

In the name of God, the Most Compassionate, the Most Merciful.
All praise and thanks belong to God, the Lord of the Worlds.
May peace and prayers be upon Prophet Muhammad and his family.



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March 1, 2022

The Honorable Steve Cohen
Chairman
House Subcommittee on Constitution, Civil Rights, and Civil Liberties
U.S. House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Mike Johnson
Ranking Member
House Subcommittee on Constitution, Civil Rights, and Civil Liberties
U.S. House Committee on the Judiciary
2142 Rayburn House Office Building
Washington, DC 20515

RE: CAIR Statement for the Record: Addressing American Muslim Discrimination and Civil Rights Concerns

Dear Chairman Cohen and Ranking Member Johnson:

On behalf of the Council on American-Islamic Relations (CAIR), the nation's largest Muslim civil rights and advocacy organization, we thank the House Subcommittee on Constitution, Civil Rights, and Civil Liberties for hosting today's hearing on "Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities."

As the House Subcommittee on Constitution, Civil Rights, and Civil Liberties today explores the interrelated issues of discrimination and the civil rights of American Muslim, Arab American, and South Asian American communities – we request that you consider several of CAIR's recommendations on how committee can:

- 1) Repair the damage done by the Muslim ban.
- 2) Investigate the funding sources of anti-Muslim hate groups promoting Islamophobia
- 3) Support calls for the DOJ to investigate an anti-Muslim hate group accused of spying on American Muslim community organizations, and elected Muslim officials.
- 4) Reform the unconstitutional, discriminatory, and ineffective Federal Terrorism Watchlist.

1) Repair the damage done by Muslim and African Bans

First authorized on January 27, 2017, the Muslim ban was amended several times to place varying levels of discriminatory travel restrictions on mostly Muslim and African citizens and government officials from Burma, Eritrea, Kyrgyzstan, Libya, Nigeria, Iran, North Korea, Somalia, Sudan, Syria, and Tanzania, Venezuela, and Yemen.

In January 2020, CAIR welcomed President Joe Biden's termination — on his first day in office — of the previous administration's discriminatory Muslim and African Bans. However, CAIR believes that it is now the responsibility of the Biden administration and Congress for determining how to holistically address the damage already done by the Muslim ban and how to help those who were denied entry into the United States.

CAIR believes that the U.S. State Department's follow-up review of immigration processes, mandated by the executive order President Biden signed repealing the Muslim Ban, could have still done more to undo the damage caused by the Muslim Ban.

Over 41,000 visa applicants from the banned countries were denied as a result of the prior administration's travel bans. People who won their diversity visa were denied this once-in-a-lifetime opportunity for themselves & their families. They need new chance to claim their lost diversity visas.

Following the Biden administration's overturning of the Muslim Ban, the State Department should have automatically reconsidered, reopen, and expedite all immigrant and non-immigrant visa applications subject to the Muslim and African Bans that have not yet been granted, including those denied during FY 17 - FY 20.

These impacted visa applicants should have also been provided a new opportunity to supplement their previous applications, if necessary, for a complete review, and granted a final outcome of the review.

The State Department also failed to waive all new application fees for non-immigrant visas impacted by the Muslim and African Bans, treating these applications as not constituting final denials as of January 20, 2020, and reimburse travel expenses for those rejected under PP 9645.

That is why CAIR welcomed the House of Representatives' November 2021 adoption of the Build Back Better Act, which among other accomplishments would have:

- included \$100 billion to reduce visa backlogs;
- recaptured diversity visas lost to the Muslim ban and COVID travel restrictions; and,
- recaptured about 300,000 unused Family-Sponsored and Employment-Based visas from Fiscal Years 1992-2021.

That legislation remains stuck in the U.S. Senate awaiting consideration — just like the House passed “National Origin-Based Antidiscrimination for Nonimmigrants Act” or the “NO BAN Act.”

Introduced by Congresswoman Judy Chu and co-sponsored by 159 congressional Democrats, the NO BAN Act would also ensure no future president has the same authority to create another discriminatory travel ban like the prior administration's Muslim and African bans.

CAIR, the American Muslim community, and immigrant rights organizations remain disappointed that Republican leadership in the Senate continue to block consideration of both these bills.

We recommend that members of the House Subcommittee on Constitution, Civil Rights, and Civil Liberties continue to press their Senate colleagues on the importance of adopting the Build Back Better Act, its Muslim ban visa solutions, and the NO BAN Act.

In the meantime, we urge members of this committees to work with the Biden administration and State Department to grant humanitarian parole to those who won the diversity visa lottery from FY 17 through FY 22, but whose visas were not issued as a result of these bans.

2) Investigate the funding sources of anti-Muslim hate groups promoting Islamophobia

In January, CAIR released a new Islamophobia report titled "*Islamophobia in the Mainstream*," listing 35 charitable institutions and foundations that funneled almost \$106 million to 26 anti-Muslim groups between 2017-2019.¹ A copy of CAIR's report can be [found here](#).

This report shows that Islamophobic organizations remain active and continue to receive large sums of money through private family foundations and mainstream donor-advised funds that are ultimately used to spread misinformation and perpetuate stereotypes about Muslims and Islam.

The funders include household names such as Fidelity and Schwab and other faith based. They also include private family foundations such as the Adelson Family Foundation which contributes millions of dollars to support anti-Muslim activity.

Anti-Muslim hate groups listed in the report include: The [American Center for Law and Justice \(ACLJ\)](#), Gatestone Institute, Center for Security Policy, Middle East Forum, Middle East Media Research Institute, David Horowitz Freedom Center, Clarion Project, and the Investigative Project on Terrorism, among many others.

In 2010, ACLJ supported Oklahoma's "Save our State" Amendment, which aimed to prohibit state courts from considering foreign law or Sharia when constructing procedures. The amendment was later struck down in federal court and was found to be unconstitutional based on its potential to do harm to Muslims, a ruling that was upheld by the Tenth Circuit Court of Appeals in January 2012.

¹ Council on American-Islamic Relations, "Islamophobia in the Mainstream," CAIR's 2021 Islamophobia Report, by CAIR Research & Advocacy Coordinator Huzaifa Shahbaz. January 11, 2022. Website Link: <https://www.cair.com/wp-content/uploads/2022/01/islamophobiainthemainstream.pdf>

The report also outlines the landscape of Islamophobia between 2019 – 2020 by detailing more than a dozen anti-mosque incidents and anti-Muslim activity in schools, American politics, and social media. Between 2019-2020, CAIR identified 16 anti-mosque incidents including incidents of damage, destruction, and vandalism (DDV), intimidation, and harassment. During this period, CAIR also identified 40 instances in which institutional leaders shared or posted anti-Muslim content online. CAIR’s report defined institutional leaders as individuals who hold a position of influence or power within our trusted institutions — for example, a school board member or a police chief.

CAIR encourages the House Subcommittee on Constitution, Civil Rights, and Civil Liberties and its staff to read the findings of this report.

We also request the committee to schedule a future hearing to investigate the prevalence of U.S. charitable institutions channeling and granting funds to major anti-Muslim bigots and far-right extremists, including U.S. Islamophobia Network groups, that promote anti-Muslim sentiment and policies in local communities and across the nation.

3) Supporting Muslim group calls on the DOJ to investigate anti-Muslim hate group Investigative Project on Terrorism’s spying on Muslims

On January 31, 83 Muslim civil society organizations and mosques sent a [joint community letter](#) to the Justice Department² urging it to investigate the actions of the Investigative Project on Terrorism (IPT), an anti-Muslim hate group founded by Steven Emerson, who has been described as an “anti-Muslim activist” by the Southern Poverty Law Center.

Specifically, Muslim groups are asking the DOJ to investigate whether IPT violated any federal laws by using paid spies to infiltrate, record and undermine Muslim organizations, houses of worship and leaders, including then-Rep. Keith Ellison, for the benefit of a foreign government.

In December 2021, CAIR-Ohio announced that its director, Romin Iqbal, had been terminated for passing information about CAIR’s civil rights work to IPT.

In the weeks following Iqbal’s exposure, a Virginia Muslim voluntarily came forward to admit and apologize for working as a paid IPT spy from 2008 to 2012. In addition, the IPT whistleblower who first alerted CAIR to IPT’s efforts to target the community released a public statement and participated in an interview with The Washington Post.

The whistleblower provided evidence showing that the hate group had spent years surveilling, spying on national Muslim leaders and organizations in an effort to protect the Israeli government from criticism.

² Muslim Community Letter, “Request that Justice Department Investigate Anti-Muslim Hate Group’s Systemic Spying on American Muslim Community,” January 31, 2022. Website Link: <https://www.cair.com/wp-content/uploads/2022/02/Muslim-Community-Letter-to-DOJ-January-31-2022-2.pdf>

CAIR has released a statement from the IPT whistleblower, a statement from the Virginia Muslim who once worked as a paid spy for IPT, a tax form showing that Emerson’s for-profit corporation paid the latter individual over \$30,000 for one of his years of spying, an excerpt from a dossier that the hate group compiled on former Rep. Keith Ellison, and an excerpt of an IPT transcript of a private meeting that national Muslim leaders held to discuss the Park51 controversy in 2010.

CAIR previously released evidence showing that IPT was communicating, collaborating with and providing assistance to Israeli intelligence officials working in the office of then-Prime Minister Benjamin Netanyahu.

Sadly, IPT’s conspiracy to spy on American mosques and Muslim organizations was not surprising. Civil rights advocates have been targeted by infiltrators and saboteurs for decades. It is long past time for this behavior to come to an end. That is why we urge members of the Subcommittee on Constitution, Civil Rights, and Civil Liberties to support our call on the DOJ to investigate this serious – and possibly illegal – breach of the Muslim community’s trusted and private spaces.

4) Reforming the unconstitutional, discriminatory, and ineffective federal terrorism watchlist

For the past twenty years, the United States government has adopted national security policies and programs under the Biden, Trump, Obama, and Bush administrations that led to the discriminatory profiling and targeting of American Muslims by state and federal law enforcement. Now is the time for Congress to adopt new laws that better protect and respect the rights of all U.S. citizens and residents, including Muslims.

One of the greatest violations of the American Muslim community’s civil rights by federal law enforcement agencies – with little to no oversight by Congress – are the abuses committed under the federal government’s unconstitutional Terrorist Screening Database (TSDB), commonly referred to as the “terrorism watchlist.”

Just two weeks ago, CAIR [held a news conference](#) at its Capitol Hill headquarters in Washington, D.C.,³ to announce an American Muslim’s lawsuit against U.S. Customs and Border Protection (CBP) and its agents at Dulles International Airport for repeatedly seizing his electronic devices. The lawsuit asserts that CBP agents take these actions, not because of any suspicion of illegal activity but only because a computer told them to.

The automated screening practices challenged here—the federal government’s watchlisting system—are based on secret statuses assigned to more than one million people. The federal

³ Council on American-Islamic Relations, “DC: CAIR to Announce Federal Lawsuit Challenging Secret Watchlist’s Role in CBP Seizures of Muslim Traveler’s Electronics at Dulles Airport,” February 16, 2022. Website Link: https://www.cair.com/press_releases/cair-to-announce-federal-lawsuit-challenging-secret-watchlists-role-in-cbp-seizures-of-muslim-travelers-electronics-at-dulles-airport/

government disseminates those statuses to private companies, hospitals, universities, every law enforcement agency in the US, and even to foreign governments.

After almost two decades, the watchlisting system has demonstrated no ability to thwart terrorism. Rather, the terrorism watchlist has been used as a tool to target innocent Muslims secretly and systematically for extrajudicial consequences without any due process or accountability. The success of this extrajudicial program depends upon secrecy and eliminating due process protections to individuals the government seeks to target; and, as such, the watchlisting system must be fundamentally reformed. At minimum, the government must adopt a TSDB inclusion standard that precludes innocent people --persons who have not been arrested, charged, or convicted of a terrorism-related offense --from being listed.

In 2003, then-President George W. Bush issued executive order HSPD-6. This executive order led to the creation of the Terrorism Screening Database (TSDB) — colloquially known as the “watchlist.” The watchlisting system is comprised of a set of interlocking national security programs throughout the federal government that primarily acts as a “stop-and-frisk” program that targets Muslims with enhanced screening and interrogations. The watchlisting system spans the entire country and much of the world.

American Muslims that are targeted by the watchlisting system are designated as “known or suspected terrorists” without any semblance of due process. Their designation in the TSDB subjects them to segregated and enhanced processes and interrogations while traveling, places their safety at risk during routine encounters with law enforcement, results in indefinite delays in the processing of immigration applications and visas, makes them ineligible to obtain various permits, licenses, and employment opportunities, and restricts them from seeking certain kinds of employment or government benefits.

The watchlisting system has demonized and stigmatized the Muslim community. Federal agents have arrested and handcuffed many listees, often at gunpoint and sometimes in front of their children. Customs officers have searched and seized their phones and computers as a matter of policy. At the airport, federal agents repeatedly disrupt listees’ travel plans with prolonged, frightening, and invasive detentions, screenings, and interrogations. Some Muslims targeted by the watchlisting system have been denied the right to even board their flights. Others have been subjected to intrusive interrogations about their religious beliefs and practices. All these consequences are attributable to the watchlist and the various annotations that accompany the entries on it.

CAIR encourages the House Subcommittee on Constitution, Civil Rights, and Civil Liberties to work with the Biden Administration to:

- **Adopt a TSDB inclusion standard that precludes innocent people - persons who have not been arrested, charged, or convicted of a terrorism-related offense - from being listed in the TSDB.**
- **The federal government should also implement due process protections for individuals listed in the TSDB.**

It is surprising that, to be included on a “terror” watchlist, a criminal designation, one need not be even suspected of a terrorism-related offense. The TSDB inclusion standard that the federal government uses to populate its watchlist is satisfied whenever a person is reasonably suspected of doing something “related to” or “associated with” terrorism. We know that the federal government considers travel to most Muslim-majority countries, performing prayers at a masjid, and studying the Arabic language as conduct that is “related to” terrorism. Indeed, of the more than one million people considered for placement on the watchlist, the FBI has satisfied the watchlist’s inclusion standard more than 99 percent of the time.

CAIR proposes an inclusion standard focused on actual criminal conduct that requires individuals to be arrested, charged, or convicted of a terrorism-related offense. This standard would allow the federal government to place people on the watchlist when there is some judicial process that approves of a warrant or an indictment. By adopting this standard, the federal government could ensure that innocent people are excluded from the watchlist. Moreover, religious beliefs and practices cannot serve as a basis for inclusion on the TSDB. CAIR notes that changing the watchlist’s inclusion standards would also minimize how many individuals will be negatively impacted by USCIS’s application of the Controlled Application Review and Resolution Program (CARRP), which imposes additional rules and review criteria that delay and deny applicants immigration benefits, with little to no public transparency, review, or accountability.

CAIR also encourages the House Subcommittee on Constitution, Civil Rights, and Civil Liberties to support legislation that would prohibit the dissemination of the TSDB to foreign governments, private individuals and corporations, and state and local police officers.

The watchlist is disseminated to more than 60 foreign governments, more than 500 private companies, and to each of the more than 18,000 state, local, and tribal law enforcement entities across the country. It is an indiscriminate dissemination that makes none of us any safer.

The federal government does not even know how these entities are using their access to the watchlist. In particular, the designation of Americans listed on the TSDB is disseminated to foreign governments that are known for committing international crimes and human rights abuses. Nonetheless, dissemination to these governments is completely unmonitored, and foreign governments have detained and even tortured American citizens who have traveled to their countries.

This dissemination must be ended. The federal government should impose a ban on the international dissemination of the watchlist. It should also ban the dissemination of the watchlist to private companies. Tens of thousands of state and local law enforcement agencies should not have access to what is supposed to be highly sensitive watchlist information.

Conclusion

Since its establishment in 1994, CAIR has worked to promote a positive image of Islam and Muslims in America. CAIR's mission is to enhance understanding of Islam, protect civil rights, promote justice, and empower American Muslims.

We believe that today's hearing represents another opportunity for this committee, Congress, and the federal government to recommit itself to protecting the civil rights of all Americans, including American Muslim, Arab American, and South Asian American communities.

We encourage you to continue to address and advance the concerns that were raised in today's hearing by American Muslim, Arab American, and South Asian American community organizations.

Discrimination can be overcome by unity and by upholding the civil rights of all Americans. CAIR and the resources of the American Muslim community are ready and available to this committee and Congress to achieve this goal.

Sincerely,

A handwritten signature in black ink that reads "Robert S. McCaw". The signature is written in a cursive, flowing style with a large initial "R" and "M".

Robert S. McCaw
CAIR Director of Government Affairs Department