

The Breach 304: How the FBI Is Targeting Peaceful Black Activists

Lindsay: Welcome to The Breach, your deep dive into authoritarianism and corruption in the era of Trump. I'm your host, Lindsay Beyerstein. The Breach is part of Rewire.news, your go-to site for reporting and commentary on health, rights, and justice. Our guest today is Nusrat Choudhury, Senior Staff Attorney with the ACLU's Racial Justice Program.

In early October, Foreign Policy magazine published a leaked memo from the FBI entitled Black Identity Extremists Likely Motivated to Target Law Enforcement. The August 3rd memo claims that so-called Black Identity Extremists are murdering police officers over what they see as racist policing. The memo says the so-called BIE movement got its start in 2014 after the shooting of Michael Brown, which makes it sound like a veiled swipe at the non-violent Black Lives Matter movement. Black Identity Extremist is to all appearances a made-up term. Many people embrace Black identities, but nobody calls themselves a 'Black identity extremist.

Experts at the Southern Poverty Law Center reject the BIE label and warn that it could be used to target peaceful political activity by Black people. Nusrat and her colleagues at the ACLU have filed a Freedom of Information request to find out how the FBI came up with this category. They're concerned it might amount to unconstitutional racial profiling. Nusrat, welcome to the program.

Nusrat: Thank you so much for having me.

Lindsay: What are Black identity extremists?

Nusrat: Well, no one really knows. Based on this FBI internal Intelligence Assessment that was released to the public by Foreign Policy last week, it looks like it's a term that was newly created based on flawed logic and might be sweeping up within its definition lots of Black activists and Black people. And, of course, that's exactly what raises concerns, that this term might really be a guise or an excuse to conduct surveillance of Black people and Black activists.

Lindsay: So, nobody out there self-identifies as a Black identity anything, right?

Nusrat: Well, people are entitled to have beliefs and in Black identity defined in various ways. I'm certain that that term is so broad in part because it does capture the feelings and sentiments of many different people for many different reasons. What's troubling here is that the term doesn't really make any sense. The FBI has coined a definition that's really unintelligible on the face of its intelligence assessment and without any kind of logic it seems to have created this new designation. People are clearly worried that it's leading to the targeting of activists and people who simply have beliefs, and those are protected by the First Amendment.

Lindsay: In the FBI's estimation, how do they define this category?

Nusrat: Well, the FBI gives kind of a paragraph-long description that is really circular. I'll give you a quote. "The FBI defines Black Identity Extremists as individuals who seek, wholly or in

part, through unlawful acts of force or violence, in response to perceived racism and injustice in American society, and some do so in furtherance of establishing a separate Black homeland or autonomous Black social institutions, communities, or governing organizations within the United States."

The bottom line is that definition is difficult to follow, and it seems to be self-referential. What the FBI does in this report is identify six separate incidents of violence and connects them through a quote "key assumption" that those incidents were ideologically motivated. But that's circular reasoning. It's kind of looking for an ideology, and then looking at six separate incidents and concluding there is some kind of connecting ideology that somehow links to violence or a threat.

But the end game, here in the United States, is that the First Amendment protects people's beliefs. We also guard against racial and ethnic profiling, so it's entirely unclear what this definition is or how the FBI is using it, and that's why the ACLU filed, with the Center For Media Justice, a Freedom of Information Act request to get to the bottom of this, and to find documents that actually explain what the FBI is doing through the designation of this term.

Lindsay: Do you feel like this was, in some way, an attempt to create a false equivalency between white supremacists and white ethno-nationalists, and some alleged Black counterpart?

Nusrat: It's hard to know what the explicit motivation was, but what we do see is that this is a flawed definition that focuses on a belief in Black identity. It is based on unsound logic, and it seems to kind of sweep under a broad brushstroke people who have a sense of Black identity or even, in the FBI's words, perceive racism and injustice in American society. That raises a red flag that the creation of this term was used to connect unconnected Black people in order to promote FBI surveillance.

There's a history of that happening in the United States. You also raise this issue of what's going on with other threats of violence coming from other cultural or ethnic groups. The far right ... Clearly, there are folks in the intelligence community who have raised a concern that white supremacist groups pose a very real threat of violence in the United States. Why the FBI is spending resources and identifying what appears to be a made-up threat that will then focus FBI resources on Black activists raises serious concerns.

Lindsay: Is it appropriate to target groups for investigation based on ideology alone? I mean, say there were six people out there amongst the millions and millions who both subscribe to some kind of Black identity politics and kill the police officer for that reason. I mean, does the fact that they have an ideology in common actually license the FBI to investigate that whole group if there's no proof of material links between them or some kind of conspiracy or anything like that?

Nusrat: Well, there needs to be credible evidence of a threat in order for law enforcement to focus their investigative activities towards someone. In recent years, especially since 9/11, the FBI has relaxed what it believes it needs to engage in intelligence gathering of people, and it's created different categories and investigative activities that need less

than reasonable suspicion. But as a public, and as a democracy, our Constitution forbids racial profiling, and it also forbids profiling based on their ideology or protected beliefs. There needs to be a threat of violence or a threat to security that is based on credible evidence. Here, it's just raising really huge concerns that the FBI's not focusing investigative activities on true threats and public security problems but instead trying to surveil activists. And surveilling activists doesn't keep us safer.

Lindsay: Are you aware of specific activists who are being surveilled right now under the rubric of Black Identity Extremist?

Nusrat: At this point, we don't know. This is the first document to our knowledge that even uses this term, and this FOIA request seeks to get broadly documents dating back to 2010 that show FBI surveillance of Black activists, including any documents that use this new term, so-called Black Identity Extremists, as well as older terms used by the FBI to justify surveillance of Black people and activists. Those terms include things like Black Separatist Extremists, Black Supremacist Extremists. There are a whole host of terms the FBI has devised over the years that have been used to conduct this kind of surveillance of Black people. We want to see all of those documents to learn more about what exactly the FBI is doing and whether it's crossing a line into impermissible profiling on the basis of race and ideology.

Lindsay: I saw on your website that you have some evidence that the government has been trawling the web, in effect, to monitor Black Lives Matter protesters. Can you describe their efforts?

Nusrat: Yeah. Back in 2014 and 2015, it was disclosed that the Department of Homeland Security records showed that government officials were trolling social media accounts to map and collect information on Black Lives Matter protests and related events. Those documents included things like Google Maps showing where protesters were headed. It included information about protests that were coming up, people who were tracking social media, and who was discussing upcoming Black Lives Matter protests and supposedly related events.

It also included tracking the physical location and people's involvement, and events that were cultural. Washington, D.C. based cultural events. It was really kind of confusing exactly what the government was doing, but it was clear that they wanted to find out where specific protests and related events were taking place, and that raised a question of, were they tracking individual people? That is where government surveillance starts coming up against the Constitution.

Lindsay: Is there any kind of recourse? Black Lives Matter is officially a non-violent movement. Do they have any way to push back and ask the FBI, or demand that the FBI not surveil them because it doesn't even fall under the definition of Black Identity Extremist?

Nusrat: Figuring out whether people are being surveilled is definitely the first step. When the FBI is creating these broad designations, we don't know what they're doing, and so getting information is definitely the most important first tool. I think once people have found out that they are being surveilled, they can also file individual Freedom of

Information Act requests to get at that information. They can try to seek expungement of records and get an explanation why.

When people believe that they are being targeted because of their race or because of their ideology, they are able to file civil rights litigation. We know that that kind of litigation is very difficult to develop and to pursue. It's very resource-intensive and difficult. This is why information and exposure is one of the critical tools that the ACLU and the Center for Media Justice believe need to be brought to this.

Other organizations that are Black-led, representing activists, places like Color of Change, are also using the FOIA to get information to try to figure out exactly what kind of surveillance is being conducted, who's being tracked and monitored. Well-known activists, like DeRay Mckesson, have spoken out about the surveillance that they've learned about that's taken place against themselves, and that kind of dialogue is really important. The public needs to know whether activists are being surveilled because of their beliefs or because of their race. Even having this public discussion helps to push back.

Lindsay: I thought it was great that Mckesson appeared in public with a parody T-shirt that labeled himself Black Identity Extremist.

Nusrat: I think that kind of speech and standing up for his views and his rights is exactly what makes this democracy strong, and why activists need to be able to speak and not fear that they will be surveilled because of their speech. We need our activists to be out there. What we're hearing from folks involved in Black Lives Matter and the Movement for Black Lives is that there are two different kinds of policing in America. One that treats white communities as deserving of protection, and another that criminalizes communities of color. Those are beliefs, and people shouldn't be targeted for them.

What this FBI internal report suggests is that when people have those beliefs, they may be grouped into certain broad categories based on flawed assumptions that might lead to surveillance and intelligence gathering, and that's not what we want in this country. We know what happens when the FBI abuses those authorities. That looks like the FBI's COINTELPRO program from the 1960s. It looks like the FBI's tracking and intelligence gathering and investigation of Vietnam War protesters. It looks like the silencing and the chilling of the ability of American Muslim civil rights leaders to speak post-9/11. That's not who we are as a country. We should be pushing out, pushing back against that. We should be speaking out against that and so should our activists.

Lindsay: It seems like it's not even really profiling on the basis of beliefs because I believe that there's two-tiered racist policing in this country, but I don't think the FBI's going to surveil me as a white person for believing and advocating for that view. It seems like this is just straight up racial profiling.

Nusrat: That's why this creation of this so-called Black Identity Extremist threats is so concerning. What does it mean to be a Black Identity Extremist? What does that term even mean? And clearly, it's a racialized term. Who is the FBI going to deem believes in Black identity in some way that is so extreme as to pose a security threat? Clearly, this

includes Black people and predominantly Black activists. The specter of racial profiling is real, and Black activists are deeply concerned. They've been speaking out about it. We at the ACLU and the Center for Media Justice are concerned as well.

Lindsay: It's interesting, the name Black Identity Extremist. It sort of resonates, at least for me, with a lot of mainstream Republican right-wing rhetoric about decrying identity politics and campus activists. It seems like it's tailor-made to kind of segue between one and the other.

Nusrat: There's clearly an effort by the right to demonize protesters who speak out against police injustice, and the Black Lives Matter movement is one of the most visible forms of that protest. That protest includes many, many different types of people, many different groups, highly localized all over the country, and there are these themes of pushing back against police injustice, pushing back against other forms of structural racism. But these are lot of different groups and lots of different people. We can't throw all Black people and Black activists under one umbrella because that also doesn't accurately represent who they are and what they're calling for, nor can that be the basis of some kind of targeting of FBI resources for intelligence gathering. Ultimately, the public wants the FBI to keep the public safe, but they want them to do it in a way that doesn't subject people to surveillance because of the color of their skin or their beliefs.

Lindsay: Can you elaborate on the ignominious history that the FBI has of using these kinds of profiling categories? You mentioned COINTELPRO earlier.

Nusrat: Throughout our country's history, the government has used the fear of threats, real or perceived, to conduct surveillance on people of color and activists. In the 1960s, the FBI conducted extensive surveillance of those it deemed so-called Black extremists or so-called Black nationalists under the covert COINTELPRO program. We know, and it's been publicly discussed and revealed, that Dr. Martin Luther King was subjected to this kind of intense FBI surveillance. And other people in the civil rights movement were as well. Many leaders, many student activists, were subjected to FBI surveillance.

More recently, since 9/11, we've seen that the FBI has mapped racial and ethnic communities in the United States for intelligence gathering, and this is under a so-called kind of racial and ethnic mapping program that is discussed in FBI documents. That included targeting Black people in Georgia for mapping and charting of their demographic shifts and well as following folks who were protesting police killings. This kind of more recent FBI mapping of racial and ethnic communities shows how some of the expanded authorities of the FBI post-9/11 that have been directed towards American Muslim, Middle-Eastern, South Asian communities has also been directed towards Black communities. It shows how that abuse of authority raises real concerns about racial and ethnic profiling.

Lindsay: How much do we know about the mechanics of this kind of racial and ethnic mapping that they're doing? Is it a new technology?

Nusrat: There are a lot of documents that the ACLU obtained since 2010 about this racial and ethnic mapping program. Unfortunately, the FBI also redacted a lot of information,

which continues to keep that program shrouded in a lack of transparency. We do know that the FBI is tracking population demographics. It's looking at where people of certain racial and ethnic communities live and using that information for some kind of further intelligence gathering and potentially even investigation or other law enforcement activity. We know that they've done this with Black populations in Georgia, American Muslim populations, Somali populations in various states throughout the country.

Lindsay: We know that this kind of similar mapping is very useful for things like voter suppression, knowing where voters of different ethnic and racial backgrounds live, and this is all being collected with tax dollars. What safeguards are in place to prevent the FBI from just handing off this information to, say, Koback's Voter Integrity Commission or something like that, to be used in other ways?

Nusrat: Well, the tough part of this is that the FBI is using publicly available population statistics in conducting this mapping, and that was its argument, actually, against disclosing a lot of information it had redacted from the documents involved in the racial and ethnic mapping program, which we challenged in court. The ACLU went to court in New Jersey and Michigan to try to get more information uncovered about the FBI's racial and ethnic mapping program.

In terms of what the FBI can give or cannot give to other private entities or to other parts of the government, it's unclear. Likely, it can share more of that publicly available information but when it's using that information in a way that's targeting intelligence gathering, that's when other protections might come into place.

Lindsay: After 9/11, we had tectonic changes in our civil rights and national security apparatus in law enforcement. Are there any precedents or laws from that era that are empowering the FBI to go after Black Identity Extremists today?

Nusrat: Well, I think that this intelligence assessment shows that the FBI is continuing to kind of identify or label, quote, "new threats," and that's something the FBI has long done. The ability to do that is part of what it's using to kind of expand its reach. The FBI has loosened the standards that it applies for identifying people to surveil threats, to follow and pursue, and it's done this over a series of years.

The ACLU has a report on the FBI, called Unleashed and Unaccountable, which really maps this kind of loosening of internal FBI guidelines that guard against the protections that were erected after the abuses of the 1960s and '70s, after COINTELPRO resulted in Senate hearings and the institution of guidelines from the Attorney General, as well as from the FBI itself, that would limit when the FBI could track people and threats. It required generally reasonable suspicion of wrongdoing or criminal activity before the FBI could take some kind of investigative action.

A lot of those protections were relaxed post-9/11, and I think we're seeing and have been seeing how those relaxed protections can be directed towards Black communities in the U.S. as well as threats to national security, so-called threats to national security, from other communities like immigrant communities, Muslim communities.

- Lindsay: Besides activism and legal, is there any other recourse that citizens have about the FBI expanding its power in this way?
- Nusrat: I think speaking out is important. I think that there are opportunities to get involved with organizations that are pushing back. Places like Center for Media Justice, Color of Change, which are getting documents through FOIA, putting them up online, creating this kind of dialogue. Pushing back against surveillance is extraordinarily difficult, precisely because most people don't know when they are being surveilled. So, having this public conversation about how that surveillance even starts in the first place is critical.
- Lindsay: The FBI is using internal guidelines to decide who's going to be surveilled, but this is such a delicate issue with the First Amendment. Why is the FBI even allowed to make up its own rules on this? Why don't we have laws that protect us?
- Nusrat: Well, there are guidelines that govern what the FBI can do coming through the Attorney General. There are some laws and regulations, like, for example, there's a federal regulation that prohibits the dissemination of personally identifiable information about people in criminal intelligence systems without reasonable suspicion of criminal wrongdoing. That's a regulation that applies to the kind of databases the FBI would use to share information with local and state law enforcement. So there are some regulations and protections that are there. There should be more. I mean, we believe that the FBI is a valuable, valuable law enforcement agency, but that there is this history of abuse, of targeting people because of identity, or race, or ethnicity, or activism, and that is not what we need as a country.
- Lindsay: I think those are all my questions. Is there anything else you'd like to add?
- Nusrat: I think I would say that internal FBI intelligence assessments like the one that created this, or articulated this so-called Black Identity Extremist threat can lead to further surveillance and targeting of people for law enforcement investigation. That is what is raising the red flag that activists are being surveilled, that even non-activist Black people are being surveilled who have certain beliefs in Black identity, and this is why the ACLU feels it's important to work with groups like the Center for Media Justice that are working hand-in-hand with hundreds of social justice groups across the United States to find out more. We want to get these documents, show them to the communities that are being affected by precisely this type of surveillance. This the kind of dialogue, the kind of protest, the kind of engagement that we collectively, as the public, need to engage in to push back against what's happening.
- Lindsay: It kind of becomes a vicious circle, or it could, where more surveillance finds more quote, unquote "threats" which in turn justify more surveillance.
- Nusrat: That's exactly the problem is that identifying a so-called threat, even based on flawed logic, flawed assumptions, can lead to further surveillance, further targeting, and it's circular. It's absolutely circular. But the detriment is huge. It can really impact people's lives. Activists have the right to speak, to protest. The FBI should not be targeting its resources unless it has credible evidence of true threat.

Lindsay: Nusrat, that's all the time we have for today. Thank you so much for coming on the program.

Nusrat: Absolutely. Thank you so much for covering this.

Lindsay: Now it's time for Recommended Reading, a hand-picked selection to deepen your understanding of our bewildering political moment. This week's reading is an op-ed by Tim Wu in the New York Times called How Twitter Killed the First Amendment. Woo, a professor at Columbia Law School, argues that social media have been a mixed blessing for free speech. On the plus side, it's almost impossible for governments to fully censor speech they don't like. Unfortunately, repressive regimes have, therefore, switched tactics from censorship to disinformation.

Instead of silencing unpopular speech, authoritarians flood the zone with disinformation, conspiracy theories, and attacks on the press so the speech they don't like gets drowned out or disregarded. This happens all the time in Russia and China, and Trump watchers can surely come up with many domestic examples. Woo argues that we need to put the teeth back in the First Amendment by protecting journalists from online harassment and by insisting on greater transparency in how governments use social media. That's it for Recommended Reading.

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