THE WRONG DIRECTION—POLICIES OF THE TRUMP ADMINISTRATION

YEAR ONE SUMMARY: VOLUME 3 – CIVIL RIGHTS

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Introduction

To mark the one-year anniversary of the Trump Administration USRESIST NEWS is publishing compilations of administration policies in several domains--- civil rights, education, the environment, foreign policy, health, and immigration. This series sadly chronicles the backward steps this administration has taken in clamping down on civil rights, undermining public schools, loosening environmental protections, revising cold war style foreign policy, reducing access to health care, and blunting immigration. The disastrous results of these policies are becoming more apparent with each passing day. Income inequality between rich and poor is on the rise; our cities and rural communities are becoming more vulnerable to the impact of climate change; the civil rights gains made by women and minorities are being threatened; and America is losing its stature as a world leader. And this is just after one year.

USRESIST NEWS monitors and reports on Trump administration and congressional policies. We publish one-page Briefs every time a new policy comes out. The Brief summarizes what's in the policy, analyzes and critiques it, and provides a list of organizational resources for people who want to push back. To learn more please visit our website (www.usresistnews) download our news Briefs and sign up for our subscription service.

Ron Israel

Managing Editor

USRESIST NEWS

The Trump Administration Influence Over Civil Rights Policies and Initiatives: Year One Summary

In his first year as President, Donald J. Trump set a disastrous new course for civil rights policies by proposing questionable and unpopular initiatives. His Attorney General, Jeff Sessions, has helped to implement some of the President's pronouncements by pursuing policies and opening investigations that are consistent with this new civil rights agenda. The effect of this new agenda was not limited to the federal level. Due to the unorthodox way that Trump speaks and presents himself as President of the United States, he has encouraged state officials to pursue actions and policies that they likely would not have if not for the childish actions of this President. And finally, this has created a heightened awareness and scrutiny of other issues whenever the President has injected himself into a discussion of other policies. The end result is a civil rights agenda and environment that looks to downplay and minimize prior progress instead of building on previous accomplishments.

During the last year President Trump made announcements or made statements that seemingly came out of the blue, sometimes on his Twitter account, and that was no different in the field of civil rights. It was the provocative nature of Trump's announcements that often were just as newsworthy as the announcement itself. In one instance, Trump made racially tinged comments regarding the National Football League's (NFL) player kneeling controversy before the national anthem. In another, Trump announced a new armed services transgender policy on Twitter using discredited medical research information. And in one of his most embarrassing episodes, Trump created a voting fraud commission to look into incidents of widespread voting fraud around the country that numerous experts said did not exist. Sadly, these incidents showed Trump displaying hostility towards those who were trying to exercise their constitutionally protected rights and put forth a positive equality message. It was this tone that he set that trickled down, especially to his Justice Department.

At the Department of Justice, Attorney General Jeff Sessions took the message and announcements of President Trump and showed what it would look like in practice. After only a year, Mr. Sessions promulgated a new criminal sentencing policy, promoted a new way to handle government media leaks that would contravene the First Amendment's protection of a free press, instituted investigations into affirmative action policies that discriminated against whites and quietly closed down the Department of Justice's (DOJ) unit on research into legal aid policy. These new civil rights policies were often based on accusations of racism because they tended to focus on programs that were of benefit to communities of color and because of Trump's budget proposals to close down units that had been successful in investigating charges of discrimination against minorities. These unpopular initiatives pushed by Mr. Sessions were consistent with Trump's hostile views towards racial minority groups.

Trump's influence did not stop at the Department of Justice or at the federal level. What became obvious with this Administration in power was that state and local government entities became emboldened to pursue policies that they might not have if not for the example set by Trump. With a President sensitive to criticism, 2017 saw a large number of states propose bills that would have increased criminal and civil penalties simply for the act of protesting. And because of Trump's hard - line stance on immigration, 2017 saw Florida's proposal for a separate criminal code for immigrants and Immigration and Customs and Enforcement's (ICE) proposal to destroy immigrant detention records to hide tactics that ICE was using against detained immigrants. The President may not have had an active hand in directing state and local policy but it did see more local groups and extreme hate groups emerge that were more willing to follow his lead with regards to immigrants, LGBT discrimination and voter ID laws.

The civil rights landscape has changed in the last year and the scrutiny of more and more issues has increased due to the man in the Oval Office. Because of the position President Trump has staked out on a number of civil rights issues, other issues now are more highly scrutinized and discussed with an eye towards what it means for the foreseeable future on the political landscape. There is a heightened awareness that one false step can set a movement or a political party agenda back years, maybe even decades. Cases on gerrymandering, campaign finance, religious liberty and voting rights are issues that may determine whether a Trump civil rights agenda survives into the next decade and so those issues get more attention than before.

These civil rights policy briefs are not just a review of President Trump's civil rights agenda but also an exploration of the American civil rights environment nationwide one year into the Trump Administration. It has been a tumultuous year with devastating setbacks at every level. But there have been inspiring incidents of resistance to push back on these Trump policies and, as part of the resistance movement, it is the hope that USResistNews can help provide the background, information and engagement resources to offer better ideas and solutions than what the Trump Administration has offered.

The following briefs are grouped into four overarching themes: The first grouping are civil rights incidents that Trump initiated or commented on personally that set the tone for his hostility to civil rights, equality and individual rights activities. The second groupings are DOJ policies and investigations that sought to implement the Administration's attempt to minimize successful individual rights and civil rights programs. The third groupings of policy briefs are policies at the state or local level that mirrored Trump's attempts to limit individual rights and civil rights programs. And lastly, the final groupings are those policies and cases that promoted greater discussion because of possible effects on the future of Trump's civil rights agenda.

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Trump's Charlottesville Response and His Statement on National Football League (NFL) Players

Presidential Statement
Issued September 22, 2017

Summary

In a speech given in Alabama on September 22, 2017, President Donald Trump said "Wouldn't you love to see one of these NFL owners, when someone disrespects our flag, to say 'Get that son of a bitch off the field right now! He is fired! He's fired!'"

The statement was in response to a small handful of National Football League (NFL) players refusing to stand during the playing of the national anthem before the start of a game. Colin Kaepernick, an African – American NFL player, started the protest in 2016 because he did not want to "show pride in a flag for a country that oppresses black people and people of color." A small handful of NFL players also began taking a knee during the playing of the national anthem. On the first NFL Sunday after the President's remarks, more players took a knee in silent protest while also linking arms with fellow players. Some NFL teams also made a statement against the President's remarks by intentionally choosing to not be on the field during the playing of the anthem. LEARN MORE, LEARN MORE

Analysis

The racial implications of Donald Trump's statement cannot be ignored. What is disturbing is how the President responded to two incidents – one a tragedy at a white – supremacist rally in Charlottesville, Virginia and the other an ongoing silent protest by African – American athletes in the NFL. After a young woman was killed protesting against a white – supremacist rally in Charlottesville, President Trump refused to condemn the white supremacist hate group. His response was universally condemned (but applauded by a KKK leader) and seen as giving support to a race-based hate group.

His statement about NFL players silently protesting racial injustice is troubling because it gives rise to the perception that the President is incapable of dealing with the racial divisions in this country. The white – supremacist protesters in Charlottesville engaged in an act of horrifying violence that killed one person yet Mr. Trump was unable to clearly condemn the action. The NFL players, the majority of whom are African – American, are merely performing an act of silent protest before going on to play in a game. Yet Mr. Trump saw to it to call them "sons of bitches." Surely an act of violence that ended in death in Charlottesville is more of a problem than a simple symbolic gesture done by professional athletes. Mr. Trump's comforting statements to white supremacist groups and hostile statements to black men protesting racial injustice clearly shows that he lacks the leadership necessary to understand and help heal the racial divisions in this country. LEARN MORE, LEARN MORE

Engagement Resources

- American Civil Liberties Union (ACLU) – nonprofit group's statement on President's Trump NFL players statement.
- Southern Poverty Law Center – nonprofit group web page dedicated to fighting hate and extremism.
- Stomp Out Bullying – nonprofit group focused on ending bullying and increasing civility, inclusion, and equality.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

The United States Flag and Free Speech Under the First Amendment

Presidential Statement
Given on September 22, 2017

Summary

In a speech given in Alabama on September 22, 2017, President Donald J. Trump made derogatory remarks towards African-American National Football League (NFL) players who had been engaging in a silent symbolic protest prior to the start of NFL games. During the playing of the national anthem, several players either chose to remain seated or took a knee until the end of the anthem. President Trump chastised the players in a Twitter post on September 24, 2017, saying that the players kneeling were "disrespecting our Flag & Country." In subsequent NFL games, players continued their silent protest prior to the playing of the anthem. LEARN MORE

Analysis

President Trump's Twitter post that said NFL players who were kneeling were "disrespecting our Flag & Country" is ignorant of the message of the players' silent protest and unaware of the case law regarding the use of the flag to communicate a message. First, it is clear that the issue of kneeling is a divisive issue with arguments of merit on both sides. Colin Kaepernick, the NFL player who first kneeled in protest during the playing of the national anthem in 2016, did so because he did not want to show pride in a flag for a country that "oppresses black people and people of color." President Trump is trying to distract from that specific message by saying it is disrespecting the country while Vice – President Pence further confused the issue by saying the protests disrespected soldiers. The response and statements by the President and Vice – President make it clear that they are unable to craft a response that directly addresses the message of the protests – racial oppression against blacks and people of color.

In 1989, the U.S. Supreme Court in *Texas v. Johnson* decided that the burning of the American flag as an act of protest was protected by the First Amendment as a form of symbolic speech. This case is instructive when viewed in the context of NFL players kneeling before the playing of the national anthem at a sporting event. The court declared that the act of burning the American flag was protected speech under the First Amendment because it was conduct that had the intent of conveying a particularized message that would be understood by those who saw the flag being burned. In the NFL protests, the players are not physically desecrating the flag (which the Supreme Court permitted) but are merely refusing to stand at attention in order to express their disappointment at the oppression and killing of minorities in America. If a person can be permitted to pour gasoline on an American flag and light it on fire to protest American policies then surely athletes refusing to stand at attention for a few moments as a form of silent protest is a permitted action under the First Amendment, too. The Supreme Court has justifiably protected non-verbal expression and the non-threatening symbolic gestures undertaken by the players also deserve the full protections of the First Amendment. LEARN MORE.

Engagement Resources

- American Civil Liberties Union (ACLU) – article and information on the NFL controversy.
- Non-Profit Anti-Racism Coalition – web page of an alliance of groups and individuals committed to ending institutional racism.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

President Trump's Policy On Transgender in the U.S. Military [UPDATE]

Presidential Announcement
Announced on July 26, 2017

Update: October 30, 2017

On Monday, October 30, 2017, United States District Court Judge Colleen Kollar – Kotelly issued a preliminary ruling that blocked provisions of a policy that did not allow the enlistment and retention of transgender peoples from serving in the U.S. Armed Forces. President Donald J. Trump had announced the controversial policy in a July 26, 2017 tweet. The most interesting portion of the ruling was the judge's criticism of the President. In her ruling, she stated, "All of the reasons proffered by the President for excluding transgender individuals from the military in this case were not merely unsupported, but were actually contradicted by the studies, conclusions and judgment of the military itself." Her ruling is just another repudiation of a boastful President who

has offered questionable facts and statements far, far too many times for a person occupying the Oval Office. LEARN MORE

Update: August 29, 2017

On August 29, 2017, Secretary of Defense James Mattis issued a statement that he is in receipt of President Trump's Memorandum banning transgender peoples from serving in the U.S. Armed Forces and its directive to comply with the statement President Trump made regarding this on July 26, 2017.

The Secretary of Defense's statement that a study and implementation plan will be developed appears to be another attempt to distort facts to reach a conclusion the President and his team prefer. While it is admirable that Secretary Mattis will allow current transgender troops to continue to serve, a new study will accomplish nothing. As previously written in this brief, transgender troops will have minimal impact on health care costs and their service, as found by 18 nations studying the issue, found no negative impact on combat effectiveness. Another study won't change that conclusion unless President Trump and Secretary Mattis intend to fabricate the study to get the result that they want so they can justify their discriminatory action.

Policy Summary

On July 26, 2017, President Donald Trump announced on his Twitter account a reinstatement of a ban on transgender persons from serving in the United States Armed Forces. The President's full statement reads, "After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. Military. Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail." President's Trump ban is a reversal of policy that had been approved under the Obama administration and which was waiting to be implemented by the Defense Department. LEARN MORE, LEARN MORE

Analysis

President Trump's surprise decision is not supported by academic studies and medical research. His decision claims to be based on medical costs and disruption to military readiness but studies have disproven these claims. A Rand Corporation study in 2016 commissioned by the Department of Defense found that allowing transgender persons to serve would have a "minimal impact" on health care costs. The same study also examined 18 countries that permitted transgender persons to serve and found "no negative impact on operational readiness, effectiveness or cohesion." President Trump's decision simply ignores the facts to reach an arbitrary decision. LEARN MORE, LEARN MORE

Engagement Resources

- American Civil Liberties Union (ACLU) – a nonprofit group supporting transgender rights.
- National Center for Transgender Equality – a nonprofit group promoting transgender equality.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

President Trump's "Election Fraud" Commission [UPDATED]

Executive Order
Issued on June 28, 2017

Update: January 3, 2018

On January 3, 2018, President Donald J. Trump signed an executive order terminating the Presidential Advisory Commission on Election Integrity. President Trump had created the commission last year to investigate whether there were instances of voter fraud and of non – citizens voting in U.S. elections. The Commission was viewed as a desperate attempt to investigate a problem that was seen as non – existent. After numerous states refused to hand over voter rolls information that contained sensitive personal data of voters others began to speak out on the sham nature of the commission. Two Republican strategists who had worked on campaigns for decades said they had never seen any instances of voter fraud. And members of the commission itself began to question the usefulness of the commission after getting no response to simple requests and inquiries into the commission's activities. As Dale Ho, Director of the ACLU's Voting Rights Project said, "This commission was a sham from the start and everyone recognized it." LEARN MORE

Summary

On May 11, 2017, President Donald Trump signed an Executive Order that established the Presidential Advisory Commission on Election Integrity. Section 3 of the order explains the mission of the commission, which is to "study the registration and voting processes used in Federal elections." On June 28, 2017, Kris W. Kobach, the Vice Chair of the Commission sent an identical letter to all 50 states and the District of Columbia requesting voter roll data from each state which could be submitted through an online portal. The information requested includes highly sensitive personal information such as birthdate, partial social security numbers, addresses, voting history and military status in a stated attempt to "fully analyze vulnerabilities and issues related to voter registration and voting." LEARN MORE, LEARN MORE

Analysis

The personal information requested by Vice Chair Kris Kobach of the Presidential Advisory Commission on Election Integrity is a meaningless gesture. The establishment of the Advisory Commission overlooks a report by the Washington Post in January that found nine investigations into voter fraud that found virtually nothing. There are investigations from academia, from the George W. Bush Administration, from a major newspaper and even statements from President Trump's own lawyers claiming there was no fraud in the 2016 election! The appointment of Kris Kobach hints at a possible motive for the Trump Administration as the former Kansas Secretary of State has a long history of making exaggerated voter fraud allegations and of illegally trying to suppress

voting rights. With overwhelming evidence from a variety of sources already, it is questionable whether another investigation will yield any new conclusions. Forty – four states and D.C. have refused the commission's request on privacy grounds but it is clear that part of the reason is that a good segment of the population and the states are fed up with the lies put forth by the Administration that could lead to misuse of personal data to suppress votes in the future and dubious new voting policies, especially in light of Mr. Kobach's prior advocacy of questionable voting programs. LEARN MORE, LEARN MORE

Engagement Resources

- American Civil Liberties Union (ACLU) – web page petition to remove Kris Kobach from Commission.
- Brennan Center for Justice – web page analyzing President Trump's "election fraud" commission.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

Campaign Finance Issue Hiding Behind President Trump's Executive Order On Religious Liberty and Free Speech

Executive Order
Issued on May 4, 2017

Policy Summary

On May 4, 2017, President Donald Trump signed an executive order titled "Promoting Free Speech and Religious Liberty." Section 2 of the order ensures that the "Department of the Treasury [will] not take any adverse action against any individual, house of worship or other religious organization on the basis that such individual or organization speaks or has spoken about…political issues from a religious perspective." An adverse action, as defined in the order is an [1] imposition of tax or penalty, or [2] the delay or denial of tax – exempt status. Churches and religious organizations in the United States are tax – exempt under 501(c)(3) of the Internal Revenue Code with certain restrictions against political activities. LEARN MORE, LEARN MORE, LEARN MORE

Analysis

The executive order signed by President Trump will have serious repercussions for campaign finance, not religious liberty or free speech. The danger with President's Trump order to relax IRS actions against those religious organizations who endorse or advocate for a particular candidate is that corporations and unions may now contribute monies to churches in the hopes that the church will endorse the candidate the corporations or unions prefer. Corporations and unions were prohibited from contributing to candidates prior to 2010. After 2010, they needed to create a Super PAC

(Political Action Committee), which currently have no limits on the amount of contributions it can accept.

With this order, corporations and unions now have a vehicle to make unlimited campaign contributions (Individuals are restricted to $5,400 a year per candidate). With the threat of losing their tax – exempt status no longer looming, churches can spend hundreds of millions of dollars in U.S. elections and become much more influential in selecting candidates and influencing policy initiatives favorable to the church and their corporate donors. This will diminish the voice of the ordinary American citizen because a single person cannot match the amounts that corporations and unions can contribute. Only those with the most money would seem to have a voice in American politics. LEARN MORE, LEARN MORE

Engagement Resources

- American Civil Liberties Union (ACLU) – info page on campaign finance issues.
- National Conference of State Legislatures (NCSL) – info page on campaign finance at the state and federal level.
- Public Citizen – nonprofit advocating against money influencing elections among other democracy issues.

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Department of Justice Policies Putting Trump Agenda in Practice

Congress Takes Bipartisan Action to Counter Attorney General Jeff Session's Charging and Sentencing Policy

Proposed Congressional Action
Proposed on May 16, 2017

Policy Summary

On May 10, 2017, Attorney General Jeff Sessions put forth the "Department Charging and Sentencing Policy" for all federal prosecutors. The memorandum instructs all federal prosecutors to [1] charge and pursue the most serious readily provable offense and [2] disclose to the sentencing court all facts that impact the sentencing guidelines or mandatory minimum sentences. On May 16, 2017, Senators Rand Paul (R-KY), Patrick Leahy (D-VT) and Jeff Merkley (D-OR) introduced the "Justice Safety Valve Act" which would give back to federal judges discretion and flexibility in imposing a criminal sentence. Representatives Bobby Scott (D-VA) and Thomas Massie (R-KY) have introduced a companion bill in the House of Representatives. LEARN MORE, LEARN MORE, LEARN MORE

Analysis

The policy announced by Attorney General Sessions was severely misguided. By requiring the most serious offenses to be pursued against a defendant and having him or her face a minimum mandatory sentence if convicted, the Attorney General has introduced nothing more than a formulaic application of the nation's federal criminal laws. The traditional guidelines of proportionality, fairness, and rationality would no longer be relevant in considering how to sentence a person. Marc Mauer, Executive Director of the nonprofit group The Sentencing Project, issued a report that concluded mandatory sentences "exacerbate existing racial disparities" and that it is "unlikely that mandatory penalties…have a significant impact on enhancing public safety." Representative Bobby Scott (D-VA) said that their bill will "give discretion back to federal judges, so that they can consider all the facts, issues and circumstances" in order to tailor each sentence on a case-by-case basis. LEARN MORE, LEARN MORE, LEARN MORE

Engagement Resources

- Sentencing Project – a nonprofit organization working for a fair and effective U.S. Criminal Justice System.
- American Civil Liberties Union – info sheet on sentencing issues.
- Criminal Justice Policy Foundation – a nonprofit group providing info on criminal drug policy reforms.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

Attorney General Sessions' Reinstatement of "Federal Adoption" Technique in DoJ Asset Forfeiture Program

Department of Justice Policy
Issued on July 19, 2017

Policy Summary

On July 19, 2017, Attorney General Jeff Sessions issued an order that sought to reinstate and expand an asset seizure technique, which is known as "federal adoption." This technique applies to assets and property seized by local law enforcement officers. State and local governments first seize the assets. Then, instead of getting a state conviction, the states willingly give the assets to feds (adoption) to forfeit where a criminal conviction is not required. As an incentive, feds promise to return seized funds to states to fund local budgets.

The order issued by the Attorney General seeks to make certain there is [1] sufficient evidence of criminal activity before federal adoption occurs, [2] the evidence is well documented, [3] local law enforcement partners have training to utilize federal adoption and [4] that there is appropriate supervisory review of decisions to approve forfeiture.

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Analysis

The rationale given for the use of state asset forfeiture laws is because officials sought to prevent criminals from profiting from their crimes with their ill – gotten gains. Cash and vehicles that were seized from criminals would instead be forfeited to the local government *but only after a criminal conviction*. Federal adoption rules came into play as a way to sidestep the restrictions of state asset forfeiture laws. By collaborating with the Federal Government on asset seizure and forfeiture cases, there was no longer any requirement of a criminal conviction as would be required in a state case. And the burden of proof of proving that the seizure was illegal was shifted from the government to the accused. And finally, the monies that were "adopted" by the Federal Government were given back to local law enforcement to fund their law enforcement budgets.

This highly controversial technique, which had been banned under Attorney General Eric Holder, is nothing more than a way to avoid having to follow state procedures (requiring criminal convictions and being innocent until the government proves you are guilty). And by giving seized monies back to local law enforcement units to fund their budgets, AG Sessions is impermissibly using a profit incentive for law enforcement to break the law and trample on the Due Process and property rights of American citizens. Attorney General Sessions is hoping to fight crime except he doesn't want to follow established law and procedure to do it. The bottom line is that a citizen cannot use a court proceeding to protect his property rights if his assets get seized and then forfeited under federal laws. Sessions prefers this method (Holder was against it) because then he doesn't have to answer to a judge or court about his police methods. And by giving monies back to local governments, he is encouraging law enforcement to act based on profit and not according to how the law says police must act. It is kind of an intimidation tactic.

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Engagement Resources

- Institute for Justice – nonprofit group's comprehensive report on civil asset forfeiture abuses.
- American Civil Liberties Union (ACLU) – info page on civil asset forfeiture.
- End Civil Forfeiture – nonprofit website with personal stories of American citizens abused by civil forfeiture laws.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

Department of Justice Policy on Media Leaks

Department of Justice Policy
Announced August 10, 2017

Policy Summary

On August 4, 2017, Attorney General Jeff Sessions announced that in order to combat "leaks" of highly classified materials threatening national security he has ordered a review of policies affecting "media subpoenas." The Department of Justice policy currently in place regarding the obtaining of information from members of the news media seeks to strike a balance in protecting national security, ensuring public safety, promoting effective law enforcement and the fair administration of justice, and safeguarding the essential role of the free press in fostering government accountability and an open society. LEARN MORE, LEARN MORE

Analysis

The problem with Attorney General Sessions' announcement is that [1] there is a strong likelihood that the Justice Department provides little guidance on what constitutes w well – researched articles that seek to hold the government accountable for its policies and [2] that new policies will not be limited to only matters of national security, which would be a direct challenge to the constitutional right of freedom of the press. Forty – eight states and the District of Columbia currently have "shield laws" in place that protects a journalist from revealing their sources for confidential information. The rationale for this privilege is that many sources would be deterred from coming forward and sharing information with the press that is of great public interest. If Sessions and Trump get their way and revise DOJ's media subpoena policy, they would be able to harass reporters – in any case, not just national security cases – into divulging their sources. This would also allow them to indirectly intimidate anonymous sources from coming forward with information that could be used to hold the Trump Administration accountable.

Also, the national security argument is questionable because of the actions of the President himself. In May 2017, President Trump revealed classified information to the Russian foreign minister and ambassador. His actions were deemed reckless and

nearly jeopardized relations with the ally who provided the intel. And again in August 2017, President Trump re-tweeted leaked information that was classified. If the President was so concerned about national security and leaks he would not have carelessly divulged information that did not need to be revealed. What is becoming clear is that leaks are not necessarily the problem. It is a President who is careless in his social media habits. This President has always been hostile to members of the press who disagree with him and with his rhetoric of "fake news."

Empowering DOJ with a new and revised "media subpoena" policy might in the short term help to stop leaks but the long term damage is likely the suppression of a free and unhindered free press. It is better to stand up now to President Trump and AG Sessions and say no to their attempt to sacrifice First Amendment press freedoms that serve their efforts to try and suppress legitimate press criticisms of the Trump Administration. LEARN MORE

Engagement Resources

- Society of Professional Journalists – society that seeks to improve and protect journalists.
- Digital Media Law Project – webpage with links to state shield law statutes.
- Reporters Committee for the Freedom of the Press – non – profit group dedicated to helping journalists.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

The Charlottesville Demonstration and the Hate Crime and Domestic Terrorism Labels

Pending Department of Justice Investigation
Launched on August 13, 2017

Policy Summary

On August 13, 2017, Attorney General Jeff Sessions announced that the Department of Justice would launch an investigation into the events of a white supremacist rally and counter – protest in Charlottesville, Virginia that left one woman dead and scores of others injured. Heather Heyer, a white woman, was killed when James Alex Fields, Jr., a man with sympathies to pro – Nazi ideology, allegedly rammed his car into a group of counter – protesters. Mr. Sessions announced that the Justice Department would "take the most vigorous action to protect the right of people to…protest against racism and bigotry." He also said that the Justice Department would prosecute anybody that violates another person's ability to protest. In addition, Mr. Sessions said the incident "does meet our definition of domestic terrorism." LEARN MORE, LEARN MORE

Analysis

The tragedy in Charlottesville, Virginia has highlighted the debate as to the differences between hate crimes and domestic terrorism and the implications if it is a state court case or a federal court case. From a legal standpoint, Mr. Session's announcement, which was intended to open the door for the FBI to get involved in the situation, that the incident was a domestic terrorist incident will only affect who is involved and the scope of the investigation and not the charges that will be brought against James Alex Fields, Jr. Susan Hennessey, in a blog post for LawFare, explains how there is no charge for domestic terrorism under federal law. The label triggers an FBI "enterprise investigation" which gives the Federal Government sweeping authority to investigate any groups or networks that James Alex Fields, Jr. may have associated. An investigation this broad and the involvement of the DOJ and FBI would not occur without the "domestic terrorism" label that Sessions has announced.

What is more likely is that the incident will be labeled as a hate crime at the state court level which, when added to the murder charge, will increase the penalties that will probably be handed down with a conviction. The case will not be pursued as a federal hate crime in federal court because the federal statutes on hate crimes have very strict requirements on protected groups, which would make a conviction difficult. Also, the federal law only applies if the victim is a member of a protected group such as race, religion, color or national origin. James A. Fields, Jr. did not appear to target any person specifically based on any of those criteria. The distinction between the two labels is hate crimes added to state charges already filed serve to increase potential penalties while a domestic terrorism label authorizes greater federal involvement with states in terms of investigations into hate groups. Some states do not have the resources to conduct multi – state investigations into various hate groups which is why bringing in Federal Government resources is vital in incidents like the one in Charlottesville. LEARN MORE, LEARN MORE

Engagement Resources

- LawFare – website with articles exploring legal terms of domestic terrorism and other legal topics.
- American Civil Liberties Union (ACLU) – webpage on the legal implications of domestic terrorism label.
- Anti – Defamation League (ADL) – webpage with suggestions to combat racism, bigotry and hate and how to get involved after the tragedy in Charlottesville, Virginia.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

The Problem of Reverse Discrimination Cases Against Whites and Affirmative Action Cases [UPDATED]

Pending Department of Justice Policy
Reported on August 1, 2017

Update: December 2, 2017

It has now been confirmed that a DOJ investigation is looking into these policies at Harvard University. Confirmation of this investigation is unique because it is an investigation being done not for the white community but on behalf of a minority class – Asian-Americans. This is surprising considering the Trump Administration and Attorney General Sessions have struggled with accusations of pursuing racist policies. This DOJ investigation appears closely linked to a 2015 complaint against Harvard that was filed by numerous Asian - American organizations and was supported by the non - profit group that brought the Abigail Fisher case to the Supreme Court. This begs the question as to whether Asian-Americans and white conservative leaning groups have banded together to oppose affirmative action policies nationwide. Because of this, it is important to remember the statement made by two Asian-American commissioners on the U.S. Commission for Civil Rights. Michael Yaki and Karen Narasaki issued a joint statement in response to the 2015 complaint against Harvard that said "we hope that this is a sincerely raised issue and not a back door attack on affirmative action that attempts to pit Asian Americans against other minorities, as other efforts have been." That statement is critical because it may reveal Mr. Sessions' true intention - to manipulate the Asian - American community into supporting his proposal to dismantle affirmative action. LEARN MORE, LEARN MORE, LEARN MORE

Policy Summary

On August 1, 2017 the New York Times reported that the U.S. Department of Justice "is preparing to redirect resources...of the civil rights division toward investigating and suing universities over affirmative action admissions policies deemed to discriminate against white applicants." This move is likely in response to the 2016 U.S. Supreme Court case *Fisher v. University of Texas* which held that a "race conscious admissions program...is lawful under the Equal Protection Clause." In that case, Abigail Fisher, a white woman, claimed her application to the University of Texas was rejected on the basis of her race. LEARN MORE

Analysis

What the Department of Justice does not see in pursuing reverse discrimination cases is that there is no law that is preventing Abigail Fisher and whites as a class from pursuing a higher education. In "reverse discrimination against whites" arguments, the key difference for discrimination purposes is that whites are not *completely barred* from the activity - in this case, pursuing a college education. Abigail Fisher may not have been accepted into the University of Texas but she could still pursue a college education at any other university that would accept her.

A white woman being denied admission to a university is not comparable to racist policies that other minorities have had to endure in the United States through the years. Unlike Abigail Fisher's situation, minority communities in the United States have had to endure laws that were designed to *bar entire races and nationalities from participating in activities* with no option to participate elsewhere. Jim Crow laws in Mississippi were designed to exclude blacks from voting. In Richard Rothstein's book *The Color of Law* he shows how government housing funds mandated discrimination against African - Americans. And for awhile in California, Chinese persons could not own property or testify against whites. The Department of Justice should use extreme caution in litigating affirmative actions policies that discriminate against whites because there is no concerted effort to completely bar the white community from higher education and other facets of daily life, which had been the experience of entire minority communities in America in years past. LEARN MORE, LEARN MORE, LEARN MORE

Engagement Resources

- Southern Poverty Law Center (SPLC) – nonprofit group promoting equal justice and equal opportunity.
- American Civil Liberties Union (ACLU) – nonprofit group webpage on affirmative action.
- Asian American Legal Defense & Education Fund (AALDEF) – nonprofit FAQ page on affirmative action and *Fisher v. University of Texas* case from a minority community point of view.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

United States Attorney General Jeff Session's Law Enforcement Memorandum [UPDATED]

Attorney General Memorandum
Issued March 31, 2017

Update: November 17, 2017

On November 17, 2017, U.S. Attorney General Jeff Sessions issued a department memorandum that prohibits the Department of Justice (DOJ) from issuing regulatory guidance documents. This announcement is an implementation of the policy announced by the Attorney General in March when he said, "it is not the responsibility of the federal government to manage non – federal law enforcement agencies." In years past, the federal government through the DOJ was permitted to enter into consent decrees with local law enforcement departments to help suggest and implement better practices to reduce potential police and civil rights abuses. But Sessions has likely brought that to an end with his directive against issuing regulatory guidance documents. This is disappointing considering residents in Baltimore are eager to see a federal police

consent decree implemented. The Attorney General's decision removes another tool that was often used to address local law enforcement abuses. LEARN MORE, LEARN MORE

Policy Summary

On March 31, 2017, United States Attorney General Jeff Sessions issued a memorandum to Department of Justice attorneys promoting support for federal, state, local and tribal law enforcement authorities. The Attorney General pledged the resources of the Department of Justice in order to "promote a peaceful and lawful society where the civil rights of all persons are valued and protected." In order to implement these twin goals, the Attorney General laid out a framework that emphasized "strengthening our longstanding and productive relationships with our law enforcement partners" at the various levels of government. LEARN MORE

Analysis

The law enforcement policy proposed by the Attorney General creates two immediate problems. The memorandum states [1] "it is not the responsibility of the federal government to manage non-federal law enforcement agencies" and that [2] "misdeeds of individual bad actors should not impugn…[the] honorable work…that law enforcement…agencies perform." This is problematic because the DOJ's Civil Rights Division has the power and authority to investigate and offer solutions to law enforcement agencies that have engaged in a pattern or practice of conduct in violation of the Constitution or laws of the United States. By minimizing unlawful conduct as only misdeeds of selected individuals, the Attorney General is ignoring the fact that numerous law enforcement agencies have systemic deficiencies that contribute to police ineffectiveness. But he also goes a step further by stating that DOJ should no longer step in to offer solutions to improve policing as DOJ did many times previously, most notably in recent police misconduct investigations in Chicago and Baltimore. This new policy, and current review of reform agreements nationwide, will curtail the ability of local communities to partner with the Federal Government to monitor, critique and address local law enforcement abuses. LEARN MORE, LEARN MORE

Engagement Resources

- American Civil Liberties Union (ACLU) – an information site addressing reform of police practices.
- Campaign Zero – a campaign that provides info on police abuses and tracks legislation on the topic.
- National Police Accountability Project – a nonprofit organization dedicated to protecting civil rights of those in their encounters with law enforcement.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

U.S. Department of Justice Closes Legal Aid Unit

Federal Agency Action
February 1, 2018

Summary

On February 1, 2018, numerous media outlets reported that an office of the U.S. Department of Justice (DOJ) – the Office for Access to Justice (ATJ) – was reassigning its personnel and that other services were being rolled back significantly. According to its website, the office was established in March 2010 to "address the access to justice crisis in the criminal and civil justice system." Additionally, the ATJ sought to "advance new statutory, policy and practice changes that support development of quality indigent defense and civil legal aid delivery systems at the state and federal level." LEARN MORE

Analysis

This news concerning Attorney General Jeff Sessions' Justice Department is just another example of the Trump administration's approach to civil rights initiatives. Previously, the Trump Administration scaled back civil rights units, reduced funding to those sections and folded some units into other offices and units with the goal of de-emphasizing the priorities and effectiveness of those offices. The result is that programs dedicated to advancing civil rights and investigating abuses in that arena no longer had the resources or guidance to aggressively investigate and monitor incidents and complaints. According to the 2017 Justice Gap Report by the nonprofit Legal Services Corporation, eighty-six percent (86%) of the civil legal problems reported by low-income Americans received inadequate or no legal help. The ATJ was a valuable unit because it also advanced statutory and policy recommendations that could have been used at the federal or state level to address the problem of access to justice for low-income Americans. By re-organizing the unit and de-emphasizing its work, the Trump Administration is showing that not only do they not care about the access to justice issue but they did not even want to hear recommendations or have discussions about something Americans definitely want to be addressed. LEARN MORE

Engagement Resources

- Office for Access to Justice at the U.S. Department of Justice – webpage on previous accomplishments of the unit.
- Legal Services Corporation – non – profit group addressing the civil legal needs of low-income Americans.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

Trump Agenda at the State and Local Level

State Voter ID Laws

Proposed Texas State Legislation
Introduced February 22, 2017

Summary

The Texas state legislature recently revealed voter ID legislation amendments that aim to satisfy recent court rulings that determined that its current voter ID law had a discriminatory effect against minority groups. The new proposal contains a feature that would permit a voter without any of the currently accepted seven forms of ID to still cast a ballot if they showed an alternate form of identification and "reasonably" claimed that they have been unable to get one of the accepted forms of photo ID. LEARN MORE

Analysis

Even with the proposed additions to the Texas voter photo ID law that are aimed at complying with recent court rulings challenging it, the law itself still creates obstacles for people to vote. According to a fact sheet prepared by the American Civil Liberties Union (ACLU) voter photo ID laws are enforced in a discriminatory manner and often result in minorities being questioned about their ID more often than white voters. The effect of these voter photo ID laws is that it tends to reduce voter turnout from minority communities. LEARN MORE

Engagement Resources

- American Civil Liberties Union – The ACLU is a nonprofit organization that works to preserve and defend individual rights and liberties guaranteed to all citizens. The organization invites donations and offers a platform for citizens to take action on numerous issues and to stand up for what they believe is right.
- Brennan Center for Justice – The Brennan Center for Justice is a nonpartisan law and policy institute that fights to improve American democracy and its system of justice. The organization is a good resource on pressing legal issues and also hosts symposiums and information panels.
- Advancement Project – The Advancement Project is a multi-racial civil rights organization that aspires to create community-based solutions and strategic initiatives to promote equality and justice. They provide tools and resources on their core issues of voter rights, immigrant justice, and educational opportunities.
- Project Vote – Project Vote's mission is to make sure that every eligible citizen is able to register, vote and cast a ballot that counts. They provide resources on all legal issues related to voting and provides a comprehensive bill tracking tool that analyzes all legislative bills related to voting.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

Proposed State Laws That Threaten to Criminalize Protests and Demonstrations

Proposed Legislation from various states
Proposed in January/February 2017

Summary

Ever since the inauguration of President Donald J. Trump numerous states have introduced bills that have the potential to curb mass protests and demonstrations. The bills aim to toughen the penalties that protesters and demonstrators face when engaging in a protest event. The criminal penalties from the states range from increased fines and lengthier jail terms if convicted. Oregon is also debating mandatory expulsion from colleges and universities for a student convicted of participating in a violent riot while Arizona is considering police seizure of a person's assets for participation in a violent protest. LEARN MORE

Analysis

Lee Rowland of the American Civil Liberties Union (ACLU) in a Washington Post article says the intent of these new legislative proposals is to "increase the penalties for protest – related activities to the point that it results in self – censorship among protesters who have every intention to obey the law." Protesters now will have to think twice about whether they should head out and join in a march or demonstration event. The consequences of being barred from higher education, of financial loss and extended time in prison will cause fewer people to speak out and suppress discussion on important issues. LEARN MORE

Engagement Resources

- Bill of Rights & Dissent Defense Committee – A nonprofit organization protecting the right of political expression.
- American Civil Liberties Union (ACLU) – Repression of Peaceful Protest – Information page on repression of peaceful protest.
- First Amendment Center at the Newseum Institute – An institute focused on First Amendment issues.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

Separate Criminal Code For Immigrants

Proposed Florida Legislation
Passed second Senate committee on February 22, 2017

Policy Summary

In the Florida Legislature, a Senate bill was introduced and recently approved by the Appropriations Subcommittee on Civil & Criminal Justice that proposes that certain

crimes committed by unlawfully present aliens in the State of Florida be charged differently from all other persons in the state. Illegal immigrants charged with a crime would, under Senate Bill 120, have their charges upgraded to the next criminal offense ranking level only because of their immigrant status. An illegal immigrant charged with a misdemeanor of the first degree would have his criminal charge upgraded to a felony in the third degree. A felony in the second degree would be bumped up to a felony in the first degree. LEARN MORE

Analysis

The proposed legislation is problematic because it discriminates between people who commit the same criminal act on the basis of their citizenship and immigrant status. The American principle of Equal Protection of the Laws enshrined in the Fourteenth Amendment provides that no "person" may be denied the equal protection of the laws. According to the Florida Department of Corrections, Florida has an inmate population of 99,119. The number of inmates who are undocumented immigrants is 4,754, only 4.8% of the total number of inmates. This bill unfairly targets persons because they are immigrants and impermissibly places the blame for crimes committed on them when the statistics show that crimes are not strictly an immigrant problem. LEARN MORE

Engagement Resources

- Mexican – American Legal Defense & Education Fund – A nonprofit organization promoting social change in immigrants rights and political access.
- American Civil Liberties Union (ACLU) – An information page on immigrant Constitutional issues.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

Religious Exemption To Be Used To Discriminate In Texas Adoption Cases

Proposed Texas State Law
Proposed on May 10, 2017

Policy Summary

On May 10, 2017, the House of Representatives of the Texas State Legislature approved House Bill 3859, popularly known as "The Freedom To Serve Children Act." The bill provides a defense for state-funded faith-based private adoption agencies that will insulate them from potential lawsuits for their decision to deny a couple from adopting a child. Every faith-based private adoption agency in Texas are Christian organizations and their mission is to place foster children with adoptive families. With this law, faith-based adoption agencies can prevent children from being placed with deserving couples and base their decision on their own personal religious beliefs. LEARN MORE

Analysis

The proposed law in Texas is a deeply flawed bill. The bill will permit these faith-based agencies to refuse service to otherwise deserving couples for nothing more than a difference in religious views. Reggie Greer, Director of Constituent Engagement at the Victory Institute, has called this proposed law a “license to discriminate” while viewing the law as a way to prioritize one set of religious beliefs (Christian) over all others. The nonprofit Family Equality Council has also called the proposed bill an impermissible effort to circumvent non-discrimination laws. It can be used to deny adoption to minority or community groups that Christian groups do not want to support, such as qualified gay and lesbian couples who wish to adopt a child.

Favoring or disfavoring one qualified group over other qualified groups is still discrimination and this law is instead making it harder for children to be placed in stable and supportive homes. LEARN MORE, LEARN MORE, LEARN MORE

Engagement Resources

- Center For American Progress – info sheet examining LGBT Discrimination in child welfare systems.
- Family Equality Council – nonprofit organization advocating LGBT family issues.
- Children’s Defense Fund – nonprofit organization on children’s issues.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

Heightened Awareness Discussions and the Future of Individual Liberties After Trump

Legal Framework For National Security Agency (NSA) Surveillance & Data Collection on American Citizens

NSA Policy
Announced April 26, 2017

Policy Summary

On April 28, 2017, the National Security Agency (NSA) announced that they would "stop certain foreign intelligence collection under Section 702" of the Foreign Intelligence Surveillance Act. This law provided the legal basis for the NSA to collect phone or Internet communications that [1] were sent directly to or from a foreign target or [2] were communications that were "about" a foreign person or target. The NSA will now cease its collection efforts of phone and Internet communications that were "about" foreign persons or targets mentioned in communications (e-mails, texts, etc.) between American citizens. However, Executive Order 12333, under Conduct of Intelligence Activities, was signed over thirty years ago by President Ronald Reagan and remains in effect. LEARN MORE, LEARN MORE, LEARN MORE

Analysis

The announcement by the National Security Agency (NSA) that it would stop "about" collections under Section 702 is a red herring. Even though the NSA announced that Section 702 would no longer be the legal justification to collect communications of American citizens in violation of their privacy it does not change the fact that the NSA could still collect the same communications *under the justification of another legal authority.*

In 2014, John Napier Tye, a former Section Chief for Internet Freedom in the U.S. State Department's Bureau of Democracy, Human Rights and Labor stated that Executive Order (EO) 12333 permits bulk data collection of American citizens communications provided the collection occurs outside the U.S. As an example, Google and Yahoo keep many Internet communications in servers in countries outside of the U.S. Now, the NSA can instead rely on EO 12333 to collect Internet communications from these servers instead of Section 702 as long as the servers are outside the U.S. EO 12333 does not have warrant or court approval requirements as Section 702 did. Surveillance and data collection efforts may have ceased pursuant to Section 702 but the same Internet communications can still be collected, albeit under a different name and without the Section 702 privacy protections for American citizens, only because they were housed on a server overseas. LEARN MORE, LEARN MORE, LEARN MORE

Engagement Resources

- American Civil Liberties Union (ACLU) – non – profit organization providing info on NSA surveillance.
- Electronic Frontier Foundation (EFF) – foundation focused on defending your rights in the digital world.

- Electronic Privacy Information Center (EPIC) – research center dedicated to online privacy and civil liberty issues.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

U.S. Census Bureau Announces That It Will Not Include Sexual Orientation and Gender Identity As A Category For Data Collection

Federal Agency Policy
Announced on May 8, 2017

Policy Summary

In April 2016, Members of Congress asked the United States Census Bureau to include sexual orientation and gender identity as subjects that Americans can be asked to be categorized as in the upcoming 2020 Census. Nearly a year later and after the inauguration of President Donald Trump, the Census Bureau changed course and clarified that it "inadvertently listed sexual orientation and gender identity as a proposed topic" and that these two topics are no longer being proposed to Congress for the 2020 census. LEARN MORE

Analysis

Laura Durso, vice – president of the LGBT Research and Communications Project at the Center for American Progress said that the change would prevent the collection of information that is necessary to understand the needs of the LGBT community. Senators Kamala Harris (D-CA) and Tom Carper (D-DE) have gone further by sending a letter to the Census Bureau asking for an explanation as to why the two categories were excluded from future census questions. The letter indicates that the information could be useful for apportionment and re-districting efforts and in helping to distribute $400 billion in federal funds annually. The decision to not include an option to classify oneself according to sexual orientation or gender identity ignores the LGBT community as a growing community in the U.S. This change also has the potential to change and diminish the electoral power of the LGBT community as a voting bloc as well as making the community unavailable for federal funds simply because the administration refuses to recognize them. LEARN MORE, LEARN MORE, LEARN MORE

Engagement Resources

- SAGE – A nonprofit group focused on LGBT issues for elderly people.
- Center for American Progress – A nonprofit group advocating progressive policy ideas on numerous issues.
- Gay & Lesbian Alliance Against Defamation – A nonprofit group focused on accelerating acceptance for the LBGT community.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

U.S. Commission on Civil Rights Investigating Civil Rights Enforcement Under The Trump Administration

Independent Federal Commission Action
June 16, 2017

Policy Summary

On June 16, 2017, the United States Commission on Civil Rights stated its concern with the Trump administration's proposed budget cuts to civil rights offices throughout the Federal Government. As a result, the Commission unanimously approved a two-year comprehensive assessment of federal civil rights enforcement under the administration at various federal departments. The review will examine [1] the degree to which budget cuts will allow the civil rights offices to fulfill their duties, [2] whether the management practices are sufficient to meet the volume of civil rights cases, and [3] the effectiveness of resolution efforts from these offices. LEARN MORE

Analysis

President Donald Trump's proposed budget cuts to federal civil rights offices can best be illustrated by what the federal civil rights offices have achieved in the past and what will be lost if his budget proposal prevails. At the Department of Labor (DOL) Office of Federal Contract Compliance Program (OFCCP), which is targeted for reduced staffing, the office was able to settle discriminatory hiring practices at Bank of America and KPMG. At the Department of Education's (DOE) Office of Civil Rights, also targeted for reduced staffing, the office was able to respond to sexual assault and harassment complaints at the university and high school level. These are just a few examples but they demonstrate the value of these civil rights offices. Without them, big corporations would no longer be held accountable for discriminatory hiring practices. Sexual assault incidents at educational institutions would likely continue to be mishandled. By highlighting the achievements of these offices, the Commission on Civil Rights can show how important it is that we need these civil rights offices in order to stand up to discriminatory actions and practices in every place that needs it. LEARN MORE

Engagement Resources

- Department of Education Office of Civil Rights – web page with info on civil rights issues in education.
- Health and Human Services Office of Civil Rights – preventing unlawful discrimination in health services.

- Department of Labor Office of Federal Contract Compliance Program – web page with info on anti – discrimination programs for companies that do business with the federal government.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

Tax Implications of Trinity Lutheran Church of Columbia, Inc. v. Comer

U.S. Supreme Court Decision
Issued on June 26, 2017

Policy Summary

On June 26, 2017, in a separation of church and state case, the United States Supreme Court issued its decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*. In a 7 – 2 decision, the court ruled that the "express policy of denying grants to any applicant owned or controlled by a church, sect or other religious entity violated the rights of Trinity Lutheran Church…under the Free Exercise Clause of the First Amendment by denying the church an available public benefit on account of its religious status." With this decision, it should also be noted that under Internal Revenue Code (IRC) 501(c)(3), churches qualify for exemption from federal income tax. And under Section 137.100.5 of the Missouri Revised Statutes, real property used for charitable purposes are exempt from taxation for state, county or local purposes. LEARN MORE, LEARN MORE, LEARN MORE

Analysis

The stance taken by the church that they were discriminated against for a public benefit exposes a glaring hypocrisy – how a church desperately wanted a seat at the table for a discretionary public benefit while taking advantage of a tax law that permits it to not contribute funds for the same public benefit. What is even more shocking is that David Cortman of Alliance Defending, an organization supporting Trinity Lutheran Church in the case, stated that Missouri's denial of funding "imposes special burdens on nonprofit organizations with a religious identity." What burden is Trinity Lutheran Church suffering in this case? The church, unlike other groups, already has the privilege of not paying state and local property taxes. Yet they've come forward and demanded to be reimbursed for improvements made to their property. This case illustrates how the discrimination issue is being distorted. Discrimination cases often employ the term 'similarly situated' which, when used in this case, highlights the unequal position that churches have in the U.S. that others do not have and why the case was likely decided in favor of Trinity Lutheran Church incorrectly. LEARN MORE

Engagement Resources

- Freedom From Religion Foundation – nonprofit group protecting the principle of separation of state and church.

- Americans United – nonpartisan organization dedicated to the principle of church-state separation.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

Immigration and Customs Enforcement's Request To Destroy Detention Records

Proposed Federal Agency Action
Proposed on September 12, 2017

Policy Summary

On July 14, 2017, the National Archives and Records Administration (NARA) published a little-seen notice in the Federal Register that showed that Immigration and Customs Enforcement (ICE) had requested permission to destroy controversial detention records. The records that were targeted for destruction were of ICE detainee records and their incidents of sexual abuse, sexual assault, and deaths while in agency custody, among others. The request, as of September 15, 2017, has not yet been approved by NARA. LEARN MORE, LEARN MORE

Analysis

Victoria Lopez, senior staff attorney with the American Civil Liberties Union's National Prison Project, said the proposed move does not give "sufficient opportunity for public scrutiny of [ICE's] operations." She went on to say that the records are also important in researching long-term trends and in determining how the issue of immigrant detention shapes law and policy. ICE's request is also troubling because the perception is that ICE is trying to hide its pattern of abuses. American society today is bitterly divided on the issue of immigration and President Trump has taken a very hard line on immigrants coming to the U.S. Hiding the facts of previous abuses of immigrants by ICE will only inflame the current national debate and deprive policymakers of facts that could lead to more transparency and well-informed solutions. LEARN MORE, LEARN MORE

Engagement Resources

- American Civil Liberties Union (ACLU) – nonprofit group's info page on ICE's current request.
- Community Initiative for Visiting Immigrants in Confinement (CIVIC) – non – profit group that monitors human rights abuses of immigrants in detention and that advocates for system change.
- Detention Watch Network – non – profit group that advocates for the rights of immigrants.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

Federal Communications Commission (FCC) Plan To Overturn 2015 Net Neutrality Rules [UPDATED]

Proposed Regulations
Proposed on April 26, 2017

Update: December 14, 2017

On December 14, 2017, the five commissioners of the Federal Communications Commission (FCC) voted in an expected party – line 3 – 2 split vote to reverse 2015 rules barring Internet service providers from throttling Internet traffic and offering faster separate Internet lanes at a higher price. Commissioner Jessica Rosenworcel wrote a blistering dissenting statement explaining her vote and why consumers would end up losers as a result of this vote. While this vote is disappointing, Congress has now chimed in and Senator Charles Schumer (D-NY) is looking into reviewing the agency decision by having Congress vote to nullify the action, as Congress is empowered to do. A group of state attorney generals, including Eric Schneiderman of New York, have vowed to sue to prevent the rules from being repealed while other states, including California which is home to the tech industry in Silicon Valley, have indicated they may implement their own net neutrality rules in their own states. It was a disappointing vote at the FCC but one where a long protracted battle now looms. LEARN MORE, LEARN MORE

Update: November 22, 2017

On November 22, 2017, The Federal Communications Commission (FCC) published its plans that are aimed to throw out nearly all of the "net neutrality" regulations that were approved in 2015. With a Republican majority of commissioners on the five-person panel, the plans are likely to be approved. This is incredibly disappointing considering that the 2015 regulations prohibited Internet service providers from favoring certain online content over others. That will no longer be the case under the FCC's new proposals. FCC Chairman Ajit Pai stated that his new plan would prohibit the "federal government from micromanaging the internet." However, his fellow commissioner Jessica Rosenworcel has called the new plans a way to "favor cable and telephone companies" instead of ordinary citizens who use the internet every day. A vote to implement the new plans by the five-member panel of commissioners is now scheduled for December 14, 2017. LEARN MORE, LEARN MORE

Policy Summary

On April 26, 2017, FCC Chairman Ajit Pai announced a vote scheduled for May 2017 to decide whether to overturn FCC rules adopted on February 26, 2015, more commonly known as Net Neutrality regulations. The regulations established that broadband providers may not use their networks to [1] block access to legal content, applications or services, [2] impair or degrade lawful Internet traffic on the basis of content, applications

or services (known as “throttling”) and [3] favor some lawful Internet traffic over others based on amounts of monies paid (known as “paid prioritization”). The regulations were originally implemented in order to ensure an Open Internet. LEARN MORE, LEARN MORE

Analysis

Chairman Pai’s scheduling of the vote has created a ferocious uproar. The Electronic Frontier Foundation (EFF), a nonprofit organization, released a statement criticizing the proposal, stating that there would be no option to prevent providers from “abusive blocking, privacy violations, throttling of Internet content and [the rise] of pay – to – play fast lanes.” Congresswoman Nancy Pelosi (D-CA) also chimed in, warning that without the current rules the Internet would become a place favoring those with the deepest pockets, and not necessarily the best ideas. Chairman Pai’s proposal is a troubling move because it gives the service providers the potential to have ultimate control over, and maybe even censor, content and websites that consumers want to view online in favor of content that service providers prefer. LEARN MORE, LEARN MORE

Engagement Resources

- Federal Communications Commission (FCC) Solicitation of Comments On Policy – FCC website to submit comments on Chairman Pai’s proposal to overturn 2015 Net Neutrality regulations.
- Electronic Frontier Foundation (EFF) – foundation focused on defending your rights in the digital world.
- Electronic Privacy Information Center (EPIC) – research center dedicated to online privacy and civil liberty issues.

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The Use of Search Warrants And Cellphone Location Tracking Information

Supreme Court Case
November 28, 2017

Summary

Carpenter v. United States is a case before the current term of the United States Supreme Court that is examining the issue of whether a warrantless search of cell phone records, including the location of and movement of the cell phone user, is a violation of a person’s Fourth Amendment right against an unreasonable search. Timothy Carpenter and Timothy Sanders were involved in a crime spree where they robbed numerous Radio Shack and T-Mobile stores in the Michigan and Ohio area. Law enforcement investigators wanted to place the men physically near the robberies. The investigators did not request a criminal search warrant but used a disclosure order that

does not require the use of a warrant. They ended up acquiring acquired one hundred twenty – seven (127) days of cellphone tower information in order to place Mr. Carpenter within the vicinity of four robberies over a five-month period. This information was used to convict Mr. Carpenter who subsequently received a one hundred sixteen (116) year sentence. The United States Court of Appeals for the Sixth Circuit upheld the conviction and the case was appealed to the Supreme Court. LEARN MORE, LEARN MORE

Analysis

This case is an important case because it is seen as a test on how far the government can intrude into the privacy of our digital devices in criminal cases. Cell phones are no longer only phones. A person's physical location can be determined by tracking the signal of his or her cellphone through cell tower records. This is troublesome from a privacy viewpoint because the information, if retrieved without a warrant, has the ability to pinpoint a person's location at all times. The idea that a person can always be tracked through their cell phone destroys any sense of privacy even when a person may not be engaging in criminal behavior on other days. Nathan Freed Wessler of the American Civil Liberties Union (ACLU) argued before the court that "warrantless tracking should [have a time limit] of 24 hours" but that anything after that should require the cops to obtain a warrant to get cellphone location tracking information from wireless service providers. In a case from 2012, the Supreme Court ruled that law enforcement must get a warrant to use a GPS device on a suspect's car to track his movements. And in 2014, the court ruled that a warrant was required to search the contents of a cellphone after the phone has been seized. Having a twenty – four (24) hour limitation as suggested by Mr. Wessler seems an appropriate limitation, as it is consistent with these recent Supreme Court cases on a person's reasonable expectation of privacy which a person should also have with regard to their cell phone records and how it pinpoints their location. The suggestion made by the ACLU in this case is the best course of action in order to keep privacy rights up to date with evolving personal digital habits. LEARN MORE

Engagement Resources

- American Civil Liberties Union (ACLU) – info page on *Carpenter v. United States* case.
- Electronic Privacy Information Center (EPIC) – info page on "locational privacy" issues.
- Electronic Frontier Foundation (EFF) – info page on "cell tracking" issues.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

The House of Representatives Vote on Extension of the Foreign Intelligence Surveillance Act and Proposed Privacy Protections For Americans

House of Representatives Action
January 11, 2018

Summary

On January 11, 2018, the House of Representatives voted on two bills regarding warrantless surveillance programs in the United States. S.139, popularly known as the FISA Amendments Reauthorization Act of 2017 was approved by the House by a vote of 256 – 164. That bill reauthorizes FISA for an additional six years and does not make any substantive changes to the law. Another bill, known as the USA Rights Act, proposed stricter limits and additional protections and was introduced as an amendment that would have replaced the text of S.139. However, this amendment failed by a vote of 183 – 233. LEARN MORE, LEARN MORE

Analysis

The vote on the two bills taken by the House of Representatives was a double-dose of disappointment. First, the approval of S.139 is an approval and extension of FISA without any substantive changes to the law at all, especially the controversial Section 702. That law was initially designed to collect electronic communications of a foreign target (person) so long as that target was overseas. However, the sweeping up of these electronic communications inadvertently collected the communications of U.S. citizens that were then stored in a database. Even if an American citizen was not targeted for surveillance, the accumulation of their electronic communications was allowed to be retained in this database and made available for search without a warrant by law enforcement and national security agencies. The disappointment of the House vote is that the law was renewed without any changes addressing the concerns of this surveillance program and its effect on American citizens.

What made the day even more frustrating was that the House had an amendment before it that contained proposals to improve Section 702 and other surveillance programs and instead the chamber voted to not approve the amendments. The USA Rights Act offered substantive reforms that would have fixed some of the troubling aspects of Section 702. Specifically, the USA Rights Act would not allow a search into the Section 702 database of American citizens without a warrant. And it would have banned the controversial “about” search clause that allows the government to look at any electronic communication of an American if their name is mentioned in the communication even if the citizen did not send or receive the message. The House of Representatives had a real chance to improve the surveillance program but instead voted down much needed changes and simply rubber stamped the original statute without addressing the known defects. The bill will now be sent to the Senate where it is expected to pass. LEARN MORE, LEARN MORE, LEARN MORE

Engagement Resources

- American Civil Liberties Union (ACLU) – statement on House vote.

- Electronic Frontier Foundation (EFF) – description of USA Rights Act voted down by the House.
- Brennan Center for Justice – factsheet on government surveillance programs.

This brief was compiled by Rod Maggay. If you have comments or want to add the name of your organization to this brief, please contact rod@usresistnews.org.

Consumer Financial Protection Bureau De-emphasizes Racial Discrimination Investigations

Federal Agency Action
January 30, 2018

Summary

On January 30, 2018, Acting Director Mick Mulvaney of the Consumer Financial Protection Bureau (CFPB) announced to staff that he would transfer the Office of Fair Lending and Equal Opportunity (OFLEO) from the Division of Supervision, Enforcement and Fair Lending (SEFL) to the Office of Equal Opportunity and Fairness (OEOF) which is under the direct control of the Director's Office in the CFPB. The CFPB was created in 2010 with the passage of the Dodd-Frank Act with specific instructions as to the structure and duties of each office within the bureau. Mr. Mulvaney, a former Republican Congressman from South Carolina, had previously opposed the creation of the agency and has been critical of it ever since. President Donald J. Trump later appointed him Acting Director of the CFPB in November 2017. LEARN MORE, LEARN MORE, LEARN MORE, LEARN MORE

Analysis

This decision by Acting Director Mick Mulvaney is a curious one. The Office of Fair Lending and Equal Opportunity (OFLEO) – the office that the Director is transferring – was a highly successful unit. The agency was established in the wake of the financial crisis of 2007 – 2008 and is tasked with consumer protection in the financial sector with mortgages, credit cards, student loans, debt collection and payday loans given priority for investigation and enforcement. In 2014, CFPB ordered GE Capital to pay $225 million to consumers because of racially discriminatory credit card practices. There were also other incidents of racial discrimination in mortgage pricing and lending practices. The move of this active unit raises eyebrows because it is being placed in an office of the director that handles personnel initiatives for people who work at the CFPB. The Office of Equal Opportunity and Fairness (OEOF) does no enforcement work at all and is focused only on initiatives that arise inside the bureau. It does not make sense to move a unit that aggressively pursued third-party banks, credit unions, lenders and other financial firms and reorganize the unit into the agency's personnel section. The obvious answer is that Mr. Mulvaney is moving to minimize the importance of fair lending for the benefit of these financial institutions. That leaves an obvious hole and

raises the question as to who will continue to investigate and correct racial discrimination abuses that the OFLEO had discovered in the past. The Dodd-Frank Act that created the CFPB mandated the creation of the OFLEO and that it "provide oversight and enforcement of Federal laws…to ensure fair, equitable, and non-discriminatory access to credit." It will be difficult to see how this will occur when the unit charged with that task is unable to continue because of Mr. Mulvaney's questionable actions. LEARN MORE, LEARN MORE, LEARN MORE

Engagement Resources

- Consumer Federation of America – info page supporting the work of the Consumer Financial Protection Bureau.
- American Civil Liberties Union (ACLU) – info page on race and economic justice (issuance of predatory loans and abusive mortgage practices).

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The Effects of and a Possible Solution to the Problem of Partisan Gerrymandering

Upcoming Supreme Court Case

Policy Summary

On September 12, 2017, the United States Supreme Court issued a ruling that temporarily prevented implementation of a federal district court ruling that found state electoral districts in Texas were illegally drawn to suppress minority voters. This ruling comes on the heels of the U.S. Supreme Court's June 2017 decision to agree to hear a case from Wisconsin, *Whitford v. Gill*. That case is similar to the case from Texas in that voters are challenging the way a state draws its electoral districts because of the way certain groups of voters are favored over other groups of voters in order to give one party (in both states, the Republican Party) an unfair and even unconstitutional advantage over the other political party. LEARN MORE, LEARN MORE, LEARN MORE

Analysis

Gerrymandering is an American political tactic that dates back nearly 200 years. The premise is simple – to draw state electoral districts and congressional districts in such as a way as to ensure that a candidate of a particular political party will have a very good chance of winning. Districts are constitutionally required to be roughly equal in terms of population, and they usually are, but the unusual shapes of certain districts – with elongated arms and hooks that curve around illogically – are often intentionally drawn that way so as to favor Republican or Democratic candidates.

The current problem, as illustrated by the Texas and Wisconsin cases, is that the drawing of electoral districts are being manipulated and not representative of how the electorate is voting in the state. For example, in Wisconsin Republican legislators re-

drew the state electoral map after they came to power in 2010. When the 2012 election came around Republicans in Wisconsin won 49 percent of all votes cast statewide in congressional elections but ended up winning 63 percent of the congressional seats. In this map of recent trends, the states of Michigan, North Carolina, Pennsylvania and Wisconsin show more Democratic votes than Republican overall but less Democratic congressional seats. Why are states that have more Democratic voters sending fewer Democrats and more Republicans to Congress? The answer lies in which political party is currently in power and how they choose to draw the electoral maps of their state. The hope is that the Supreme Court will take the *Whitford v. Gill* case and articulate a framework to determine when "gerrymandering" crosses the line and becomes unconstitutional. Each and every vote should count and should be reflective of what the electorate wants instead of allowing the process to be manipulated by legislative leaders in order to suppress votes from minority communities and keep their party in power. LEARN MORE, LEARN MORE

Engagement Resources

- Campaign Legal Center – nonprofit webpage on redistricting cases.
- Brennan Center for Justice – nonprofit group info page on redistricting and gerrymandering.
- Common Cause – nonprofit group's information page on redistricting reform campaigns nationwide.

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Religious Freedom and Representative Kennedy's Proposed "Do No Harm" Amendment

Presidential and Attorney General Directive
October 6, 2017

Summary

Last year on May 18, 2016, Representative Joseph Kennedy III (D-MA) introduced an amendment to the Religious Freedom Restoration Act (RFRA) of 1993. That statute provides that "Government shall not substantially burden a person's exercise of religion." The proposed amendment was referred to a congressional committee but no action was taken on it. On July 13, 2017, Representative Kennedy reintroduced the same amendment to the statute again in Congress. The amendment introduced by Representative Kennedy is popularly known as the "Do No Harm Act" and would clarify the RFRA to provide that no person can use the religious exemption of the law to deny another person fundamental civil and legal rights. On October 6, 2017, Attorney General Jeff Sessions issued a directive to all federal government agencies that said, "religious

observance and practice should be reasonably accommodated in all government activity." LEARN MORE, LEARN MORE, LEARN MORE, LEARN MORE

Analysis

In recent years, opponents of women's reproductive rights, same-sex marriage and LGBT issues have tried to resist complying with government laws designed to protect people who would otherwise be vulnerable to discrimination because of these issues. In 2014, the Supreme Court decided Burwell v. Hobby Lobby, which allowed a company to opt out of mandated contraceptive insurance because of religious beliefs. And in a highly anticipated Supreme Court case, the court will examine the case of a baker who refused to bake a wedding cake for a same-sex couple because it went against his religious beliefs.

These cases illustrate an alarming trend – how more and more people are relying on religious beliefs and the RFRA in order to not comply with laws they do not personally agree with. It is becoming, in effect, a license to resist and discriminate against abortion laws, same-sex marriage and other LGBT issues. How long before this rationale is extended to discriminate against minorities and even other viewpoints? This is why Representative Kennedy's "Do No Harm" bill should be approved. In an inspiring speech promoting it Representative Kennedy said:

"Inherent in our nation's right to religious freedom is a promise that my belief cannot be used to infringe on yours or do you harm. The Religious Freedom Restoration Act was intended to protect against such distortions of faith, not to justify them. Unfortunately, in recent years, that legislation has been used as cover to erode civil rights protections, equal access to health care and child labor laws. In the face of mounting threats from an Administration that continues to back away from civil rights protections, the Do No Harm Act will restore the sacred balance between our right to religious freedom and our promise of equal protection under law."

The "Do No Harm Act" is the right mindset and the right approach to oppose this alarming trend. This amendment is not a restriction on religious freedom. It still protects the Freedom of Religion and a person's ability to worship as they see fit. What it does is ensure that those religious beliefs do not deprive other persons their right to full participation in American society. LEARN MORE, LEARN MORE

Engagement Resources

- American Civil Liberties Union (ACLU) – non – profit group's webpage statement on Do No Harm Act bill.
- Human Rights Campaign – non – profit group's info page analyzing the Do No Harm Act bill.
- Protect Thy Neighbor – non – profit group advocating the separation of church and state and its analysis and support of the Do No Harm Act bill.

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Senate and House of Representatives Joint Resolution Repealing Online Privacy Protections For Customers of A Telecommunications Service Carrier

Proposed Congressional Legislation
Approved by the Senate on March 23, 2017
Approved by the House on March 28, 2017

Policy Summary

In the United States Congress, a joint resolution was introduced that seeks to overrule a prior regulation promulgated by the Federal Communications Commission (FCC). On January 3, 2017, the "Protecting the Privacy of Customers of Broadband and Other Telecommunications Services" went into effect implementing rules that would [1] protect customer proprietary information (personal information) and [2] require customer approval requirements for the use and disclosure of a customer's personal information by the service carrier. The resolution introduced in Congress states that "Congress disapproves of the rule submitted" and "such rule shall have no force or effect." The Senate approved the resolution on March 23, 2017, by a 50 – 48 vote. The House of Representatives passed a companion resolution on March 28, 2017, by a 215 – 205 vote. The bill has now been sent to President Trump who is expected to sign the bill. LEARN MORE

Analysis

The proposed legislation is a step in the wrong direction. The effect of nullifying the FCC rule is that service carriers who provide a platform for people to go online now have no limits on what they are permitted to do with the personal information they collect from their customers. A customer's personal information (name, address, phone numbers and the content of their communications) can be used to identify specific people and reasonably link them to the information they view and download on the Internet. Without the protection of the FCC rule, service carriers can distribute and/or sell the information which will expose customers to unwanted target advertising as well as increased instances of identity theft and criminal stalking. LEARN MORE

Engagement Resources

- Electronic Frontier Foundation (EFF) – foundation focused on defending your rights in the digital world.
- Electronic Privacy Information Center (EPIC) – research center dedicated to online privacy and civil liberty issues.

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Senate Bill 823 Against Warrantless and Random Searches of American Citizens Digital Devices At U.S. Border Crossings

Proposed Congressional Legislation
Proposed April 4, 2017

Policy Summary

On April 4, 2017, Senator Ron Wyden (D-OR) introduced in the U.S. Congress the "Protecting Data At The Border Act." The bill is aimed at protecting the privacy rights of Americans as they exit or re – enter the United States with regard to their personal electronic devices and the personal information contained on those devices. The bill, if passed, would [1] require a warrant based on probable cause for a border agent to search a device and [2] prohibit law enforcement officials from delaying or denying entry to the U.S. by persons who refuse to hand over to border law enforcement officials their device PIN numbers, passwords and social media account information. LEARN MORE, LEARN MORE

Analysis

Senate Bill 823 is a needed new law because of the potential for abuse and the protections it promises to provide to American citizens. In 2016, Department of Homeland Security data showed nearly 25,000 incidents of cell phone searches by border agents. This was an increase from the 5,000 incidents in 2015. The Fourth Amendment provides against "unreasonable searches or seizures" and yet searches at the border constituted nothing more than agents thumbing through photos, text messages, and apps containing highly sensitive personal information, such as banking and health information. The search of digital devices of foreign nationals can still occur but Senator Wyden's bill is properly narrow in that it implements protections for Americans and requires a more substantial connection to criminal activity to search. This will ensure that Americans are not subject to random searches of their digital devices when crossing a United States border. LEARN MORE, LEARN MORE, LEARN MORE

Engagement Resources

- White House Petition – petition to urge Congress and the White House to pass Senate Bill 823.
- Electronic Frontier Foundation (EFF) – foundation focused on defending your rights in the digital world.
- Electronic Privacy Information Center (EPIC) – research center dedicated to online privacy and civil liberty issues.

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