



IndivisibleEB.org

Senator Dianne Feinstein
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To: Senator Dianne Feinstein
From: Indivisible East Bay
Date: June 13, 2018
Subject: Resisting the Trump Agenda (Criminal Justice Reform)

Algorithmic Bias: We were encouraged to see the senator co-sponsored Senator Grassley's Sentencing Reform and Corrections Act of 2017[1] and that it has a lot of bipartisan support. We have some concerns about the current bill and wish to strengthen some of the proposed reforms, especially the use of software that determines the risk of recidivism and thus determines sentencing. We are concerned that there isn't a path to appeal the software's[2] outputs, that there is lack of requirements for testing of the software's output as well as a review of the software systems' source code and input data and how those might unintentionally encode bias[3]. We'd like to see more concrete safeguards against bias as part of any reform initiative. In order to adjust the assessment system to "reduce such disparities to the greatest extent possible," S.1917 Sec. 203(a) [1] giving text of proposed 18 USC sec.3621A(b)(1)(D)(ii), we believe it's necessary to investigate the issue of algorithmic bias and amend any proposed law to include such requirements as periodic public review of algorithms and associated software development processes and input data.

Questions:

- Has the senator looked into the issue of algorithmic bias?
- Will the senator call for an SJC hearing on algorithmic bias in criminal procedure and ways to address it?
- If the bill moves forward, would she offer amendments to address the above issues?

Police Brutality and "Black Identity Extremists": A leaked report from the FBI's counterterrorism division, dated August 2017, categorizes black activists protesting police brutality as a domestic terror threat intent on retaliatory lethal violence against law enforcement. Black law enforcement officers[4] consider this an ill-advised practice and members of the Congressional Black Caucus[5] have raised concerns about this in a recent hearing. We know of at least one case resulting from profiling and surveillance based on this new categorization: the raid, arrest, and jailing[6] of a black activist by the name of Rakem Balogun. To be clear, his only "crime" was a Facebook post criticizing police brutality but because he was designated a terrorist threat, he was denied bail and was jailed for five months, at the end of which the judge rejected the single charge brought against him.

Questions:

- Does the senator know how this new categorization arose and who ordered that FBI report?
- Is there an equivalent report about white identity extremists and their easy access to firearms?
- Will the senator request that the FBI report on the number of arrests and charges based on this new category?
- Does the senator know if the FBI or DOJ has put forward any guidance to state and local law enforcement about this new categorization?

Bail: Will Sen. Feinstein support eliminating cash bail? Has she looked at Sen. Harris' S.1593 Pretrial Integrity and Safety Act?

Overcounting of encrypted devices: Has the recent revelation that the FBI (due to software error) grossly overestimated[7] the number of encrypted devices by a factor of almost 6X affected Sen. Feinstein's view on the agency's call for encryption backdoors and other measures that we have concerns about because they could endanger end-users?

Civil Asset Forfeiture: Will there be an effort to reintroduce and pass anti civil forfeiture amendments that passed unanimously in the House, earlier last year[8], in the next spending bill?

Drug Policy: We were glad to see Sen. Feinstein change her position on cannabis, and we want her to help ensure that the industry successfully transitions to a legal business — and not become what the president of the California Urban Partnership (C.U.P.) has called “another cotton or sugar or tobacco where [Black people] work for free, where we do all of the jail time but reap none of the benefits.”

Questions:

-What are the next steps and how can we help?

-Will the Senator, like Sen. Harris, co-sponsor Cory Booker’s Marijuana Justice Act [9]?

Sources

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9. Booker C. Marijuana Justice Act of 2017 [Internet]. S.1689 Aug 1, 2017. Available from: <https://www.congress.gov/bill/115th-congress/senate-bill/1689>