

July 21, 2020

**RE: JACKSON LEE AMENDMENT 180 TO THE FY21
NATIONAL DEFENSE AUTHORIZATION ACT (H.R. 6395)**

Dear Representative,

On behalf of the American Civil Liberties Union (ACLU), and our more than 8 million members, supporters, and activists, we write to express our concerns with Representative Jackson Lee's Amendment 180, Report on Threat Posed by Domestic Terrorists, to the Fiscal Year 2021 National Defense Authorization Act. This amendment raises the significant risk that the Federal Bureau of Investigation and other federal agencies will further target marginalized communities for surveillance, prosecution or worse, using vague and overbroad "domestic terrorism" authorities without evidence of any criminal acts. It is unfortunate that it has been included in one of the second block of amendments the House will vote on. If the amendment becomes part of the bill and passes the House, we recommend that it be removed from the bill in Conference with the Senate unless significant improvements are made to address the following concerns.

Amendment 180 may seem innocuous, requiring the government to submit to specified congressional committees a report related to "domestic terrorists." Unfortunately, this report is problematic at best. In particular, it requires the creation of a list of "domestic terror groups." But federal law contains a vague and overbroad definition of "domestic terrorism" that federal agencies have used and are using to harm the First, Fourth, and Fifth Amendment rights of communities of color and those who dissent against unjust government programs and policies. "Terrorism" or "terrorist" can be a subjective category, abused for political purposes. As a result, this list of groups and description of their ideologies, which is also required within the report, are likely to target not only those who may be engaged in attempted or actual violence, but also those holding views and conveying messages with which the government disagrees or of which it disapproves.

This government and administrations before it have largely focused their authorities and resources regarding domestic terrorism on Black and Brown communities. Federal law enforcement agencies are, for example, using Fusion Centers and Joint Terrorism Task Forces to assist in their investigation of marginalized communities under the label of "domestic terrorism." These actions include the targeting of Black activists under the made-up label of "Black Identity Extremists"¹ as well as those engaged in family separation protests² and border rights advocacy.³ Black Lives Matter has also been the focus of these investigations—both in the past and in the current



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protests nationwide.⁴ Thus, requiring the government to compile a report with a list of groups and their ideologies is not only unhelpful, it would in fact prove to be harmful to Black and Brown communities, many of which are currently engaged in protests against police brutality.

Furthermore, Amendment 180 requires that the government describe in its report the “efforts of such groups, if any, to infiltrate or target domestic constitutionally protected activity by citizens for cooption or to carry out attacks, and the number of individuals associated or affiliated with each group that engages in such efforts.” This requirement compounds the problems introduced by the list of groups the reporting agencies must create. It requires government-determined suspicion without adequate standards, evidence, or safeguards to protect civil rights and liberties. For example, there is no requirement that groups or individuals identified be engaged in the commission of any violence, attempted violence, ideologically based or otherwise. It appears that this provision is an attempt to address the alleged interference in Black Lives Matter protests by groups or individuals intending to derail these advocacy efforts. Unfortunately, this administration has already targeted groups like Black Lives Matter, alleging they are extremists and threats. This Congressionally-mandated report, rather than protecting the advocacy of Black and Brown communities, may do the exact opposite by creating yet another government incentive to record “efforts” that are simply First Amendment-protected activity, separate and apart from the commission of any crime. This provision could also be used to justify the investigation of individuals and groups like Black Lives Matter under the guise of protecting them. Additionally, this provision is oddly limited to U.S. citizens, creating a discriminatory implication for others in the United States who also engage in First Amendment-protected activities.

Though these issues may not be the intention of Amendment 180, they are in fact the likely harmful consequence of this amendment and therefore, must be opposed. Without significant improvements, Amendment 180 should not be included in the final legislative package that passes into law.

¹ Nusrat Choudhury and Malkia Cyril, *The FBI Won't Hand Over Its Surveillance Records on 'Black Identity Extremists,' so We're Suing* (March 21, 2019), <https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/fbi-wont-hand-over-its-surveillance-records-black>; Ken Klippenstein, *Leaked FBI Documents Reveal Burea's Priorities Under Trump* (Aug. 8, 2019), <https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/mnzAKMpdtiZ7AcYLd5cRR>.

² Jesse Franzblau, *New Documents Expose Government Monitoring of Protests Against Family Separation* (April 29, 2019), <https://immigrantjustice.org/staff/blog/new-documents-expose-government-monitoring-protests-against-family-separation>.

³ Jana Winter and Hunter Walker, *Exclusive: Document reveals the FBI is tracking border protest groups as extremist organizations*, Yahoo News (Sept. 4, 2019), <https://news.yahoo.com/exclusive-document-reveals-the-fbi-is-tracking-border-protest-groups-as-extremist-organizations-170050594.html>.

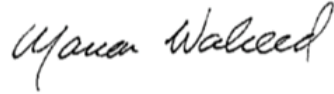
⁴ Sam Biddle, *Police Surveilled George Floyd Protests with Help from Twitter-Affiliated Startup Dataminr* (July 9, 2020), <https://theintercept.com/2020/07/09/twitter-dataminr-police-spy-surveillance-black-lives-matter-protests/>.

Please do not hesitate to contact Manar Waheed (mwaheed@aclu.org) if you have any questions. Thank you for your attention to this matter.

Sincerely,



Ronald Newman
National Political Director



Manar Waheed
Senior Legislative and Advocacy Counsel