHED BY  
THE SOUTHERN POVERTY LAW CENTER

SPRING 2019 // ISSUE 166



THE YEAR IN HATE AND EXTREMISM

## RAGE AGAINST CHANGE

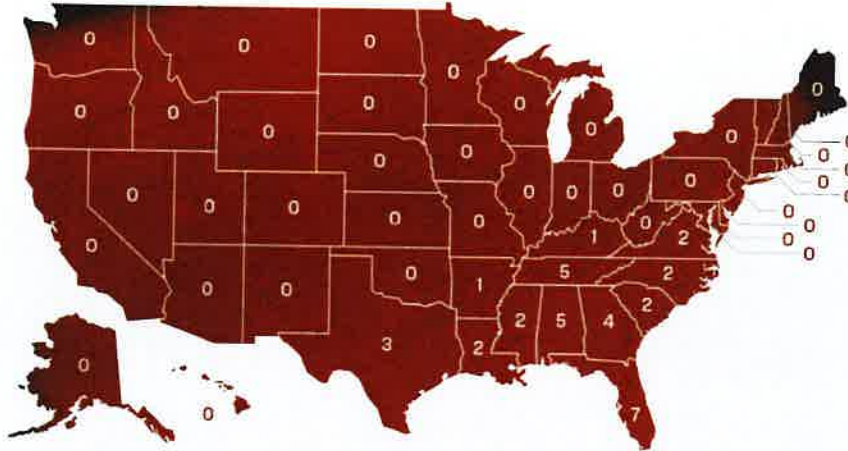
White Supremacy Flourishes Amid Fears of Immigration and Nation's Shifting Demographics

EXHIBIT 3

# 36 NEO-CONFEDERATE

“Neo-Confederacy” refers to a reactionary, revisionist branch of American white nationalism typified by its predilection for symbols of the Confederate States of America (CSA), typically paired with a strong belief in the validity of the failed doctrines of nullification and secession — in the specific context of the antebellum South — which rose to prominence in the late 20th and early 21st centuries.

<b>Dixie Republic</b> Travelers Rest, SC	North Carolina Tennessee Texas Hanover County, VA	Dothan, AL Northport, AL Weogufka, AL Wetumpka, AL Harrison, AR Hialeah, FL	Jacksonville, FL Lake City, FL Ocala, FL Panama City, FL Pinellas County, FL Cartersville, GA	Powder Springs, GA Taylorsville, KY Gonzales, LA Holly Springs, MS Jackson, MS Columbia, SC Gallatin, TN Johnson City, TN Knoxville, TN Memphis, TN Pointblank, TX San Antonio, TX Danville, VA
<b>Identity Dixie</b> Florida Georgia Louisiana	<b>League of the South</b> Killen, AL*			<b>Southern Revivalist</b> North Carolina <b>Wildman's Civil War Surplus and Herb Shop</b> Kennesaw, GA



**TOP TAKEAWAYS** The League of the South (LOS), the most prominent neo-Confederate hate group in the country, continued to suffer the consequences of their involvement in violent public activism in 2017. One member faced jail time for an assault at the “Unite the Right” rally in Charlottesville, and the LOS at large aligned itself more closely with neo-Nazis and Klansmen, alienating the pseudointellectuals who had previously associated with the group.

Identity Dixie, a neo-Confederate outgrowth of the white nationalist podcast network The Right Stuff, grew in influence, due in large part to the League’s declining popularity, especially among younger generations.

**KEY MOMENTS** Three men charged in the parking garage beating of DeAndre Harris in 2017 faced jail time following their trials this year, and a fourth man, LOS member Tyler Watkins Davis, pleaded not guilty. He will go to trial in February 2019.

After the fallout from the violent rally, the LOS and several of its leaders signed a consent decree agreeing not to rally in Charlottesville as a group again.

Responding to internal pressure, LOS leader Michael Hill withdrew the organization from the Nationalist Front coalition, an alliance of various white supremacist and neo-Nazi groups, in April. In December, the League announced it would no longer be allowed to host its conferences at the “Southern Cultural Center” in Wetumpka, Alabama, after a local chapter that owned the building broke from LOS.

**WHAT'S AHEAD** LOS will continue to struggle with legal fallout from Charlottesville. They may have unannounced “flash” demonstrations, and the external pressure on the group may lead some of its members to violence. Identity Dixie will maintain their strategy of recruiting new members through social media, and are unlikely to be involved in public activism.

## FAQ

### HOW DOES THE SOUTHERN POVERTY LAW CENTER CATEGORIZE HATE GROUPS?

The SPLC lists hate groups under the following categories: Ku Klux Klan, Neo-Nazi, White Nationalist, Racist Skinhead, Christian Identity, Neo-Confederate, Black Nationalist, Anti-LGBT, Anti-Immigrant and Anti-Muslim. A General Hate category consists of Hate Music, Holocaust Denial and Radical

Traditional Catholicism, among others. An Other category includes groups espousing a variety of hateful ideologies. Some groups do not fall neatly into one sector, and many embrace racism and antisemitism as core components.

### WHAT IS A HATE GROUP?

The SPLC defines a hate group as an organization that — based on its official

statements or principles, the statements of its leaders, or its activities — has beliefs or practices that attack or malign an entire class of people, typically for their immutable characteristics.

### WHAT IS THE SPLC'S HATE MAP?

Each year since 1990, the SPLC has published an annual census of hate groups operating within the

United States. The number is a barometer, albeit only one, of the level of hate activity in the country. The hate map, which depicts the groups’ approximate locations, is the result of a year of monitoring by analysts and researchers and is typically published every January or February. It represents activity by hate groups during the previous year.

# 17 ANTI-IMMIGRANT

Anti-immigrant hate groups are the most extreme of the hundreds of nativist and vigilante groups that have proliferated since the late 1990s, when anti-immigration xenophobia began to rise to levels not seen in the U.S. since the 1920s.

**American Border Patrol**  
Sierra Vista, AZ  
**American Immigration Control Foundation/ Americans for Immigration Control**  
Monterey, VA  
**Americans for Legal Immigration (ALIPAC)**  
Raleigh, NC  
**Californians for Population Stabilization**  
Santa Barbara, CA  
**Center for Immigration Studies**  
Washington, DC

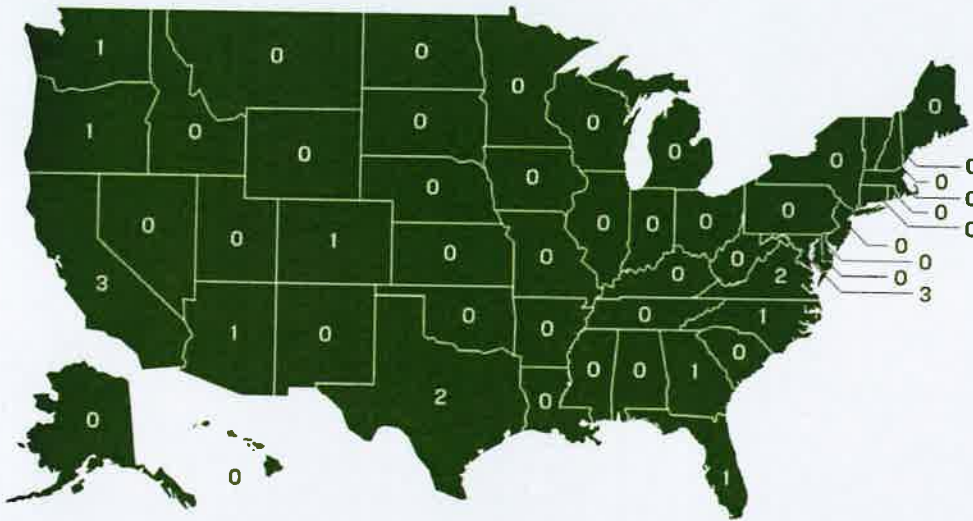
**Colorado Alliance for Immigration Reform**  
Lakewood, CO  
**The Dustin Inman Society**  
Marietta, GA  
**Federation for American Immigration Reform**  
Washington, DC  
**Immigration Reform Law Institute**  
Washington, DC  
**Legal Immigrants for America**  
Winter Springs, FL

**Mountain Minutemen**  
Tecate, CA  
**Oregonians for Immigration Reform**  
Salem, OR  
**ProEnglish**  
Arlington, VA  
**The Remembrance Project**  
Pleasanton, TX  
**Respect Washington**  
Seattle, WA  
**San Diegans for Secure Borders**  
San Diego, CA

**Texans for Immigration Reduction and Enforcement**  
Houston, TX

## HATE BY STATE

The arrows below indicate whether the number of hate groups in each state rose or fell in the last year.



AK	—	MT	↓
AL	↑	NC	↑
AR	↑	ND	↑
AZ	↓	NE	↓
CA	↑	NH	↑
CO	↑	NJ	↑
CT	—	NM	↓
DC	↑	NV	↑
DE	—	NY	↓
FL	↑	OH	↑
GA	↑	OK	↓
HI	↑	OR	↓
IA	↓	PA	—
ID	↓	RI	↓
IL	↓	SC	↑
IN	↓	SD	—
KS	—	TN	↓
KY	↑	TX	↑
LA	↑	UT	↑
MA	↑	VA	↑
MD	↑	VT	↓
ME	↑	WA	↑
MI	↑	WI	↑
MN	—	WV	↑
MO	↑	WY	—
MS	↓		

**TOP TAKEAWAYS** The anti-immigrant movement’s “big three,” Center for Immigration Studies (CIS), Federation for American Immigration Reform (FAIR) and NumbersUSA continued to gain clout in 2018 as they pervaded mainstream media and infiltrated the White House.

Several former employees of these groups (CIS and FAIR are designated hate groups) have ascended to high levels of government. Positions include Citizenship and Immigration Services ombudsman, and jobs at the Department of Homeland Security (DHS), State Department and the White House Domestic Policy Council. Increasingly seen as legitimate think tanks, the groups were regularly cited by mainstream press including *The New York Times* and the *Washington Post*.

**KEY MOMENTS** Anti-immigrant hate groups coalesced around several issues in 2018: repealing birthright citizenship (the first clause in the 14th Amendment of the Constitution), limiting welfare use by immigrants, ending the Deferred Action for Childhood Arrivals program (DACA), curbing refugee admissions, eliminating temporary protected status (TPS), supporting Trump’s family separation policy, getting rid of the diversity visa lottery program, increasing deportations and repealing sanctuary laws across the country.

But it was the migrant caravan that drew unprecedented attention in the latter months of 2018. President Trump deployed around 5,000 troops to the border with Mexico to prevent asylum seekers, mostly from Central and South America, from entering the U. S. In repeated tweets attacking migrants, Trump described the migrants as “Stone cold criminals” and authorized the use of tear gas and “other lethal force” against them.

**WHAT’S AHEAD** With hopes to “secure the border,” increase deportations and enact attrition through enforcement, 2019 will surely be another banner year for anti-immigrant groups in Donald Trump’s America.



## DUSTIN INMAN SOCIETY

The Dustin Inman Society, led by D.A. King, poses as an organization concerned about immigration issues, yet focuses on vilifying all immigrants.



### EXTREMIST GROUP INFO:

SPLC DESIGNATED HATE GROUP

**Date Founded:** 2003

**Location:** Marietta, Georgia

**Ideology:** Anti-Immigrant

The Dustin Inman Society is a Georgia-based anti-immigrant hate group founded and led by activist D.A. King. The Southern Poverty Law Center lists it as an anti-immigrant hate group because it denigrates immigrants and supports efforts to make the lives of immigrants so hard that they leave on their own—a tactic known as “attrition through enforcement.” Despite his regular demonization of immigrants, King finds allies in the Georgia State Legislature and has played a significant role in passing anti-immigrant legislation in Georgia for more than a decade. King is also comfortable working with some of the most hardcore elements of the anti-immigrant movement, including white nationalists.

### In their own words

“I was taught that we have an American culture to which immigrants will assimilate, and I am incredibly resentful that’s not what’s happening anymore.” — King, 2013.

“[The march was composed of] mostly Hispanic demonstrators. ... I got the sense that I had left the country of my birth and been transported to some Mexican village, completely taken over by an angry, barely restrained

mob. ... My first act on a safe return home was to take a shower.” – King in a 2010 [blog entry](#) on the anti-immigrant hate website VDARE about his experience at a March for Dignity.

“King has described the United States as a country ‘being invaded and colonized,’ and its ‘way of life’ destroyed with the ‘Hispandering’ of his state, which he has taken to calling ‘Georgiafornia.’” – King, quoted by the [Anti-Defamation League in 2008](#).

“[Undocumented immigrants are] not here to mow your lawn – they’re here to blow up your buildings and kill your children, and you, and me.” – King, at a [Newton County, Georgia, Republican Party meeting](#) in April 2007.

“We have become sadly acquainted with the absolute and brazen disregard for the law that comes from the third world horde that is allowed to swarm over our border with Mexico. ... It is clear that when the mostly Mexican mob illegally ‘migrates’ into our nation, it brings with it the culture of lawlessness and chaos that is responsible for the very conditions that they flee in the rapidly deteriorating example of Democracy without the rule of law that is Mexico.” – King, in a [blog](#) in July 2004.

“Must the United States silently suffer the incursion of one million people a year because they are brown?” – [King, May 2004](#).

“Damned right. I hate ‘em all – negroes, wasps, spics, eskimos, jews, honkies, krauts, ruskiies, ethopians, pakis, hunkies, pollocks and marxists; there are way too many of them. I’m all for trout, elephants, bacteria, whales, wolves, birds, parrot fish, deciduous foliage and mollusks. Time to rebalance the planet, bleeding heart liberals be damned.” – [Fred Elbel, board of advisors and webmaster, 2004](#).

## Background

The Dustin Inman Society began as the American Resistance Foundation in 2003. The organization was renamed the Dustin Inman Society (DIS) after its namesake was killed by an undocumented immigrant. King claims to have been passionate about issues with undocumented immigrants since the 1990s, when he worked for the [Georgia Coalition for Immigration Reduction](#). However, he asserts everything changed after the terrorist attacks of Sept. 11, 2001. “I realized if I could have people living illegally across the street from me and there are people in the country who are flying planes into our buildings, this doesn’t seem like a big effort at national security,” he [said](#).

While King focuses his ire on “criminal illegal aliens,” who he has termed “[crimigrants](#),” he has had his own run-in with the law. In 1977, King pleaded [guilty](#) to a charge of interstate gambling, a felony offense. He paid a fine and served two years’ probation.

In an effort to keep his organization afloat, King has depleted his savings account, refinanced his home, and “sold the stock [his] grandmother left” him. He believes DIS is “deterred” by its 501(c)4 rather than 501(c)3 status. King complains an IRS agent would not allow him a 501(c)3 status because he is an “advocate,” to which he [responded](#), “I’m advocating that we obey our laws.” DIS remains a 501(c)4 organization.

DIS and King are longtime allies of the anti-immigrant movement. In 2007, DIS accepted \$5,000 from John Tanton’s foundation U.S. Inc. [Tanton](#) is a Michigan ophthalmologist turned white nationalist who has created a [network](#) of anti-immigrant organizations. Tanton has a long track record of working with white nationalists and espousing racist rhetoric. In 1993, he wrote, “I’ve come to the point of view that for European-American society and culture to persist requires a European-American majority, and a clear one at that.” King not only accepted money from Tanton, but also set up a scheme so that donations to DIS can be funneled through [U.S. Inc.](#) and be tax-deductible. In a radio interview, King said he was “proud” of the relationship and [stated](#), “I am also very proud that John Tanton is a personal friend and a personal hero.”

[Federation for American Immigration Reform](#) (FAIR), Tanton’s flagship organization that has been designated

by SPLC as an anti-immigrant hate group, listed D.A. King as a state contact for a number of years. Roy Beck, the head of [NumbersUSA](#), a prominent nativist group within the Tanton network, was having regular “[strategy calls](#)” with King in 2013. Beck once [said of King](#), “I can’t think of anybody in my 20 years of working on this issue who has been more adroit in working inside the state Legislature to get legislation actually passed. ... He’s just kind of at the top of the heap nationwide in terms of local activists.”

Another anti-immigrant hate group within Tanton’s network, [Californians for Population Stabilization](#) (CAPS), [lists](#) D.A. King as one of its senior writing fellows. CAPS made recent waves in the news for a [number of their employees](#) having [affiliations](#) with white nationalists. In February 2017, the San Francisco-based newspaper *El Tecolote* published an [article](#) about [Parker Anthony Wilson](#), a neo-Nazi, and his employment at CAPS. CAPS has since tried to erase Wilson’s name from their site. Wilson received an [award](#) from CAPS during its 2012 “California Population Awareness Awards” competition.

Both [Fred Elbel](#) – who once served as DIS’s webmaster and sits on the group’s board – and King have written for *The Social Contract*, a quarterly journal founded by Tanton known for routinely publishing race-baiting articles penned by white nationalists. Elbel also works for [Colorado Alliance for Immigration Reform](#) (CAIR-CO), another anti-immigrant hate group. On numerous occasions, King has spoken at [The Social Contract Press’s](#) (TSCP) Writer’s Workshop, an annual gathering of white nationalists and the anti-immigrant lobby. TSCP is an SPLC-designated white nationalist hate group.

## Activism

Despite an eight-member board of advisors, King is responsible for most of the action taken by the organization and “[works at his own expense and donations](#).” Since the establishment of DIS, King has taken to the streets to protest and lobby legislators to curb immigration. His strategies are unusual to say the least.

In October 2005, he employed 14 homeless people to hold signs outside the Georgia State Capitol in Atlanta at a rate of \$10 per protester to push back against “illegal immigration.” “I consider it very good use of the day labor laws. ... Yes, I paid them. ... And I’m going to pay them again,” he [told](#) a local newspaper.

King has organized and participated in several rallies protesting legislation that would aid undocumented immigrants in any way. For example, in 2005, DIS hosted a “public education” [rally](#) with anti-immigrant speakers. “ILLEGAL ALIENS DISPLACE U.S. WORKERS,” signs at the rally proclaimed. Chris Simcox, the leader of the [Minuteman Civil Defense Corps](#), a nationwide anti-immigrant vigilante organization known for its armed-citizen border patrols, spoke at the rally and members of the group were in attendance. King has not only advertised the group on his site, but he also thanked an anti-immigrant blog called “[Just Build the Fence](#)” for reporting on the rally.

King has written for the white nationalist SPLC-designated hate group [VDARE](#). VDARE is an anti-immigration website “dedicated to preserving our historical unity as Americans into the 21st century.” It is a hub for white nationalists and antisemites who write on the issue of immigration. White nationalist [Peter Brimelow](#) founded the website.

“For me, while standing a few feet away from group after group, the impulse to reach out and personally deport these Third World invaders was nearly uncontrollable,” King [wrote](#) in a June 2006 VDARE article. In September 2006, however, King [sought to distance himself](#) from the white nationalist anti-immigrant organization and asked the site to remove his name from the editorial collective but keep an [archive](#) of his previous articles.

In April 2007, King [organized](#) an anti-immigrant rally in Washington, D.C., as part of the “Hold Their Feet to the Fire” series of anti-immigrant events. The events were held ahead of the annual conference by the same name hosted by anti-immigrant group Federation for American Immigration Reform (FAIR). Leaders in the

anti-immigrant movement including Terry Anderson (who passed away in 2010), who King considered a “personal friend,” Rick Oltman and William Gheen were in attendance.

In March 2008, King led a rally to protest “Georgians for McCain” in front of a hotel in Atlanta. The rally was protesting an Atlanta fundraiser for John McCain, who King calls “half” of the “amnesty-again legislation partnernship.” In promoting the rally, King wrote on the DIS site, “We support the concept of attrition of the illegal population through enforcement of existing laws.”

The “attrition through enforcement” concept mentioned by King was popularized in 2005 by the anti-immigrant hate group Center for Immigration Studies (CIS). Mark Krikorian, executive director of CIS, wrote in May 2005 that the United States needs to “shrink the illegal population through consistent, across-the-board enforcement of immigration law.” He explains attrition through enforcement as making it as difficult as possible for an immigrant to live so that they “self deport.”

King has an ongoing dispute with the Georgia Association of Latino Elected Officials (GALEO). He calls them his “biggest” and “most well-funded enemy” in the state since they lobby against English-only legislation, which King is an advocate of. He further claims they “use a race-baiting scare tactic” with anyone who disagrees with them.

In June 2016, then Sen. Jeff Sessions wrote a letter to King:

“Dear D.A., It was great to see you last night. Thanks for your extraordinary service to the Republic in the immigration realm. Keep up the important work!”

## Media appearances

Regrettably, King has permeated mainstream media as an “activist.” In 2008, the Anti-Defamation League reported that 12 mainstream newspapers had printed his articles. On top of allowing King a platform, mainstream outlets often do not appropriately convey his extremism.

The conservative *Washington Times* has described DIS as “a Georgia-based coalition of citizens with the goal of educating the public on the consequences of illegal immigration.” He has appeared on “Lou Dobbs Tonight,” “Anderson Cooper 360” and National Public Radio (NPR). In October 2007, NPR called him a “grassroots activist.” That same year, CNN’s “Headline News” labeled King an “anti-illegal immigration activist” and “columnist for the *Marietta Journal*.”

On Feb. 7, 2008, the *Gainesville Times*, a Georgia-based newspaper, published a letter authored by King. In it, he described a future after the implementation of 287(g), stating that “Parasitic ethnic hustlers who encourage and feed on continued illegal immigration will begin to howl that any enforcement of the law that affects the illegals who are their golden goose is ‘profiling’ and, sooner or later, ‘racist.’” King added a hyperlink to the phrase “ethnic hustlers” on the DIS blog leading to the homepage of Georgia Association of Latino Elected Officials (GALEO), a nonprofit organization based in Atlanta. The 287(g) program allows state or local police to enter into an agreement with Immigration Customs Enforcement (ICE) to enforce federal law.

In August 2013, *The New York Times* (NYT) published a profile of King, which neglected to mention his connections to white nationalist outlets like VDARE and The Social Contract Press.

In June 2018, NYT called DIS “an Atlanta-area group that opposes illegal immigration.”

## Legislation

King has an intimate relationship with state legislators in Georgia. He has been a vocal supporter and staunch advocate for anti-immigrant legislation in the Georgia State legislature for years.



According to a [blog](#) on DIS's website, King took four Georgia state legislators to the U.S.-Mexican border in Cochise County, Arizona, in December 2006: State Senator Chip Rogers and Representatives Tom Graves, Martin Scott and Barry Loudermilk. "We at the Dustin Inman Society are proud to have helped with the on-site education of the curious – and now incredulous – lawmakers," King wrote.

## Supporting section 287(g) of the Immigration and Nationality Act

In 2007 and 2008, King was a major supporter of the [287\(g\) program](#) of the Immigration and Nationality Act. [King described](#) the program as "the latest effort to rid Georgia of the taxpayer-subsidized illegal aliens who are lowering wages and straining our schools, hospitals, jails and common language," in a *Gwinnett Daily Post* article published in February 2008.

In December 2007, King [honored](#) Cobb County Sheriff Neil Warren with DIS's "Sheriff of the Year" award for being the "only sheriff in Georgia to have taken advantage of" section 287(g). King claimed other elected officials were also in attendance during the event to award Warren.

## Contributing to H.B. 87 and Georgia's Immigration Enforcement Review Board

In 2011, Republican Rep. Matt Ramsey authored one of the most contentious immigration bills in Georgia, H.B. 87. King was quick to proclaim he [helped write H.B. 87](#), which allows law enforcement to stop and ask for identification from anyone they consider to be "suspicious" and makes it illegal for any person to "harbor" undocumented immigrants. It also made E-Verify mandatory for businesses with more than 10 employees and makes it illegal to use false information when applying for a job. The bill passed in April 2011 and was enacted that July. When asked about King's role in drafting the bill, Rep. Ramsey only [told](#) the *Atlanta Journal-Constitution* that King is a "staunch advocate for enforcement of immigration laws."

President Obama [criticized](#) H.B. 87 in April 2011: "It is a mistake for states to try to do this piecemeal. ... We can't have 50 different immigration laws around the country. Arizona tried this, and a federal court already struck them down."

H.B. 87 also created the [Immigration Enforcement Review Board \(IERB\) in Georgia](#). The board is [tasked](#) with reviewing and investigating "complaints related to illegal immigration" and is given authority to take corrective action. Governor Nathan Deal and Speaker David Ralston appointed several members to the IERB including Phil Kent, a friend of D.A. King whose work is [regularly featured](#) on DIS's blog and King's Facebook page. Kent has also served as the [spokesperson](#) for anti-immigrant hate group [Americans for Immigration Control](#). His articles have run in the nativist publication *Middle American News*, and even in the *Citizens Informer*, the tabloid of the white nationalist group Council of Conservative Citizens (CCC). [Dylann Roof](#), the Charleston shooter who murdered 9 members of an AME church, claimed the CCC was his gateway into white nationalism. Kent defended the group in a 1999 piece describing the CCC as a good conservative group that had been "targeted for demonization by the political leadership of the Left and its media allies."

Of the 34 complaints the board has received since its creation, [over 30 stem from King](#), as of September 2018. Only [three](#) resulted in action. Tom Edwards, deputy legislative director of the Association County Commissioners of Georgia, [said](#), "The bill's original language authorized aggrieved parties to sue and have their complaints, even meritless ones, litigated in courts of law. ... And what should be concerning, is the legislation had no means by which counties could recoup attorney's fees and legal costs for meritless suits."

King has essentially used IERB as his personal, publicly funded investigative agency. Recent complaints by King include elementary schools providing English language classes for parents of students without checking immigration status. One complaint, from May 2017, alleged Marietta City Schools engaged the services of [La Amistad](#), a community-based nonprofit working to empower Latino community members, without getting the E-Verification number or statement showing the organization was in compliance with E-Verify. Marietta

schools stipulated that they required written assurances and La Amistad complied with the system. The city of Marietta also has La Amistad's E-Verify number on record. Such frivolous complaints cost the state of Georgia and the Marietta school district time and money. In May 2018, CBS 46's "The Bulldog," an investigative news program, questioned D.A. King on the taxpayer-funded board. "The board should be dissolved," King conceded, claiming his complaints were not handled quickly enough.

## Targeting undocumented students in Georgia

In April 2012, Rep. Barry Loudermilk (who served as a Georgia State Senator during this time) sponsored SB 458, which would bar undocumented students from attending any public school. It would additionally deem foreign passports unacceptable forms of identification with local government agencies. The AJC reports that Loudermilk "consulted King" during legislative sessions on the bill. This bill did not pass.

King was also a big proponent of H.B. 452, which requires criminal data of undocumented immigrants to be published. In an op-ed published by *The Telegraph* advocating for the bill, termed "Immigrant Registration" by local civil rights groups, King cited a report from CIS, which made the inaccurate claim that "illegal aliens" are "responsible for a significant crime spree in American communities..." Governor Deal signed H.B. 452 into law at the end of the 2017 legislative session.

## Social media

King's social media accounts are also revealing.

King retweeted the vile anti-Muslim Voice of Europe Twitter account dozens of times in 2017. The tweets include headlines such as:

"The beautiful Italy is rapidly being Islamised. This looks more like Tehran or Kabul"

"The usual suspects were rioting in Brussels. Sad, it was once a great city with wonderful people"

"Import the Third World, become the Third World: this is Paris!"

"Italian psychiatrist: Italy could soon look like Nigeria and could completely lose control"

In March 2018, King retweeted an account that shared a screenshot of the tweet that got it suspended: "Friendly reminder that Muslims murder gay people." He has continued to retweet accounts including CIS and Roosh, "one of the most public and reviled online misogynists," in 2018.

In July 2018, Krikorian cited a DIS blog written by King in July 2018. Krikorian quoted King, explaining Georgia Republican gubernatorial candidates have shied away from speaking about "criminal illegal aliens." King posted Krikorian's blog the next day on his Facebook, saying, "Many thanks to my friend Mark Krikorian." King regularly refers to "criminal illegal aliens" as "crimigrants."

Also, in July, King posted a graphic with DIS's logo "VIVA ZERO TOLERANCE! *America First!* ... Deport illegal alien families together."

In October 2018, he encouraged people to contact their representatives about foreign nationals being able to vote at Georgia polls with temporary driver's licenses.

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HATEWATCH

# Georgia's unchecked Immigration Enforcement Review Board

March 07, 2018

by Swathi Shanmugasundaram

The Immigration Enforcement Review Board (IERB) in Georgia heard 14 complaints made by anti-immigrant activist D.A. King at its most recent hearing on February 28, 2018.

The Board is tasked with reviewing and investigating complaints “related to illegal immigration” and is given authority to take corrective action. Since its creation in 2011, the IERB has received 34 complaints, over 30 of which were made by King. Just one complaint has resulted in a sanction since the Board’s inception.

King, who founded the anti-immigrant hate group Dustin Inman Society (DIS) in 2003, has an intimate relationship with both state legislators and white nationalists in Georgia, and played an important role in creating the IERB.

## History of the IERB

In 2011, Republican Representative Matt Ramsey authored HB 87, one of the most contentious immigration bills in Georgia. King was quick to assert he helped write HB 87 which allows law enforcement to stop and ask for identification from anyone they consider to be “suspicious” and made it illegal for any person to “harbor” undocumented immigrants. (This provision was struck

EXHIBIT 5

down in 2012 in *Georgia Latino Alliance for Human Rights v. Deal 2012*). The bill additionally makes E-Verify mandatory for businesses with over 10 employees and makes it illegal to use false information when applying for a job.

Ramsey told the *Atlanta Journal Constitution* that King is a “staunch advocate for enforcement of immigration laws,” who supported HB 87, which in turn created the Immigration Enforcement Review Board in 2011.

## **Ties to white nationalists**

King, who pleaded guilty to a charge of interstate gambling in 1977, takes issue with “criminal illegal aliens” who he has termed “crimigrants.”

In addition to English-Only legislation, the DIS and King advocate for “attrition through enforcement,” a concept first popularized by the anti-immigrant hate group Center for Immigration Studies (CIS). “Federal immigration authorities must also enforce the law so undocumented immigrants won’t come and won’t stay,” he explains.

In 2007, DIS accepted \$5,000 from U.S. Inc, John Tanton’s foundation. Tanton is a Michigan ophthalmologist turned white nationalist who has created a network of anti-immigrant organizations. One organization, Californians for Population Stabilization (CAPS) lists D.A. King as one its senior writing fellows. Another, the Federation for American Immigration Reform (FAIR), an SPLC-designated hate group, previously listed D.A. King as a state contact. Roy Beck, the head of NumbersUSA, another anti-immigrant organization created in Tanton’s network, holds regular “strategy calls” with King. Beck once said, “I can’t think of anybody in my 20 years of working on this issue who has been more adroit in working inside the state Legislature to get legislation actually passed ... He’s just kind of at the top of the heap nationwide in terms of local activists.” King also regularly cites the work of the CIS and uses their terminology such as “attrition through enforcement.”

King has written for the white nationalist, SPLC-designated hate group, VDARE, an organization “dedicated to preserving our historical unity as Americans into the 21st century.”

“For me, while standing a few feet away from group after group, the impulse to reach out and personally deport these Third World invaders was nearly uncontrollable” King wrote in a June 2006 VDARE article. In September 2006, King sought to distance himself from the white nationalist, anti-immigrant organization and asked the site to remove his name from the editorial collective but keep an archive of his previous articles.

Fred Elbel, who sits on the board of the Dustin Inman Society and serves as websmater once said in an email:

*Damned right. I hate ‘em all – negroes, wasps, spics, eskimos, jews, honkies, krauts, ruskies, ethopians, pakis, hunkies, pollocks and marxists; there are way too many of them. I’m all for trout, elephants, bacteria, whales, wolves, birds, parrot fish, deciduous foliage and mollusks. Time to rebalance the planet, bleeding heart liberals be damned.*

Both Elbel and King have written for Tanton’s *Social Contract* Journal. King also spoke at the 2008 Social Contract Press Writers Workshop.

Among other appointees by Governor Nathan Deal and Speaker David Ralston, was Phil Kent, friend of D.A. King, author on DIS’s blog and spokesperson for anti-immigrant hate group Americans for Immigration Control. Kent’s articles have run in the nativist publication *Middle American News*, and even in the *Citizens Informer*, the tabloid of the white nationalist group Council of Conservative Citizens (CCC). Dylann Roof, the Charleston shooter, claimed the CCC was his gateway into white nationalism. Kent defended the group in a 1999 piece describing the CCC as a good conservative group that had been “targeted for demonization by the political leadership of the Left and its media allies.”

## Complaints and cost to the state

King has essentially created a personal public investigative agency. Recent complaints by King include elementary schools providing English language classes for parents of students without checking immigration status. One complaint, from May 2017, alleged Marietta City Schools engaged the services of La Amistad, a community based non-profit working to empower Latino community members, without getting the E-Verification number or statement they were in compliance with E-Verify. Marietta schools stipulated that they required written assurances La Amistad complied with the system. The City also has the E-Verify number on record. Such frivolous complaints cost the state and district in question time and money.

SPLC's Immigrant Justice Project explained in a 2012 letter cosigned by the National Immigration Law Center (NILC) and the American Civil Liberties Union (ACLU),

*The Board's proposed subpoena power allows for invasion of individuals' privacy by a non-judicial, non-elected body that can compel attendance and testimony based solely on the request of a private citizen under the unclear standard of "good cause shown." This can allow for personal agendas to result in subpoenas.*

The IERB presents a large cost to the state of Georgia as every county or city in which a complaint is filed is immediately subject to a subpoena which cannot be appealed. *Hatewatch* spoke with Lucy Sheftall, the Assistant City Attorney in Columbus, Georgia, who was on the receiving end of a complaint made by D.A. King in 2013. King alleged Columbus was not properly using the federal SAVE program (Systemtic Alien Verification for Entitements Program) in administering benefits in 2010 and 2011. The city not only showed that it was in compliance but it also illustrated "significant procedural definciencies in the Complaint." Among other issues, Columbus asserted King's complaint did not meet the requirements for substantive review by the Board. IERB Rule 291-2-01(3)(c) states the complaint must contain "suffiecient facts concerning the

alleged violation or failure to enforce the eligibility status provision....” Columbus concludes, King did not make a complaint based on facts and, in accordance with the aforementioned rule, the burden is on the party filing the complain to show “sufficient facts concerning the alleged violation.”

The complaint was dismissed, but Sheftall maintains it took over 40 hours in attorney fees and six to nine months to handle the accusation.

Tom Edwards, deputy legislative director of the Association County Commissioners of Georgia, said, “The bill’s original language authorized aggrieved parties to sue and have their complaints, even meritless ones, litigated in courts of law... and what should be concerning, is the legislation had no means by which counties could recoup attorney’s fees and legal costs for meritless suits.”

Board Member Shawn Hanley also pointed to this issue at the last meeting. “Some of these complaints are pretty loose. Small counties pay a lot of money to defend against what could be frivolous complaints. I don’t think any of these complaints are frivolous but some of them are pretty close. We take complaints seriously and also take seriously protecting tax payer dollars...” However, Kent responded, “We don’t need to do anything about it, we can dismiss complaints.

The Board will meet again on March 15 to discuss five complaints that were not heard at the last meeting.

*Comments, suggestions or tips? Send them to [HWeditor@splcenter.org](mailto:HWeditor@splcenter.org) and follow us on [Twitter @Hatewatch](https://twitter.com/Hatewatch).*

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PUBLICATION

## Frequently asked questions about hate groups

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March 18, 2020

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What is a hate group?

The Southern Poverty Law Center defines a hate group as an organization that – based on its official statements or principles, the statements of its leaders, or its activities – has beliefs or practices that attack or malign an entire class of people, typically for their immutable characteristics. We do not list individuals as hate groups, only organizations.

The organizations on our [hate group list](#) vilify others because of their race, religion, ethnicity, sexual orientation or gender identity – prejudices that strike at the heart of our democratic values and fracture society along its most fragile fault lines.

The FBI uses similar criteria in its [definition of a hate crime](#):

*[A] criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.*

We define a “group” as an entity that has a process through which followers identify themselves as being part of the group. This may involve donating, paying membership dues or participating in activities such as meetings and rallies. Individual chapters of a larger organization are each counted separately, because the number indicates reach and organizing activity.

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**What is the SPLC's hate map?**

Each year since 1990, the SPLC has published an [annual census](#) of hate groups operating within the United States. The number is a barometer, albeit only one, of the level of hate activity in the country. Other indicators of hateful ideas include the reach of hate websites, for example. The [hate map](#), which depicts the groups' approximate locations, is the result of a year of monitoring by analysts and researchers and is typically published every February. It represents activity by hate groups during the previous year.

Tracking hate group activity and membership is extremely difficult. Some groups do everything they can to obscure their activities, while others grossly over-represent their operations. The SPLC uses a variety of methodologies to determine the activities of groups and individuals. These include reviewing hate group publications and reports by citizens, law enforcement, field sources and the news media, and conducting our own investigations.

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### Why does the SPLC compile a list of hate groups?

Hate groups tear at the fabric of our society and instill fear in entire communities. American history is rife with prejudice against groups and individuals because of their race, religion, disability, sexual orientation or other characteristics. As a nation, we've made a lot of progress, but our history of white supremacy lingers in institutional racism, stereotyping and unequal treatment of people of color and others. Hate also plays a particular role in crime and thus the existence and location of hate groups is important to law enforcement. The U.S. Department of Justice warns that hate crimes, more than any other crime, can trigger community conflict, civil disturbances, and even riots. For all their "patriotic" rhetoric, hate groups and their imitators are really trying to divide us; their views are fundamentally anti-democratic and need to be exposed and countered.

### How do I read the hate map?

The [SPLC hate map](#) depicts the approximate locations of hate group chapters. The location of a chapter in no way implies that local government officials or residents endorse the beliefs of the group. Quite often, they don't know it is there. The hate map is also available in text format sorted [by state](#) and [by ideology](#).

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### What does "statewide" mean?

Some hate groups have chapters that meet in different cities across a state. And, in some cases, these groups have not designated a specific location as their headquarters. When this occurs, the SPLC lists the chapter as statewide and indicates on the hate map how many statewide chapters there are per state.

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**How does the SPLC's Hatewatch blog differ from the hate map?**

The SPLC's [Hatewatch](#) blog provides investigative reporting and breaking news analysis on the radical right. Like the extremist files, individuals discussed on Hatewatch are not part of our hate group list, as we do not list individuals as hate groups. Blog mentions also do not necessarily imply that the individuals or the groups discussed are members or leaders of hate or [antigovernment](#) groups.

**How often does the SPLC publish its hate map?**

The SPLC produces a nationwide [hate group list](#) and [map](#) on an annual basis, normally in February. The map includes groups that showed activity during the previous calendar year. Some groups may only exist for a few months during the calendar year and others may disappear or change location after the hate map is published.

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**How does the SPLC categorize hate groups?**

The SPLC lists hate groups under the following categories: [Ku Klux Klan](#), [Neo-Nazi](#), [White Nationalist](#), [Racist Skinhead](#), [Christian Identity](#), [Neo-Confederate](#), [Black Separatist](#), [Anti-Immigrant](#), [Anti-LGBTQ](#) and [Anti-Muslim](#). A [General Hate](#) category consists of [Hate Music](#), [Holocaust Denial](#) and [Radical Traditional Catholicism](#), among others. An Other category includes groups espousing a variety of hateful [ideologies](#). Some groups do not fall neatly into one sector, and many embrace racism and antisemitism as core components.

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**Does violence play a role in designating hate group?**

Vilifying or demonizing groups of people on the basis of their immutable characteristics, such as race or ethnicity, often inspires or is a precursor to violence. But violence itself is not a requirement for being listed as a hate group. Because a group's ideology can inspire hate violence even when the group itself does not engage in violent activity, we concentrate our analysis on ideology. An example is [Dylann Roof's racist Charleston massacre](#) at Mother Emmanuel church in 2015. Roof was not a member of any hate group, but his act was inspired by the ideology of the white nationalist group [Council of Conservative Citizens](#) (CCC), among other hate group websites. The CCC has no track record of leaders or members engaging in violence, but its ideas can clearly prompt hate violence.

Conversely, there are some violent groups that are not hate groups. For example, we do not list racist prison gangs as hate groups, because their goals are primarily criminal, not ideological.

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**Can organizations operating in the mainstream be hate groups?**

Yes. In fact, it's even more important to call out groups that demonize others while having a foothold in the [mainstream](#). It's easy to recognize the hater in a white sheet for what he or she is. It's the wolf in sheep's clothing that's harder to identify.

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**Why is there no specific category for antisemitism?**

Antisemitism is a central tenet of belief for most white hate groups, though other people are also anathema to these organizations. Many of the groups we list are antisemitic, including [neo-Nazis](#), [Racist Skinheads](#), [Christian Identity](#) adherents, [Klan](#) groups, many [white](#)

nationalist groups, and others, such as Radical Traditional Catholics. Black separatist hate groups are also often antisemitic.

What does the SPLC consider an anti-immigrant hate group?

Anti-immigrant hate groups are the most extreme of the hundreds of nativist groups that have proliferated since the late 1990s, when anti-immigration xenophobia began to rise to levels not seen in the United States since the 1920s. Most white hate groups are also anti-immigrant, but anti-immigrant hate groups target only that population usually arguing that immigrants are unable to assimilate, have a lower intellectual capacity than white people, bring disease or are inherently more criminal. Although many groups legitimately criticize American immigration policies, anti-immigrant hate groups go much further by pushing racist propaganda and ideas about non-white immigrants.

What does the SPLC consider an anti-LGBTQ hate group?

The SPLC lists organizations such as the Family Research Council as anti-LGBTQ hate groups because they use dehumanizing language and pseudoscientific falsehoods to portray LGBTQ+ people as, for example, sick, evil, perverted, and a danger to children and society – or to suggest that LGBTQ+ people are more likely to be pedophiles and sexual predators. Some anti-LGBTQ hate groups support the criminalization of LGBTQ+ people in the United States and abroad, often marshaling the same debunked myths and demonizing claims in their efforts.

A major misconception – one that is deliberately promoted by anti-LGBTQ hate groups in order to accuse the SPLC of being “anti-Christian” – is that the SPLC considers opposition to same-sex marriage or the belief that being LGBTQ+ is a sin as the sole basis for the hate group label. This is false. There are many organizations, such as Focus on the Family, and hundreds of churches and other religious establishments that oppose marriage equality or oppose being LGBTQ+ on strictly Biblical grounds that the SPLC does not list as hate groups.

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Does the SPLC list any anti-white hate groups?

The SPLC listed [black separatist](#) groups since the late 1990s. Most prominent are the [Nation of Islam](#) and the [New Black Panther Party](#), which has no relationship to the Black Panther Party of the 1960s and 1970s. The organizations hold beliefs whose tenets include racially-based hatred of white people. Other black separatist groups believe black people are the true Israelites and many espouse virulently antisemitic and anti-LGBTQ beliefs.

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What is a black separatist hate group?

[Black separatist](#) groups have always been a reaction to white racism. These groups are typified by their antisemitic, [anti-LGBTQ](#), anti-white rhetoric and conspiracy theories. They should not be confused with mainstream black activist groups such as [Black Lives Matter](#) and others that work to eliminate systemic racism in American society and its institutions.

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Why doesn't the SPLC list Black Lives Matter?

We've written about this issue [before](#). While its critics claim that Black Lives Matter's very name is anti-white, this criticism misses the point. Black lives matter because black lives have been marginalized for far too long. As BLM puts it, the movement stands for "the simple proposition that 'black lives also matter.'"

We have heard nothing from the founders and leaders of the Black Lives Matter movement that is in any way comparable to the racism espoused by, for example, the leaders of the [New Black Panther Party](#) – and nothing at all to suggest that the bulk of the demonstrators hold

supremacist or black separatist views. Indeed, people of all races have marched in solidarity with African Americans during BLM marches.

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### Why doesn't the SPLC list Islamist terrorist groups like ISIS?

The SPLC lists only domestic hate groups – those based in and focused on organizing in the United States. We do, however, list several U.S.-based groups that are ideologically similar to groups like ISIS. They are usually listed as hate groups because of their vilification of Jews and LGBTQ+ people.

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### Why doesn't the SPLC list antifa as a hate group?

The SPLC condemns violence in all its forms, including the violent acts of far-left street movements like [antifa](#) (short for anti-fascist). But the propensity for violence, though present in many hate groups, is not among the criteria for listing. Also, antifa groups do not promote hatred based on race, religion, ethnicity, sexual orientation or gender identity (see criteria above).

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### Does the SPLC list any far-left hate groups?

Our goal is to identify all U.S.-based groups that meet our definition of a hate group regardless of whether one would think of the group as being on the left or the right. One can always debate whether a group should be considered “left” or “right.” [The Nation of Islam](#), which we list for its antisemitism and vilification of white people, is a case in point. Another example is Jamaat al-Muslimeen – a Muslim group we list because of its vilification of Jews and the LGBTQ+ community. But, as a general matter, prejudice on the basis of factors such as race is more prevalent on the far right than it is on the far left.



This does not mean that extremism and violence on the far left are not concerns. But groups that engage in anti-fascist violence such as Antifa, for example, differ from hate groups in that they are not typically organized around bigotry against people based on the characteristics listed above.

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**What is the difference between a hate group and a "Patriot" group?**

In addition to hate groups, the SPLC monitors a sector of the radical right known as the "[Patriot](#)" or antigovernment extremist movement. This movement sees the federal government as an enemy of the people and promotes baseless conspiracy theories generally involving a secret cabal of elites seeking to institute a global, totalitarian government – a "New World Order." It includes the militia movement, which comprises groups such as the [Three Percenters](#) and [Oath Keepers](#), who actively engage in paramilitary activities. The movement also includes so-called "[sovereign citizens](#)" who reject the authority of the government, as well as self-described "constitutional sheriffs" who believe sheriffs are the highest form of law enforcement in the country and can disobey federal laws deemed "unconstitutional," and members of the tax protest movement, who believe they have the legal ability to avoid paying income taxes, which they perceive to be illegitimate.

The SPLC produces an [annual list of antigovernment groups](#). The vast majority are not hate groups, so they are not listed on the hate map. Although many elements of the movement were originally rooted in white supremacy and antisemitism, the movement has largely attempted to distance itself from these ties since the mid-1990s, following the Oklahoma City bombing. In recent years, however, anti-Muslim sentiments have permeated the movement's conspiracy theories about "New World Order" plots to destroy Western civilization.

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**What are the Extremist Files?**

The Extremist Files feature on our website contains in-depth profiles of individuals who are key figures on the radical right. Most are associated in some way with either hate groups or antigovernment “Patriot” groups. These profiles, however, should not be confused with the hate group list; we do not list individuals as hate groups, and not all of the profiled individuals are members or leaders of hate groups.

We also offer profiles of a number of radical-right organizations – most of which are designated as either hate groups or antigovernment groups – along with explanations of the ideologies that motivate them.

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