REPORT

Is a Court Case in Texas the First Prosecution of a 'Black Identity Extremist'?

The FBI is looking for terrorists. Civil rights advocates say it is targeting people engaged in free speech.

BY MARTIN DE BOURMONT

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Christopher Daniels and his 15-year-old son awoke on Dec. 12, 2017, to heavily armed FBI agents outfitted in bulletproof vests and helmets pouring into the one-bedroom apartment they shared in Dallas, Texas. The pair were hurried outside, where they were separated while Daniels was arrested.

Items seized during the raid on Daniels's apartment included two firearms — a Taurus Protector Poly 38 Special and a Norinco AK-style assault rifle — items the government says he is prohibited from possessing due to a misdemeanor conviction in 2007 for domestic assault in Tennessee. Also seized was a book, *Negroes With Guns*, by Robert F. Williams, a civil rights leader and advocate of armed resistance to racial oppression.

Held outside in nothing but his underwear, Daniels was unaware that the raid occurring in his home was the product of more than two years of FBI surveillance.

Today, Daniels, known to many in his Dallas community as Rakem Balogun, stands indicted for unlawful possession of a firearm and has been in federal custody since his December arrest. Friends and family of Daniels believe the FBI targeted Daniels because of his political beliefs and anti-law enforcement rhetoric, rather than any legitimate threat he poses. They point specifically to a new government classification for domestic terror threats, which the FBI calls "black identity extremists."

The terrorism classification is used to describe individuals who resort to violence or unlawful activities "in response to perceived racism and injustice in American society," according to a copy of the report obtained and published by Foreign Policy.

"The [black identity extremist] classification has grown from a report on paper, to a national investigation of Black Lives Matter and and black gun ownership advocates," wrote Daniels's brother, Yafeuh Balogun, in a statement on the arrest. "Rakem Balogun has been classified as B.I.E, we must defend him."

"This is a continuation of COINTELPRO in a modern-day form," Balogun said in a telephone interview with FP, referring to J. Edgar Hoover's counterintelligence program, which targeted domestic political organizations, particularly those in the civil rights movement.

The FBI declined to comment on any aspect of Daniels's case, including whether he was tracked as a black identity extremist, but in interviews, civil rights advocates expressed concerns about the precedent of targeting African-Americans, like Daniels, for their

political activism, and using broad categories anchored in race to potentially criminalize speech and political activity.

For those involved in activism, Daniels's arrest poses the even more troubling possibility that his case could be just the first of many. Activist and attorney Kamau Franklin said people like Daniels are easy targets because of their nonmainstream politics. "This is obviously the first of what will be several attempts to begin to criminalize black organizing, militant black organizing in particular, and work their way down to other types of organizing," he said.

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Daniels came to the attention of the FBI's Dallas Division in March 2015, not for anything connected to weapons or crime, but because of InfoWars, a right-wing news website known for publishing conspiracy theories.

Video showing Daniels's appearance at a rally to protest police brutality showed up on various outlets including InfoWars, Aaron Keighley, an FBI special agent, said at Daniels's Dec. 15 detention hearing. (Keighley did not mention what those other outlets were.)

The demonstration took place in Austin, in front of the Texas State Capitol, and was meant simultaneously as a pro-Second Amendment rights demonstration and a rally against police brutality. The demonstration brought together members of the Huey P. Newton Gun Club and Guerilla Mainframe, a group that promotes weapons training, fitness, and community service.

Daniels is a co-founder of Guerilla Mainframe and a founding member of the Huey P. Newton Gun Club, which promotes open carry, in which gun owners carry firearms that are visible. Open carry is legal in Texas.

Footage of the demonstration shows openly armed demonstrators chanting "oink oink bang bang" and "the only good pig is a pig that's dead."

The demonstration, reported on by *Reason* magazine, was described by the magazine as part of a long, if misunderstood, tradition of armed resistance in black communities against racial oppression.

Keighley, the FBI special agent, said during the detention hearing that Daniels's Facebook profile "openly and publicly advocates violence toward law enforcement."

During Daniels's detention hearing, Keighley also referred to Facebook posts Daniels made on accounts under the aliases Rakem Khafre Balogun and Rakem Khafre, in which he showed admiration for Tremaine Wilbourn, who is accused of killing a Memphis, Tennessee, police officer, and Micah X Johnson, who killed five police officers in Dallas in July 2016.

In one post, Daniels shared a *Dallas Morning News* article about how Johnson's actions were the result of America's failure to address racism, with the caption, "They deserve what they got. LMAO!"

Another post Daniels shared on the one-year anniversary of the shooting bore the caption: "Today, one year ago, one black man brought the Dallas Pig Department to their knees. #77."

Interviews with individuals close to Daniels suggest that the FBI was following other black activists he knew. Yafeuh Balogun, who has given interviews to numerous media outlets over the years explaining the right to gun ownership as a civil rights issue, told FP that FBI agents visited two of his workplaces over the past year.

The FBI investigation of Daniels also appeared to extend to Detroit.

Louis, a friend of Daniels who asked that his last name not be used, said that he purchased Daniels's plane ticket to visit Detroit in November. Two days before Daniels was supposed to arrive, a neighbor living next to a home address associated with Louis reported that a man in a black car arrived in the neighborhood with a picture of Daniels. Louis was not there, so the man proceeded to ask the neighbor questions about where Louis lived and where he was employed. A few days later, the man returned, asking the neighbor similar questions.

Lauren Hagee, the FBI's Dallas spokesperson, declined to comment on Daniels's investigation. Tim Wiley, the FBI's Detroit spokesperson, also declined to comment.

The FBI surveillance of activists connected to Daniels even extended to South Carolina. On Sept. 26, 2016, Johnathan Thrower, who goes by Shakem Amen Akhet, found out that two

FBI agents, William L. White — of the South Carolina Joint Terrorism Task Force — and Clinton F. Pierce, had dropped by his mother's house and left business cards. Thrower, who knows both Balogun and Daniels, said he contacted one the agents, who told him that he wished to speak with him in order to "close out" an investigation.

Thrower agreed to meet with agents that day. During their discussion, Thrower was asked to explain a Facebook post supporting open carry and suggesting that if open carry came to pass in South Carolina (open carry of a handgun is illegal in South Carolina), local communities would organize militias in order to protect themselves from police violence. The agents also seemed interested in ideological similarities between Daniels, Balogun, and Thrower.

Further questioning centered on what the agents allegedly characterized as "anti-police" rhetoric Thrower engaged in during protests in Charlotte, North Carolina, following the killing of Keith Scott by a police officer; protests surrounding the death of Walter Scott in South Carolina; any connection he may have to the New Black Panther Party; and discussions he engaged in with James Bessenger, chairman of the South Carolina Secessionist Party.

Contacted by FP to verify the details of the meeting, agents White and Pierce did not respond. Don Wood, an FBI public affairs official at the Columbia field office, which covers the entire state of South Carolina, declined to comment.

On Aug. 3, in the midst of of the ongoing investigation into Daniels and his associates, the FBI's counterterrorism division issued an internal report for law enforcement agencies warning about "black identity extremists." People affiliated with this movement threatened law enforcement officers with premeditated violence, motivated by a desire for revenge over "alleged police abuse," warned the report, which was obtained and published by FP in October.

As politicians and the media debated the usefulness and fairness of the "black identity extremist" classification, the FBI continued watching Daniels.

Law enforcement scrutiny of Daniels culminated with a trip Daniels took to Detroit for what an FBI affidavit describes as a "firearm-related training event" scheduled for Nov. 18, 2017. In his affidavit, Keighley describes learning that Daniels placed a firearm in his checked luggage — in compliance with airline regulations, according to the defense — which was then delayed, before being returned to his home address in Dallas.

The FBI obtained a search warrant on Dec. 7, based on Daniels's prior conviction, and the raid took place five days later.

In an email to FP, Daniels said his prior conviction was the result of a dispute with a girlfriend at the time; he also denied the charge. Daniels said that after a traumatizing experience in a small-town jail, he allowed a public defender to persuade him to plead guilty.

Daniels told FP he was unaware he was breaking federal law by having a weapon, and never tried to conceal his pro-gun stance. (In a motion to dismiss the indictment against Daniels filed on Jan. 24, Daniels's public defenders contested the charge, arguing that "domestic assault" as codified by Tennessee law does not categorically fit the federal definition of domestic violence that would prohibit him from owning a firearm.)

During his detention hearing, Daniels's court-appointed lawyer at the time, Lara Wynn, asked agent Keighley whether or not Daniels directed another individual to cause harm to a law enforcement officer, or if there was evidence Daniels specifically wanted to harm a law enforcement officer. Keighely's response to both questions was no.

The judge, however, found that Daniels threatened community safety and ordered that he remain in federal custody.

Residents and activists march in the streets amid heavy police and North Carolina National Guard presence as they protest the death of Keith Lamont Scott Sept. 23, 2016 in Charlotte, North Carolina. Scott, 43, was shot and killed by police officers at an apartment complex near UNC Charlotte. (Brian Blanco/Getty Images)

Whether or not Daniels is guilty of violating the law for owning a weapon, his case is cause for concern among civil rights advocates who monitor the FBI's use of domestic terrorism designations for potentially constitutionally protected activities. As far back as 2012, the American Civil Liberties Union noted its concerns about bias in FBI reports on "black separatists" and training materials that juxtaposed controversial speech and beliefs by present-day African-American groups with decades-old acts of violence by the Black Panthers.

Lee Rowland, a senior staff attorney with the ACLU's Speech, Privacy, and Technology Project, said that speech, even unpopular speech, is protected so long as it does not cross the line of creating an immediate risk of harm against a particular person or group of people. "Broadly giving governments the power to create a second class of people who receive more surveillance, more scrutiny, who have no leeway to make a single mistake in life, should trouble us," she said.

John Raphling, a senior researcher on criminal justice for Human Rights Watch's U.S. program, agreed with those concerns, saying that Daniels's political positions were protected under the First Amendment. "It is a concern that anyone who puts themselves out with a unpopular viewpoint is going to be subject to surveillance, and we don't know how many other people are subject to that surveillance," Raphling said. "This guy happened to get caught having a gun he wasn't supposed to."

Daniels's case also illustrates the large amount of discretion FBI agents have in determining who poses a threat, according to Mike German, a retired FBI agent and fellow at the Brennan Center for Justice's Liberty and National Security Program.

In 2008, the FBI introduced a new class of investigations called "assessments," which do not require a "factual predicate" to commence; it is up to the FBI agent to affirm to him or herself that his or her mission is pure. By classifying people, such as black activists, as part of a violent group, the FBI can tell itself that it's not profiling them because they're black or engaging in constitutionally protected speech.

"That's where this black identity assessment is important," German said. "It provides the additional element necessary."

Not everyone is convinced, however, that the FBI is singling out black Americans. JJ MacNab, a domestic terrorism expert, said that rhetoric of the sort employed by Daniels and appearing in public or on social media with guns would get anyone investigated, regardless of their race or affiliation. MacNab added that she was aware of FBI

investigations into the predominantly white American militia movement, saying that she did not believe there was a disproportionate focus on black groups.

But even MacNab said there was a disconnect in Daniels's case. "If someone is that much of a threat, why do you take two years to arrest?" she asked. "And then once you arrest them, they're so much of a threat that they can't possibly be let out … either arrest them sooner or let them out pending trial."

Cases like these also demonstrate the dangers of implicit bias in law enforcement and run the risk of criminalizing legal speech, said Paul Butler, a former prosecutor and Georgetown University law professor. Even if the FBI admitted that they began investigating Daniels because they disapproved of his ideology, they would not have violated any federal law.

"When law enforcement agents have a large amount of discretion, black men will bear the cost of that," he said.

For the activists who worked with Daniels, the potentially stifling effects of his arrest can already be seen. In a Jan. 16 email, John Nicholson, Daniels's court-appointed attorney, warned Gina Smith, an attorney who briefly acted as a go-between for allies of Daniels and Nicholson, about his concern over supporters who held a demonstration outside a federal courthouse.

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Nicholson told Smith such demonstrations — some demonstrators wore masks and engaged in legal open carry — would harm efforts to have Daniels's detention order revoked. "The District Court will have to presume that, if released, Christopher will go right back to associating with these folks," he wrote.

In response to queries from FP, Nicholson declined to comment on any aspect of the case.

On Jan. 24, Nicholson filed another motion appealing the magistrate judge's detention order.

In the motion, Nicholson writes that Daniels's constitutionally protected speech, which he refers to as the case's "elephant in the room," does not provide any basis for his pretrial

detention. The government filed an objection to this motion, citing Daniels's social media posts and rhetoric as examples of his "state of mind."

While not the basis of a charge against him, Daniels's speech and social media postings demonstrate his release would threaten community safety, the U.S. Attorney's Office argued.

Daniels has now spent more than a month in prison, initially at the federal detention center in Mansfield, Texas, before being transferred to the federal correctional institution in Seagoville, Texas. A trial has been set for Monday, March 26.

If convicted, Daniels could face up to 10 years in prison.

In an email to FP from prison, Daniels said that while he cannot predict the outcome of his case, he plans to stay away from guns upon release. If he does get out, he said, his plan is to return to school and continue spending time with his children.

Daniels, who said that he stopped protesting police brutality in 2016 to focus his energy on work and other types of community service, expressed disbelief at his situation. "I never expected that this would happen to me."

Top photo: A photo from Christopher Daniels's Facebook page, dated Dec. 9, 2017.

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