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# How the USA PATRIOT Act redefines "Domestic Terrorism"

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December 6, 2002

Section 802 of the USA PATRIOT Act (Pub. L. No. 107-52) expanded the definition of terrorism to cover ""domestic,"" as opposed to international, terrorism. A person engages in domestic terrorism if they do an act ""dangerous to human life"" that is a violation of the criminal laws of a state or the United States, if the act appears to be intended to: (i) intimidate or coerce a civilian population; (ii) influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping. Additionally, the acts have to occur primarily within the territorial jurisdiction of the United States and if they do not, may be regarded as international terrorism.

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Section 802 does not create a new crime of domestic terrorism. However, it does expand the type of conduct that the government can investigate when it is investigating ""terrorism."" The USA PATRIOT Act expanded governmental powers to investigate

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terrorism, and some of these powers are applicable to domestic terrorism.

The definition of domestic terrorism is broad enough to encompass the activities of several prominent activist campaigns and organizations. Greenpeace, Operation Rescue, Vieques Island and WTO protesters and the Environmental Liberation Front have all

recently engaged in activities that could subject them to being investigated as engaging in domestic terrorism.

One recent example is the Vieques Island protests, when many people, including several prominent Americans, participated in civil disobedience on a military installation where the United States government has been engaging in regular military exercises, which these protesters oppose. The protesters illegally entered the military base and tried to obstruct the bombing exercises. This conduct would fall within the definition of domestic terrorism because the protesters broke federal law by unlawfully entering the airbase and their acts were for the purpose of influencing a government policy by intimidation or coercion. The act of trying to disrupt bombing exercises arguably created a danger to human life - their own and those of military personnel. Using this hypothetical as a starting point, we will go through the USA PATRIOT Act and explore the new governmental powers that could be brought to bear on Vieques Island protesters whose conduct falls within the overbroad definition of domestic terrorism.

**Seizure of assets - Sec. 806:** Section 806 of the Act could result in the civil seizure of their assets without a prior hearing, and without them ever being convicted of a crime. It is by far the most significant change of which political organizations need to be aware. Section 806 amended the civil asset forfeiture statute to authorize the government to seize and forfeit: all assets, foreign or domestic (i) of any individual, entity, or organization engaged in planning or perpetrating any act of domestic or international terrorism against the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization or (ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing an act of domestic or international terrorism against the United States, citizens or residents of the United States or their property or (iii) derived from, involved in, or used or intended to be used to

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commit any act of domestic or international terrorism against the United States, citizens or residents of the United States, or their property.

This language is broad enough to authorize the government to seize any assets of any individuals involved in the Vieques Island protests or of any organization supporting the protests of which the person is a member, or from any individuals who were supporting the protesters in any way. Possible supporters of the protesters could include student organizations that sponsored participation in the demonstration, the Rainbow/Push Coalition, the Rev. Sharpton's National Action Network, and religious or community organizations that provided housing or food to the protesters.

The civil asset forfeiture power of the United States government is awesome. The government can seize and/or freeze the assets on the mere assertion that there is probable cause to believe that the assets were involved in domestic terrorism. The assets are seized before a person is given a hearing, and often without notice. In order to permanently forfeit the assets, the government must go before a court, but at a civil hearing, and the government is only required to prove that the assets were involved in terrorism by a preponderance of the evidence. Because it is a civil proceeding, a person is not entitled to be represented by an attorney at public expense if they cannot afford to pay an attorney. The time between seizure and forfeiture can sometimes be months; meanwhile, organizations or individuals whose assets are seized are forced to make do without the assets. Only the most financially flush non-profit organizations would be able to successfully defend themselves against government forfeiture. In short, without the full due process afforded in criminal cases, the U.S. government can bankrupt political organizations it asserts are involved in domestic terrorism.

**Disclosure of educational records - Sec. 507:** This provision of the USA PATRIOT Act requires a judge to issue an order permitting the government to obtain private educational records if the Attorney General or his designee certifies that the records are necessary for investigating domestic or international terrorism. No independent judicial finding is required to verify that the records are relevant. This means that the Attorney General may obtain the private educational records of a student involved in the Vieques protests by asserting that the records are relevant to a domestic terrorism investigation. These records may include information such as a student's grades, private medical information (counseling, abortions), which organizations the student belonged to,

or any other information that the educational institution collects about its students.

### **Disclosure of information from National Education Statistics Act -**

**Sec. 508:** This provision of the USA PATRIOT Act requires a judge to issue an order for the government to obtain educational records that have been collected pursuant to the National Education Statistics Act. NESA includes a vast amount of identifiable student information from academic performance to health information, family income, and race. Until now, this information has been held to strict confidentiality requirements without exception. Again, all the government needs to certify is that the information is relevant to a terrorism investigation and the court has no choice but to issue the order.

**Single-Jurisdiction Search Warrants (Sec. 219):** This section of the USA PATRIOT Act amends Rule 41(a) of the Federal Rules of Criminal Procedure to authorize the government to go before a single Federal magistrate judge in any judicial district in which activities relating to the terrorism may have occurred, to obtain a warrant to search property or a person within or outside the district. This means that the government could go to a single judge to get a warrant to search the property or person of the Vieques activists in New York, Chicago, California, or wherever else the protesters were from. If the government chose to go before a magistrate in New York, a person in California, who wished to seek to have the warrant quashed because he or she believed it was invalid, would have to find a way to appear before the New York court that issued the warrant. This would be a daunting task for most.

### **Post-PATRIOT Act Laws**

Since passage of the PATRIOT Act, two other new laws have passed that implicate domestic terrorism.

**Taxpayer Information** - 26 U.S.C.A. Sec. 6103(i)(3)(C) requires the Secretary of the Internal Revenue Service to provide taxpayer information to the appropriate Federal law enforcement agency responsible for investigating or responding to the terrorist incident. If abused, this provision could be used by law enforcement to gain access to confidential taxpayer information of political protesters.

**Regulation of biological agents and toxins** - 42 U.S.C.A. Sec. 262a and 7 U.S.C.A. Sec. 8401 regulate biological agents and toxins. If a person is involved

with an organization that engages in domestic or international terrorism, he or she is not permitted to gain access to these regulated agents. Under the law, the Attorney General identifies individuals involved in ""terrorism"" to the Department of Agriculture. Once the person is listed, he or she cannot get access to any of the regulated agents or toxins. This provision will probably not impact most people, however, it might impact someone such as a scientist who might regularly use biological agents or toxins in their work.

**Conclusion** - The ACLU does not oppose criminal prosecution of people who violate the law, even if they are doing it for political purposes. However, we do oppose the broad definition of terrorism and the ensuing authority that flows from that definition. One way to ensure that the conduct that falls within the definition of domestic terrorism is in fact terrorism is to limit the scope of the conduct that triggers the definition. Thus, domestic terrorism could include acts which ""cause serious physical injury or death"" rather than all acts that are ""dangerous to human life."" This more narrow definition will exclude the conduct of organizations and individuals that engage in minor acts of property damage or violence.



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