

## 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 here in the U.S., however, these rights are not 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.

#### 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, detention, and deportation.

- 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.
- 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. TSA's methods and efficacy have been questioned, with numerous claims against the agency for unreasonable search, seizure and profiling travelers.
- 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.
- In August 2011, the Associated Press published an investigative report on the New York Police Department's (NYPD) counter-terrorism and surveillance programs that directly targeted Arab American Muslim businesses, mosques and communities in New York and New Jersey. The revelations of the breadth and depth of the NYPD's surveillance program were shocking. Not only is the NYPD's spying program and others like it illegal under the Constitution, they are ineffective and highly consequential to the communities they infiltrate. Not a single lead on terrorist

operations has resulted from NYPD's spying activities, and the erosion of trust between Arab Americans/American Muslims and the NYPD is undermining the greater safety of New York as well trust within the community itself.

- Federal intelligence agencies including the Federal Bureau of Investigation (FBI) utilize blatantly Anti-Arab and Islamophobic training materials, employing crude stereotypes of Arabs and Islam and fallacious assertions about the threat of "Sharia Law." As a result, the pivotal relationship between the intelligence community and the communities they purportedly protect has been soured. Further, agents and officers who underwent training programs that included crude stereotypes must be retrained.
- Through leaked press reports, we learned that Dearborn, Michigan - a city with less than 100,000 residents and home to the largest concentration of Arab Americans - has more watchlisted individuals than any other city in the U.S. except for New York. A city with such a small population having the second-highest concentration of people designated as "known or suspected terrorists" raises some serious concerns regarding the standards for inclusion on such lists. Watch lists raise significant civil liberties and privacy concerns and the placement of Dearborn on such a list, if true, would suggest that current watchlisting practices are based off of racial, ethnic, national origin, and religious profiling.
- Leaked reports about information sharing practices between the National Security Agency (NSA) and the Israeli SIGINT National Unit (ISNU) are concerning. This year, 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.

### Moving Forward

- Congress must act on 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.
- The Department of Justice's 2003 "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies" should be revised to clarify ambiguities, close the national security and border security loopholes, and eliminate provisions that permit discriminatory profiling on the basis of ethnicity, religion, race or national origin.
- Controversial provisions in counterterrorism legislation that have negatively impacted the civil liberties of Americans in the aftermath of 9/11 should be revisited to strike a better balance between safeguarding our national security and protecting our civil liberties. We call for the passage of the USA FREEDOM Act, introduced by Rep. Sensenbrenner (R-WI) in the House and Sen. Leahy (D-VT) in the Senate, which will end bulk collection of Americans' records under Section 215 of the Patriot Act, reform the Foreign Intelligence Surveillance Court, and increase transparency.
- The Department of Justice must follow through on its promise to investigate the NYPD's spying on Arab Americans and American Muslims. Members of Congress, including Rep. Mike Honda (D-CA) and Rep. Rush Holt (D-NJ), have requested numerous updates, but the Department of Justice has

yet to respond.

- Congress must implement increased oversight over training programs for the NYPD, FBI, and other law enforcement agencies.
- Congress must implement increased oversight, accountability and transparency over the DHS, TSA, and CBP. Recent news accounts reveal an unacceptable use of force, profiling, and detention of Americans by CBP officers at U.S. ports of entry. Officers and agents need to be provided the training, support, and oversight needed to ensure that they and the communities they serve are safer.
- Congressional action needs to be taken to improve the DHS's redress system and provide the means for individuals who have been placed on the Government's No-Fly List or Watch-Lists, to be able to contest any derogatory information submitted about them.