

# SECURITY NEWSLETTER JANUARY 2021

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## **COULD CAPITOL RIOTERS FACE SECURITY CONCERNS?**

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When the Capitol Hill riots took a dangerous and unlawful turn this week, questions began to arise concerning what negative repercussions may face attendees of the riot or those who breached the Capitol grounds. As photos spread, some faced criminal charges, and others were immediately laid off by their employers. What remains uncertain is if any of them are active security clearance holders, and if anyone could lose their security clearance or national security job in response to their participation.

When it comes to security clearance concerns related to the riots, there are two major factors at play: Allegiance to the United States and Criminal Conduct.

Working in national security is one of the few careers where you may find yourself being asked: “*Have you ever* advocated (either directly or indirectly) the *overthrow* of any *government* by force or violence?” Even the average security clearance holder probably doesn’t meditate often on the question, but you should be prepared to answer it if you have an active clearance, potentially in the course of a polygraph examination.

The Allegiance to the United States adjudicative criteria is rarely used to deny a security clearance. In fact, among 2020 security clearance denials, Allegiance to the United States was never once used in a security clearance denial. For those attending the Capitol Hill protests, a security clearance denial based on the Allegiance to the United States adjudicative criteria would have to prove that the individual was attempting to or desired to overthrow the U.S. government in their actions. That is a difficult burden to prove, and a big reason why you don’t see it frequently referenced in clearance denials.

## Capitol Breach = Criminal Conduct

The bigger issue and more likely cause of security clearance denial or revocation would be criminal conduct. As we've previously discussed at ClearanceJobs.com, security clearance holders don't check their first amendment rights at the door. An individual can peacefully protest for a variety of causes, even if they work for the government or have a security clearance. The greater issue is when a protest turns from peaceful to criminal in nature, which is what happened this week. An arrest, even for a misdemeanor, can cause security clearance issues.

## Your Right to Protest



Over the past week, thousands of Americans have taken to the streets to protest police brutality and racial inequality. The First Amendment to our Constitution guarantees that everyone may peaceably assemble and “petition the government for a redress of grievances.” Federal employees have just as much right as other Americans to exercise that right to join in these protests and rallies, to donate to political and charitable causes, and to share opinions on their personal social media accounts. However, in order to insulate the civil service system from partisan politics, Congress has enacted the Hatch Act, which places some limits on the political speech of federal employees.

Can I join a protest in person?

Yes! As long as you are not wearing insignia that makes it appear that you are participating in an official government capacity, you are allowed to participate in peaceful demonstrations. You should not drive a government owned vehicle to a protest. However, remember as an employee with a security clearance you should be especially careful to follow instructions given by law enforcement officers while attending these protests. An arrest, even a baseless one where the charges are later dropped, would need to be reported to the cleared employee's security office and could cause complications during a clearance investigation.

## Any Questions? Please contact us:

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