

The Honorable Kirstjen Nielsen
Secretary of Homeland Security
Washington, DC 20528

May 30, 2018

Dear Secretary Nielsen:

The undersigned civil rights and civil liberties groups call for the release of the unredacted memo referred to in Department of Homeland Security Office of Intelligence and Analysis documents as the “Race Paper” and “Growing Frequency of Race-Related Domestic Terrorist Violence.”^{1 2} DHS intelligence and threat analysis inform the activities of law enforcement officials at all levels of government. Thus, we are concerned that biases and inaccuracies reflected in the “Race Paper” could result in unconstitutional law enforcement activities throughout the country that disproportionately impact activists, protesters, and communities of color.

The Race Paper’s existence came to light recently as part of a Freedom of Information Act (FOIA) request, but the document itself was released in entirely redacted form.³ However, DHS’s recently filed declaration indicates that the document was intended to survey growing trends in domestic terrorism driven by race-related “extremist” ideologies and address the co-opting of peaceful protests by violent ideological actors.⁴ The declaration also reveals that DHS believes it has identified common indicators displayed by those engaging in domestic terrorism.

Given what the declaration reveals about DHS’s focus on racial identity as it relates to domestic terrorism, we believe that the Race Paper may improperly suggest that constitutionally-protected Black political speech should be considered an indicator of criminal conduct or a national security threat. A flawed analysis of this type would raise troubling questions about DHS’s priorities, resource allocations, and intelligence methodologies. It would also have serious implications on the constitutional rights and safety of Black and Brown people in the United States, and, in particular, protesters and activists of color.

The U.S. government has a long history of monitoring activists of color.⁵ For instance, during the Civil Rights Movement, federal law enforcement tried to suppress political dissent by targeting Black organizations and leadership through a range of illegal activities under the auspices of the COINTELPRO program.⁶ That program and other efforts to surveil Black communities are now

¹ “FBI Tracked an Activist Involved With Black Lives Matter as They Travelled Across the U.S., Documents Show” *The Intercept*, 18 March 2018 <https://theintercept.com/2018/03/19/black-lives-matter-fbi-surveillance/>

² Declaration Of Arthur R. Sepeta, Department of Homeland Security, 18 April 2018

https://d11gn0ip9m46ig.cloudfront.net/images/Dkt_60_-_Def_Decl_DHS_-_SJ_Race_Paper.pdf

³ *Color of Change v. Department of Homeland Security and Federal Bureau of Investigation* <https://ccrjustice.org/home/what-we-do/our-cases/color-change-v-department-homeland-security-and-federal-bureau>

⁴ Declaration Of Arthur R. Sepeta, Department of Homeland Security, 18 April 2018

https://d11gn0ip9m46ig.cloudfront.net/images/Dkt_60_-_Def_Decl_DHS_-_SJ_Race_Paper.pdf

⁵ “The History of Surveillance and the Black Community,” *The Electronic Frontier Foundation*, 13 February, 2014

<https://www.eff.org/deeplinks/2014/02/history-surveillance-and-black-community>

⁶ “COINTELPRO,” *FBI Records: The Vault* <https://vault.fbi.gov/cointel-pro>

seen as a stain on the history of federal law enforcement and resulted in robust reforms meant to protect against similar future abuses. However, recent reports of police tracking the movements and affiliations of Black and Brown anti-racist protesters represent a chilling continuation of this shameful history.⁷

Other recently released documents, such as the Federal Bureau of Investigation's "Black Identity Extremist" report, show federal law enforcement is developing race-based analysis to justify targeting and surveilling protesters of color with unjustified and unconstitutional scrutiny.⁸ These documents wrongly characterize peaceful, anti-racist groups carrying out First Amendment-protected activity as having a propensity for violence and therefore worthy of invasive and persistent surveillance. Similar to the FBI documents, DHS's declaration mentions that the "Race Paper" examines peaceful protests that have been co-opted by violent "extremists." But there is no evidence that Black racial justice and anti-police brutality activism has been co-opted in such a manner.

DHS has stated that releasing the document would cause public confusion. We disagree. The public has a right to know whether the Department is improperly using race or constitutionally protected political activity as an indicator of violent behavior. Withholding the documents only contributes to lack of public trust and confidence in the Department.

We demand that DHS's "Race Paper" be released immediately. Given our country's long history of discriminatory policing, the public should not be left to speculate about the content and insinuations hidden in this document.

Sincerely,

American Civil Liberties Union
Arab American Institute
Brennan Center for Justice
Campaign for Liberty
Campaign for Youth Justice
Center for Democracy & Technology
Center for Media Justice
Color of Change
Defending Rights and Dissent
Demand Progress Action
18MillionRising.org
Electronic Frontier Foundation
Free Press
Free Speech Coalition
Government Information Watch

⁷ "Documents show US monitoring of Black Lives Matter," Al Jazeera, 28 November, 2017

<https://www.aljazeera.com/news/2017/11/documents-show-monitoring-black-lives-matter-171128110538134.html>

⁸ "The FBI's New U.S. Terrorist Threat: 'Black Identity Extremists'," *Foreign Policy*, 6 October, 2017

<http://foreignpolicy.com/2017/10/06/the-fbi-has-identified-a-new-domestic-terrorist-threat-and-its-black-identity-extremists/>

Human Rights Watch
Juvenile Justice Coalition (Ohio)
Law for Black Lives – DC
Lawyers' Committee for Civil Rights Under Law
Media Freedom Foundation
MPower Change
Muslim Advocates
Muslim Justice League
NAACP
National Association of Criminal Defense Lawyers
National Coalition Against Censorship
National Hispanic Media Coalition
National Immigration Law Center
National Juvenile Justice Network
National Lawyers Guild
National LGBTQ Task Force
New America's Open Technology Institute
New Jersey Parents' Caucus
PEN America
Project Censored
Restore The Fourth
The Center on Privacy and Technology at Georgetown Law
The Constitution Project at POGO
The Southern Poverty Law Center
United Congregations of Metro East (Illinois)
Woodhull Freedom Foundation
X-Lab