

ARAB AMERICAN INSTITUTE

POST 9/11 CIVIL RIGHTS AND LIBERTIES

Background

Civil liberties are personal freedoms granted to all United States (U.S.) citizens by the U.S. Constitution; these include freedoms of speech, assembly, religion, right to privacy, right to a fair trial, and equal protection under the law. For minority and immigrant communities in the U.S., however, these rights are not always applied equally and consistently. Numerous individuals within these population subsets are subject to arbitrary profiling and unlawful surveillance on the basis of race, ethnicity, religion, or national origin.

In June 2001, Rep. John Conyers (D- MI) and Sen. Cardin (D-MD), introduced the End Racial Profiling Act (ERPA), which received strong bipartisan support. After the September 11th attacks, however, the legislation quickly died, and a number of initiatives linked to our national security emerged, giving rise to the profiling of Arab Americans and American Muslims. Both the communities at large and their members individually have been subject to heightened scrutiny from law enforcement officials. Beyond targeting Arab Americans and American Muslims, these current practices and policies violate the civil liberties of American citizens; perpetuate the institutionalization of racial, ethnic, national origin, and religious profiling; squander much needed resources on ineffective strategies; and ultimately result in a failure to identify genuine threats to homeland security.

In December 2014, the Department of Justice released long awaited revisions to its original 2003 Guidance on the use of profiling by federal law enforcement officials. The “Guidance” spells out exactly what considerations federal law enforcement agencies are prohibited from using for profiling practices, and how they are allowed to use those considerations. The 2014 revisions made to the Guidance expanding the considerations law enforcement officers are prohibited from using to include - in addition to race and ethnicity - gender, religion, and national origin were a step in the right direction. But the revisions failed to close critical national and border security loopholes. The Guidance continues to permit federal enforcement agencies to gather vast amounts of data on individuals; to map communities based on race, ethnicity, or religion; and to recruit informants based on race, religion, or national origin without any known connection to criminal activity. It does not end the FBI’s permission to spy on Americans and intrude on their houses of worship. The Guidance fails to compel state and local law enforcement to follow federal standards, and the guidelines do not apply to any CBP operations or officers working within 100 miles of any U.S. border. Referred to as the “border security carve out,” this one stipulation alone permits arbitrary investigation of the nearly two thirds of the country that lives within 100 miles of the border.

The Problem

A wave of legislation following the September 11th attacks ushered in a new culture of government secrecy with the simultaneous abandonment of several core constitutional guarantees, including due process, privacy, and equal protection. Many of these laws target the Arab American and American Muslim communities, who are subject to widespread surveillance and detention.

- The USA PATRIOT Act, passed in October 2001 and renewed in 2006 and 2011, expands the federal government’s ability to conduct surveillance or authorize the detention of individuals with little oversight. Section 215 of the USA PATRIOT Act, which allowed for the bulk collection of telecommunication data, expired in June 2015. The USA Freedom Act was passed the next day and restored in modified form several PATRIOT Act provisions. A step in the right direction, the USA Freedom Act imposes limits on bulk data collection of citizens, but a complete reform of

government practices is needed. With the new limits on data collection, and Section 702 of FISA set to expire in 2017, now is the time to completely reform the government's practice of bulk data collection. Please refer to our issue brief on surveillance.

- In November 2001, Congress passed the Aviation and Transportation Security Act, tasking the newly established Transportation Security Administration (TSA) with all airport security measures and screenings. Recent reports have highlighted TSA's shortcomings, including a 96 percent failure rate at spotting weapons and explosives. TSA's methods and efficacy have also been questioned, with numerous claims against the agency for unreasonable search, seizure, and profiling travelers. Please refer to the issue brief on the TSA SPOT Program.
- Arab Americans continue to face profiling by law enforcement officers, including U.S. Customs and Border Protection (CBP) officers; this constitutes a breach of constitutional protections under the guise of national security.
- Federal intelligence agencies including the Federal Bureau of Investigation (FBI) utilized blatantly anti-Arab and anti-Muslim training materials, employed crude stereotypes of Arabs and Islam, and made fallacious assertions about the threat of "Sharia Law." As a result, the pivotal relationship between the intelligence community and the communities they protect was soured. Agents and officers who underwent training programs that included crude stereotypes must be retrained.
- Leaked reports about information sharing practices between the National Security Agency (NSA) and the Israeli SIGINT National Unit (ISNU) are concerning. In 2013, a report of a "Memorandum of Understanding" between NSA and ISNU revealed that ISNU receives unfiltered data on various communications, emails, and phone calls made by American citizens. Some of these communications include those made by Arab and Palestinian Americans domestically. These information-sharing practices violate the civil liberties of our community. Necessary safeguards must be implemented to protect Americans, regardless of background, against bulk data collection that can be utilized by foreign governments.
- Earlier this year the White House launched its multi-million dollar Countering Violent Extremism (CVE) initiative. CVE programs rest on the government's ability to predict who is vulnerable to using violent extremism - a theory that is notoriously unsophisticated, inexact, and lacks reliable indicators. By the government's own count, 95% of domestic terrorists are not Muslim or Arab, yet the Arab American and American Muslim communities have received the bulk of governmental anti-terrorism resources, rhetoric, study, and public media attention directed to it. The Obama Administration initially claimed that CVE would not exclusively focus on Arab Americans and American Muslims, but all of the evidence up to this point suggests otherwise. Community CVE programs that attempt to educate citizens about "extremist radicalization and recruitment" typically occur at mosques or Islamic community centers, making clear their intended target audience. CVE's singular focus on the American Muslim community has entrenched common misperceptions and contributes to the alienation of our community with local law enforcement and federal agencies. Chairman of the House Homeland Security Committee, Representative Michael McCaul (R-TX), introduced H.R. 2899 to reallocate funds for the purpose of creating an office within the Department of Homeland Security (DHS) to coordinate CVE efforts. This bill calls for \$40 million dollars to be allocated to this new department. A Government Accountability and Oversight investigation should be conducted into the merits and efficacy of CVE methodology prior to allocating additional government funds to these programs.

Moving Forward

- Congress must act on S.1056 and H.R. 1933, the End Racial Profiling Act (ERPA), banning ethnic, religious, national origin, and racial profiling by law enforcement at the federal, state, and local levels, and providing legal recourse for victims of such profiling.

- Pressure the Department of Justice to issue a second revision to the 2003 “Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.” The 2014 revisions were welcomed as an important step forward, but failed to close the vast national security and border security loopholes, or eliminate provisions that permit discriminatory profiling on the basis of ethnicity, religion, race, or national origin.
- In 2012, members of Congress and civil rights organizations called on the Department of Justice to investigate the NYPD’s surveillance of Arab American Muslims. Recent media reports found that the NYPD continues to target these communities as potential informants. The DOJ must open a federal investigation into these unconstitutional practices and announce a plan for reform.
- Legislative action needs to be taken to improve the process by which individuals who have been put on the Department of Homeland Security’s “Watchlist” or “Selectee List” are able to contest that designation. While the DOJ announced in early 2015 that they are making slight improvements to the redress process for the “No Fly List”, there continues to be fundamental issues of transparency about the criteria by which people are put on these lists.. Individuals on the selectee list continue to be denied due process and must endure enhanced screening and questioning at airports.
- Congress must implement increased oversight, accountability and transparency over the DHS, TSA, and CBP. Officers and agents need to be provided the training, support, and oversight needed to ensure that they and the communities they serve are safer.