Written Statement of Hammad A. Alam
Staff Attorney and Program Manager, National Security and Civil Rights, Asian-Americans Advancing Justice-Asian Law Caucus

Submitted to the U.S. House of Representatives Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

For a Hearing on Discrimination and the Civil Rights of the Muslim, Arab, and South Asian American Communities

March 1, 2022

Thank you to the U.S. House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties for holding this important hearing. I submit this written statement to highlight long-standing and continuing government policies and practices that have subjected Black, African, Arab, Middle Eastern, Muslim, and South Asian ("BAMEMSA") communities to unjust policing, surveillance, and criminalization under the guise of national security and counterterrorism. I urge the committee to examine these policies, evaluate the impacts of these policies on communities they have disproportionately targeted, and to consider the recommendations provided.

The sections which follow are excerpted from a memorandum co-published by Asian Americans Advancing Justice-Asian Law Caucus (ALC), American-Arab Anti-Discrimination Committee (ADC), Center for Constitutional Rights (CCR), Creating Law Enforcement Accountability & Responsibility (CLEAR), and Partnership for the Advancement of New Americans (PANA) in September 2021. The full memorandum is submitted into the record as a supplement to this written statement.

I. *Policing, Surveillance and Criminalization*

A. Joint Terrorism Task Forces

Joint Terrorism Task Forces (JTTFs) are collaborative and multi-agency law enforcement efforts between federal, state, and local law enforcement agencies led by the U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). JTTFs are housed in FBI facilities and, together with state and local agencies, conduct investigations into terrorist threats. Today, there are about 200 task forces around the country, including at least one in each of the FBI's 56 field offices, with hundreds of networks of collaborations between JTTFs and state, local, and other federal agencies, including the U.S. Department of Homeland Security (DHS).[1]

[1] The DHS's Homeland Security Investigations (HSI), by its own account, "represents the largest federal contributor of personnel outside of the FBI to the JTTFs. HSI special agents and intelligence personnel are directly embedded within the FBI's Counterterrorism Division's operational and command elements." *See* U.S. Citizenship and Immigration Services, *Joint Terrorism Task Force: Supporting the Global Fight Against Terrorism*, *available at* https://www.ice.gov/partnerships-centers/jttf. HSI is the principal investigative arm of the U.S. Department of Homeland Security.

JTTFs, their structure, and their activities are shrouded in secrecy. For instance, there is no publicly available list of agencies that participate in JTTFs in many jurisdictions. What we do know is that JTTFs involve collaborations between federal law enforcement agencies like the FBI and local law enforcement, including local police departments and sheriff's offices, with the former providing training, resources, and coordination. Local law enforcement officers are in turn deputized as federal field agents tasked with carrying out investigations and operations. The rules, protocols and chain of command governing these deputizations are unclear.[2]

In 2008, then Attorney General Mukasey rewrote the guidelines that govern the conduct of FBI and JTTF agents, giving them unfettered authority to investigate anyone without any factual basis for suspected wrongdoing.[3] Under these guidelines, FBI and JTTF agents have the power to open what are called "assessments" on individuals, even without any factual indication of wrongdoing or threat to national security.[4] Through such assessments, agents may use intrusive investigative techniques, including confidential informants, interviews under false pretenses, and unlimited physical surveillance typically reserved for investigations supported by a factual criminal predicate.[5] These investigative authorities are often broader than those permitted under state and local law, policies, and regulations.

That such techniques can be diffused throughout the country through the FBI's JTTF collaborations with support from local law enforcement agencies indicates the all-encompassing and dragnet nature of policing, surveillance, and potential criminalization of communities traditionally targeted by counterterrorism investigations. These include Black activists and others engaged in anti-policing, civil rights, animal rights, environmental justice, and other protest and resistance movements, including those the FBI has previously marked as "Black Identity Extremists," as well as those among BAMEMSA communities. Given the DHS's involvement in JTTFs, immigrants from these and other communities are particularly vulnerable to profiling and surveillance without suspicion.

JTTFs inflict harm on local communities through racial profiling, harassment, suspicionless surveillance and investigations, and exploitation of immigration enforcement, all of which are authorized under federal guidelines loosened after September 11, 2001. The White House and leading federal agencies, including the DOJ, FBI, and DHS, must take the steps outlined below to begin addressing the harms inflicted by this abusive and harmful program.

---

[2] *See, e.g.*, *Standard Memorandum of Understanding Between the Federal Bureau of Investigation and the San Francisco Police Department*, *available at* https://www.brennancenter.org/sites/default/files/analysis/SFPD%20MOU-JTTF.pdf; *Standard Memorandum of Understanding Between the Federal Bureau of Investigation and the City of Portland and the Portland Police Bureau*, *available at* https://www.brennancenter.org/sites/default/files/analysis/PORTLAND%20JTTF%20MOU%20Draft.pdf; *Standard Memorandum of Understanding Between the Federal Bureau of Investigation and the Oakland Police Department*, *available at* https://cao-94612.s3.amazonaws.com/documents/Sept.-5-Agenda-Packet.pdf.

[3] U.S. DEP'T OF JUSTICE, *The Attorney General's Guidelines for Domestic FBI Operations* (Oct. 2008), *available at* https://www.justice.gov/archive/opa/docs/guidelines.pdf.

[4] *Id.* at 17-18.

[5] *Id.* at 19-20.

Recommendations

- The DOJ should dismantle the JTTF, all of its field offices and collaborative networks, including with state and local agencies and those established internationally, and any future such iterations that may go by other names;
- The DOJ Office of the Inspector General (DOJ OIG) must examine and publish findings on what types of information the JTTF shares and has shared with other federal agencies, including DHS, DHS Fusion Centers, and other components of DHS, and how these agencies have used this information;
- The DOJ OIG must (1) examine and evaluate the data that the FBI has collected and holds on U.S. and non-U.S. persons and purge all records which did not lead to predicated investigation; (2) evaluate and publish findings regarding violations of state and local law resulting from JTTF collaborations; (3) evaluate and publish findings about how many "assessments" are opened based in whole or in part on First Amendment protected activity; (4) evaluate and publish findings about how many "assessments" JTTFs open into those it classifies as engaging in so-called Black Identity Extremism, Islamic extremism, domestic terrorism, and other such classifications; and (5) evaluate and publish findings regarding the disproportionate impacts of JTTFs on BAMEMSA, immigrant, and communities of color;
- The DOJ must publicly publish all Memorandums of Understanding (MOUs) establishing JTTF partnerships between the FBI and local, state, tribal, and other federal agencies, the names of each agency participating in the JTTF across the country, and the number of officers from each agency assigned to the JTTF in a full- or part-time capacity;
- The DOJ must release data regarding funding allocations to local and state agencies, including law enforcement agencies, participating in the JTTF;
- Establish a Congressional Commission or Congressional hearings led by impacted and targeted communities to evaluate and remedy the harms and impacts of the JTTF and its operations.

B. Countering Violent Extremism

Countering Violent Extremism (CVE) constitutes a series of government and private sector programs, policies, and frameworks designed to ostensibly identify individuals perceived to be susceptible to "radicalization" and "violent extremism." While CVE in the U.S. is rooted in programs and policies initially developed and implemented by the federal government, including DHS, DOJ, and FBI, CVE programs and frameworks are disseminated globally, with concerns of human rights violations echoed worldwide.[6] The term "CVE" itself has now transformed into a broader reference for domestic and international frameworks intended to address violent extremism and radicalization, now with multiple iterations that go by varied names.[7]

[6] *See, e.g.*, The Transnational Institute, *The Globalisation of Countering Violent Extremism Policies: Undermining Human Rights, Instrumentalising Civil Society*, *available at* https://www.tni.org/en/publication/the-globalisation-of-countering-violent-extremism-policies.

[7] CVE's varied names and identifications pose a considerable impediment to grassroots and community mobilization and public recognition of these programs, which all fall under the general framework of CVE. *See, e.g.*, U.S. Dep't of Homeland Sec., *DHS Countering Violent Extremism Grant*, *available at* https://www.dhs.gov/cvegrants; U.S. Dep't of Homeland Sec., *DHS Targeted Violence and Terrorism*

CVE's theoretical foundations lie in the controversial and empirically questionable "radicalization theory."[8] Under the theory, CVE frameworks mark expressions of political dissent, cultural and religious saliency, and feelings of alienation as indicators of potential radicalization and violent extremism, thus casting everyday activities and expressions as indicators of "pre-terrorism" warranting potential arrest and prosecution. Some examples of activities and expressions that have served as indicators of extremism under CVE frameworks include wearing traditional religious attire; increased attendance of a house of worship or prayer group; travel abroad; increased political or social activism; and critique of U.S. domestic or foreign policy. While these indicators may appear neutrally applicable, given long-standing federal law enforcement targeting of Muslim, Black, and other communities traditionally perceived to be suspect, as well as empirical evidence that past CVE programs have almost exclusively targeted Muslim, Black, and LGBTQ groups, the indicators themselves reveal a racialized focus that leaves targeted communities vulnerable to surveillance and criminalization under CVE frameworks.[9] CVE thus reinforces the racialized fallacy that people from a particular religious, racial or ethnic group are more likely to commit acts of terrorism or violent extremism, while doing nothing to address the systemic barriers hampering their progress and wellbeing.

CVE frameworks claim to "empower local partners to prevent violent extremism,"[10] but in effect constitute little more than racial or religious profiling under the guise of "counterterrorism" policy. Often billed as "community-led" programs, they are, in fact, intelligence gathering operations resulting in the disproportionate if not exclusive targeting of Muslim, Black, and other communities historically regarded as suspect and criminal.[11] Unlike traditional surveillance employed by law enforcement, CVE disseminates surveillance models throughout targeted communities without the physical presence of agents. In the U.S., CVE has often taken the form of grant programs distributing federal funding to local organizations, including academic institutions and non-profit organizations, and partnering grant recipients with federal and local law enforcement agencies who in turn provide training to help identify "violent extremism" and collect information on the communities and individuals such grant recipients

---

Prevention Grant Program (TVTP), *available at* https://www.dhs.gov/tvtpgrants ("The TVTP Grant program is an evolution of the FY16 CVE Grant Program."); Fed. Bureau of Investigation, *Preventing Violent Extremism in Schools*, *available at* https://rems.ed.gov/Docs/FBI_PreventingExtremismSchools.pdf (noting the "FBI's Countering Violent Extremism (CVE) program"); U.S. Dep't of Homeland Sec., *DHS Center for Prevention Programs and Partnerships (CP3)*, *available at* https://www.dhs.gov/CP3 (listing both the DHS TVTP grant program and the CVE grant program).

[8] *See Why Countering Violent Extremism Programs are Bad Policy*, Brennan Center for Justice, Sept. 9, 2019, *available at* https://www.brennancenter.org/our-work/research-reports/why-countering-violent-extremism-programs-are-bad-policy ("CVE programs are designed around the erroneous idea that there is a discernible process of radicalization that results in terrorist violence. The key assumption of radicalization theory is that individuals who adopt 'extremist' ideologies start down a conveyor belt that leads inexorably toward becoming a terrorist.").

[9] *See* Faiza Patel, *Countering Violent Extremism Programs in the Trump Era*, Brennan Center for Justice, June 15, 2018, *available at* https://www.brennancenter.org/our-work/analysis-opinion/countering-violent-extremism-programs-trump-era.

[10] *See* U.S. Dep't of Homeland Sec., *Empowering Local Partners to Prevent Violent Extremism in the United States* (Aug. 2011), *available at* https://www.dhs.gov/sites/default/files/publications/empowering_local_partners.pdf.

[11] *See* Michael Price, *Community Outreach or Intelligence Gathering?*, Brennan Center for Justice, Jan. 29, 2015, *available at* https://www.brennancenter.org/our-work/research-reports/community-outreach-or-intelligence-gathering.

serve. Some examples of grant recipients and their grant focus include non-profit organizations providing "terrorism-prevention" training to teachers who are then tasked with identifying violent extremism amongst primarily students of color; community-based organizations providing social services, including mental health services, to Arab and Muslim refugees who have fled conditions of violence; and academic institutions esstablishing programs to monitor and report online "extremist" content. Under the Obama administration, DHS awarded 31 grants totaling $10 million, all to Muslim-serving groups save one.[12] This disproportionate focus on Muslim communities, despite widespread community opposition, underscores the biased nature of counterterrorism policing which has almost exclusively targeted Muslim and Black communities.

CVE's law enforcement underpinnings have an undeniably chilling effect on the communities such programs target, as well as their exercise of civil rights and liberties. It also has the practical effect of both stigmatizing individuals from "suspect communities"--particularly Muslim and other communities--and unwittingly placing them into referral networks where they are in turn more likely to be the targets of unwarranted law enforcement interdiction. Finally, because of the so-called "community-led" approach to surveillance under CVE frameworks, CVE programs foment distrust not only between targeted communities and government institutions and actors, but also service providers, teachers, community leaders and others tasked with implementing CVE frameworks in their communities.

CVE has been shown to be ineffective, and no government agency to date has provided any evidence that CVE frameworks are successful at "preventing" or "countering" violent extremism.[13] Community groups have called for an end to such programs, however, not only because of their ineffectiveness, but because of the premises they fundamentally rely on.[14] Given CVE's flawed assumptions that certain communities may be especially susceptible to violent extremism and that any such violent extremism can be predicted and prevented through the identification of so-called indicators, opposition to CVE has called for an abandonment of CVE frameworks altogether, citing them as deeply stigmatizing and corrosive.[15] This is the case even with the alarming expansion of CVE frameworks to address what policymakers name as "domestic violent extremism," with community groups raising concerns that more funding and resources for law enforcement to engage in CVE programs risks inevitably intensifying the long-standing targeting of Muslim, Black and other communities by the counterterrorism law enforcement apparatus, while doing nothing to address systemic white supremacy, whether

[12] *Supra* note 14.
[13] *Id.*
[14] For additional resources, background, and community demands regarding CVE frameworks and programs, *see* StopCVE Coalition, http://www.stopcve.com/; *see also* Muslim Justice League, *StopCVE Primer*, available at https://www.muslimjusticeleague.org/wp-content/uploads/2020/09/MJL-StopCVE-Primer-2020.pdf. The recommendations to end all CVE frameworks and programs, establish Congressional hearings and community forums, and reallocate all CVE funding have been drafted by the StopCVE Coalition through an iterative, grassroots process.
[15] *See* Lydia Wilson, *Gone to Waste: The 'CVE' Industry After 9/11*, Newlines Magazine, Sept. 10, 2021, *available at* https://newlinesmag.com/argument/understanding-the-lure-of-islamism-is-more-complex-than-the-experts-would-have-you-believe/ (arguing that CVE frameworks, methodologies, and programs are all part of a "flawed industry" that stigmatizes "entire communities as terrorist-producing").

across America's law enforcement agencies,[16] its institutions, or its social and economic structures.[17]

Recommendations

- End all CVE frameworks and programs, including DHS's Center for Prevention Programs and Partnerships (CP3), federal grant programs like the Targeted Violence and Terrorism Prevention (TVTP) Grant Programs, State Homeland Security Grant Program, Urban Areas Security Initiative, and all grants addressing "domestic violent extremism" (DVE);
- End all DHS, FBI, and DOJ programs based on the "radicalization theory" and the use of community-policing frameworks designed to counter or prevent so-called "radicalization";
- Establish Congressional hearings and community forums led by impacted communities on the harms of CVE, including reparations;
- Reallocate all CVE-related funding under DHS and DOJ to other non-law enforcement federal agencies under the guidance of impacted and targeted communities;
- Direct the DHS's Office of Inspector General to conduct an evaluation of past and ongoing CVE programs, including the FY2016 CVE Grant Program, the FY2020 TVTP Grant Program, and the FY2021 TVTP Grant Program, and the work of the DHS CP3 and any programs and initiatives involving training, collaboration, or advisement provided by DHS officials to state and local government agencies implementing local CVE programs, including investigating the nature and extent of any information and data collected by DHS from grant recipients.

C. FBI Informant Recruitment and Coercion Practices

The FBI has aggressively recruited informants within Muslim, Arab, and South Asian communities. The deployment of informants in these communities' private, religious and political spaces has had devastating impacts. Moreover, the recruitment of informants is stigmatizing and often coercive. FBI agents' unfettered access to a growing arsenal of coercive measures include the ability to delay or withhold immigration benefits, interrogate individuals at the border, and place people on watch-lists.[18] They can thus derail individuals' ability to travel, be with family, or secure important immigration benefits in exchange for information or affirmative information gathering.[19] These recruitment efforts have gone virtually unregulated,

[16] *See* Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, Brennan Center for Justice, Aug. 27, 2020, *available at* https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law.

[17] For additional information regarding the limitations and critique of the supposed utility of CVE and similar policing programs even as to white supremacist violence, *see* Nicole Nguyen & Yazan Zahzah, *Why Treating White Supremacy as Domestic Terrorism Won't Work and How to Not Fall for It*, Vigilant Love (2021), *available at* https://static1.squarespace.com/static/593f2dbaebbd1a0b706908ea/t/5fa0518556b08d66e6c5d4e8/1604342152141/white_supremacy_toolkit.pdf.

[18] Sana Sekkarie, Note, *The FBI Has a Racism Problem and it Hurts Our National Security*, Geo. Sec. Stud. Rev (2020).

[19] *See, e.g.*, Nina Totenberg, *Supreme Court Says Muslim Men Can Sue FBI Agents in No-Fly List Case*, NPR, Dec. 10, 2020, *available at* https://www.npr.org/2020/12/10/945000341/supreme-court-says-muslim-men-can-sue-fbi-agents-in-no-fly-list-case (describing how three Muslim men, who were not"suspected of illegal activity," were put on a

unrestrained, and present limited avenues for judicial oversight.[20] While many of these coercive measures, including watchlisting and coercive border searches, are addressed elsewhere in this memorandum, the practice of FBI informant coercion is of paramount concern to Muslim, Arab, South Asian and other immigrant communities.

Recommendations

- The FBI's Domestic Investigations and Operations Guide (DIOG) should be amended to prohibit the deployment of informants into religious and community spaces;
- The DOJ OIG should investigate FBI abusive informant coercion and recruitment practices and publish its findings and recommendations. This should include an assessment of the scope and impact of these practices, and the FBI's compliance with even the minimal existing FBI Guidelines[21];
- Congress should consider legislation giving a right of action to anyone who has been threatened, blackmailed, or otherwise coerced into providing information to the federal government and provide reparations to victims of entrapment and coercion;
- The CARRP program, the No-Fly List and the Selectee List must be abolished to prevent their abuse by FBI agents from interfering with individuals' rights;
- The FBI should be prohibited from rewarding FBI agents for their cultivation of Confidential Human Sources amongst particular ethnic or religious groups.[22]

II. *Immigrants' Rights and National Security*

A. Denaturalization

For most of the country's history since the passage of legislation authorizing denaturalization, this extraordinary measure has been reserved for former Nazis and other war criminals. The Obama and Trump Administrations, however, expanded the use of denaturalization. The Trump Administration ramped up denaturalization efforts and widely publicized them, instilling fear in immigrant communities and raising concerns that the

No-Fly list for years and were unable to travel for work or to visit family when they refused to become FBI informants).

[20] This issue is not new. A 2005 DOJ OIG special report on the FBI's compliance with its own Manual of Investigative Operations and Guidelines "found one or more Guidelines deficiencies in 104 of the 120 confidential informant files [reviewed], or 87 percent of those we examined." OFFICE OF THE INSPECTOR GEN., U.S. DEP'T OF JUSTICE, The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines (2007), *available at* https://oig.justice.gov/sites/default/files/archive/special/0509/chapter3.htm.

[21] Directorate of Intelligence, Fed. Bureau of Investigation, Confidential Human Source Policy Guide (Sept. 21, 2015), *available at* https://theintercept.com/document/2017/01/31/confidential-human-source-policy-guide/.

[22] Decl. of Marc Sageman in Opposition to Defs.' Cross- Motion for Summary Judgement, Latif v. Lynch, No. 3:10-cv-00750-BR (D. Or. Aug. 7, 2015), ECF No. 268, *available at* https://www.aclu.org/sites/default/files/field_document/268_declaration_of_marc_sageman_8.7.15.pdf ("FBI special agents are promoted and rewarded—even with monetary bonuses—based on providing derogatory information on U.S. persons, while admission of error or new information that exonerates someone from suspicion tends not to be rewarded. In other words, the incentive in the system is to report suspicious activity but not correct the information when it turns out to have been a false alarm."); *see also supra* note 25 ("FBI special agents are promoted and rewarded based on the negative information they provide on the communities they are monitoring. Information that exonerates people from suspicion is not similarly rewarded.").

government would target them for minor mistakes in paperwork. In 2017, the Trump Administration announced the beginning of Operation Second Look, a program to investigate the pursuit of denaturalization against at least 1,600 citizens.[23] Between 2008 and 2020, 40% of the 228 denaturalization cases filed by the DOJ were filed after 2017.[24] Additionally, in 2020, the Trump Administration created an office within the DOJ focused exclusively on denaturalization efforts.

Denaturalization can have disastrous consequences for the targeted individual and their family members. Numerous U.S. Supreme Court decisions recognize the importance of citizenship, that its loss may result in the loss "of all that makes life worth living."[25] The law permits automatic denaturalization of spouses and children of individuals who derived citizenship from the individual and where denaturalization was as a result of willful misrepresentation.[26] This essentially constitutes guilt by association – putting at risk the citizenship of individuals who had no involvement in any attempt to procure naturalization by willful misrepresentation. It is clear that the Trump Administration pursued denaturalization in order to further pursue deportation, and the DOJ has admitted as much.[27] Because there is no statute of limitations with respect to civil denaturalization, citizens who have lived decades in the United States, establishing families and working here, can suddenly become subject to banishment.

Resolving a denaturalization case through settlement is encouraged as a way for the government to efficiently secure denaturalizations. A review of closed denaturalization cases as of May 2019 revealed that 77% of denaturalization cases ended in a plea or settlement agreement.[28] Settlement demands have put targeted individuals in coercive situations where they must agree to waive immigration protections, relinquish immigration statuses, and/or agree to deportation, in exchange for the government's decision not to strip the citizenship of derivative U.S. citizen children or spouses.[29] The government's settlement tactics are especially concerning in light of the procedural safeguards that are lacking in civil denaturalization proceedings. For civil denaturalization, there is no statute of limitations, right to appointed counsel, right to trial by jury, or any requirement of personal service to guarantee against involuntary *in absentia* denaturalizations.

A review of denaturalization suits filed in the first two years of the Trump Administration revealed that the DOJ had filed nearly three times as many civil denaturalization suits than the

---

[23] U.S. Dep't of Justice, *Justice Department Secures First Denaturalization as a Result of Operation Janus*, Jan. 9, 2018, *available at* https://www.justice.gov/opa/pr/justice-department-secures-first-denaturalization-result-operation-janus.
[24] Katie Benner, *Justice Dept. Establishes Office to Denaturalize Immigrants*, N.Y. Times, Feb. 26, 2020, https://www.nytimes.com/2020/02/26/us/politics/denaturalization-immigrants-justice-department.html.
[25] *Knauer v. United States*, 238 U.S. 654, 659 (1946).
[26] 8 U.S.C. § 1451(d).
[27] Anthony D. Bianco, Paul Bullis & Troy Liggett, *Civil Denaturalization: Safeguarding the Integrity of U.S. Citizenship*, U.S. Att'ys' Bull., July 2017, at 5, 16-17, https://www.justice.gov/usao/page/file/984701/download [https://perma.cc/MSB6-P6CQ] ("Typically, the government does not expend resources on civil denaturalization actions unless the ultimate goal is the removal of the defendant from the United States.").
[28] Open Society Justice Initiative ("OSJI"), *Unmaking Americans: Insecure Citizenship in the United States*, at 106 (Sept. 2019), *available at* https://www.justiceinitiative.org/uploads/e05c542e-0db4-40cc-a3ed-2d73abcfd37f /unmaking- americans -insecure-citizenship-in-the-united-states-report-20190916.pdf.
[29] *Id.*

average over the previous eight administrations.[30] At least a third of these cases appeared to fall within Operation Janus/Operation Second Look – using digital records of fingerprints to identify potential cases for denaturalization.[31] The same review determined that 49% of all civil denaturalization cases filed targeted citizens whose country of origin is a "special interest country"–a label often used as a proxy for Muslim-majority countries or countries with significant Muslim populations–which includes India, Nigeria, Bangladesh, and Pakistan.

One key tool for the government in identifying targets for denaturalization has been ATLAS – a screening functionality that is incorporated into the U.S. Citizenship and Immigration Services' (USCIS) primary case management system.[32] ATLAS receives information from the individual's form submission and biographic and biometric-based checks and then screens that through a predefined set of secret rules and, according to pattern-based algorithms and predictive analytics, determines whether the individual presents *potential* fraud, public safety, or national security concerns.[33] When ATLAS finds something derogatory according to its secret list of rules, the software sends out a "System Generated Notification," which is then triaged and elevated for further review or investigation.[34] Upon investigation, that individual can potentially be subject to immigration or criminal enforcement actions, including denaturalization.[35] Given the role of ATLAS in denaturalization operations[36], ATLAS must be part of any review of denaturalization practices.

Additionally, both the Obama and Trump Administrations have pursued denaturalization in cases where an individual accepted a guilty plea relating to conduct in the five year statutory period prior to naturalization without receiving constitutionally adequate advice concerning the consequences of their plea. Many of these individuals pled guilty not knowing that someday, years down the line, the government could seek to denaturalize them based on their guilty plea, implicating their constitutional right to receive effective assistance of counsel.

Given the stakes at issue, and because individuals are not entitled to free representation in civil denaturalization proceedings, a review of current denaturalization priorities is of paramount importance.

Recommendations

- Halt denaturalization efforts and dismantle the denaturalization operations that were institutionalized at DHS, DOJ, and the State Department during the Obama and Trump administrations, including disbanding the denaturalization units within USCIS and DOJ;
- Support legislation designed to limit denaturalization and institute procedural protections for those subject to civil denaturalization. Support legislation to

[30] *Id.* at 10.
[31] *Id.* at 11.
[32] Privacy Impact Assessment for the ATLAS, DHS Reference No. DHS/USCIS/PIA-084 (Oct. 30, 2020), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis084-atlas-october2020_0.pdf.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] For more information on ATLAS's nexus to denaturalization, *see* Sam Biddle & Maryam Saleh, *Little-Known Federal Software Can Trigger Revocation of Citizenship*, The Intercept, Aug. 25, 2021, https://theintercept.com/2021/08/25/atlas-citizenship-denaturalization-homeland-security/.

impose a statute of limitations in civil denaturalization (there is currently a ten-year statute of limitations for criminal denaturalization); right to appointed counsel, right to trial by jury, heightened personal service requirement, and heightened evidentiary standard of "clear, unequivocal and convincing" evidence; and require proof of intentional fraud. Pursue legislative reform to prohibit denaturalization in any case where it would result in statelessness and in cases involving derivative denaturalization;

- Impose a moratorium on filing new civil and criminal denaturalization (8 U.S.C. § 1451 and 18 U.S.C. § 1425) suits until adequate independent oversight by DOJ Office of Inspector General is in effect and the Administration has fully assessed and dismantled the current operations across the DOJ, DHS, and the State Department and placed appropriate safeguards as discussed above;
- Dismiss civil and criminal denaturalization cases that are currently being litigated or, alternatively, place in abeyance or seek stays until such review is complete;
- Publish a DHS and DOJ policy limiting investigations potentially leading to denaturalization;
- Publish clear and limiting DOJ guidance to U.S. Attorney's offices on appropriate cases for denaturalization. Preclude denaturalization litigation where an individual is facing denaturalization due to admitted facts in a guilty plea and in criminal denaturalization cases where an individual is seeking to vacate a conviction on the grounds that they did not receive constitutionally adequate advice concerning the risk of denaturalization and deportation at the time of a guilty plea;
- Halt the use of ATLAS pending a disparate impact review and public disclosure of:
    - The rules that ATLAS is using to flag individuals for further investigation;
    - The population being flagged by ATLAS, disaggregated by race, country of origin, etc.; and
    - The number of screenings and flags, and the outcome of those flags, including data on how many flags end up in denaturalization investigation and prosecutions.
- Institute a process for reviewing all denaturalizations since 2016 with the aim of reinstating citizenship of denaturalized individuals and their derivatives, including by permitting such individuals to re-apply for citizenship *nunc pro tunc* and waiving fees;
- Publish the results of the review undertaken by Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans as it relates to denaturalization (Section 5(a)(v)). Ensure that the review encompasses the investigation, prosecution, and impact of denaturalization cases, and includes the following:
    - The policies, procedures, and priorities under which DHS, DOJ, and/or the State Department investigate and prosecute U.S. citizens for denaturalization;
    - Staff and funding deployed for denaturalization from each relevant operational component;
    - The number of denaturalization cases reviewed or investigated, referred for prosecution, filed in federal court, placed in removal proceedings,

leading to removal, and leading to statelessness. Case data should be disaggregated by country of origin, religion, gender, manner of entry (including port of entry and immigration status upon entry), referring agency, and alleged denaturalization grounds; and

- The number of Americans with derivative citizenship denaturalized due to their sponsor's denaturalization.

B. Passport Revocations

In the past decade, the U.S. government has pursued a policy of arbitrary passport denials and revocations among primarily Yemeni-Americans. A similar policy has been adopted for the last two decades among Mexican-Americans, primarily along the southern border.[37]

In January 2016, two organizations filed a request with the State Department's Office of the Inspector General to investigate a pattern of passport confiscations and revocations at the U.S. Embassy in Sana'a, Yemen.[38] The report detailed a specific pattern that occurred primarily between 2012 – 2014 at the Sana'a Embassy. American citizens of Yemeni descent would visit the Embassy for routine consular services, such as renewing a passport or obtaining a passport or Consular Report of Birth Abroad for a child. Embassy employees would then subject the individual to hours long interrogations, threatening them with arrest or denaturalization, and coercing them into signing statements that purported to admit that the names on their Certificates of Naturalization were not their "true" names. It appeared that these Embassy employees assumed that all Yemeni-Americans engaged in some type of fraud to immigrate to the United States.

At the end of the coercive interrogations, the Embassy employees would then confiscate the passport and refuse to inform the individual how they might return to the United States. Many individuals were stuck in Yemen for a year or longer, until the Embassy finally provided them with appropriate instructions for how to apply for a limited validity passport, notice of revocation of their passport, and instructions on how to challenge the revocation. In effect, the U.S. government left these individuals in limbo for more than a year, denying them their rights to any type of due process, simply on the basis of their national origin.

In these cases, the Embassy employees were arguably taking action inconsistent with the Foreign Affairs Manual by deciding to revoke a passport by claiming there was fraud in obtaining the Certificate of Naturalization, even though no denaturalization proceedings had taken place.[39] The DOS Office of the Inspector General issued a report in October 2018 that laid out its findings, including key recommendations regarding improvement to systems of records, the burden of proof for passport revocation, and procedures related to passport confiscation.[40]

---

[37] The practices along the Southern border involve separate but related issues around the assumption of fraud in recording births of predominantly Mexican-Americans. *See supra* note 46, at 124-36.
[38] Asian Americans Advancing Justice – Asian Law Caucus & Creating Law Enforcement Accountability and Responsibility, *Stranded Abroad: Americans Stripped of Their Passports in Yemen* (Jan. 2016), *available at* https://bit.ly/2Rwpt8C.
[39] 8 FAM § 301.8-3(d) (2018).
[40] U.S. Dep't of State, Office of the Inspector Gen., *Review of Allegations of Improper Passport Seizures at Embassy in Sana'a, Yemen*, OIG-ESP-19-01, at 2 (Oct. 2018), *available at* https://www.stateoig.gov/system/files/esp-19-01_0.pdf.

Even after these individuals returned home and challenged their passport revocations, they continued to experience significant difficulty, as the State Department continued to proceed as though it had the power to indefinitely refuse to issue an individual a passport with a currently valid Certificate of Naturalization on the ground that they believed the name on the Certificate was not the name they were born with.[41] This practice also affected family members of those who had had their passports revoked, and continues to this day. This has meant that for years, many citizens residing in the United States with valid Certificates of Naturalization were unable to obtain passports and therefore unable to live and travel on the same terms as any other citizen – solely because of their country of origin.

Recommendations

- Review all current pending passport revocation/issuance decisions and cease proceedings in cases where the sole basis for revocation or refusal to issue is a claim that the individual's birth name is different from the name on their Certificate of Naturalization or Certificate of Citizenship;
- Review any final passport revocation decisions not currently in litigation in which the basis is the same as above and reverse the decision;
- Cease refusal to issue a passport solely where DOS believes the individual holds a name other than the name on a valid Certificate of Naturalization;
- Direct the DOS Office of the Inspector General to conduct a review of all passport revocations and confiscations from 2005 - 2021 to ensure an accurate accounting of all passports or Consular Reports of Birth Abroad improperly revoked or confiscated:
    - At the U.S. Embassy in Sana'a, Yemen or as a result of coercive interrogations at the Embassy (including family members of those who were coerced into signing statements at the U.S. Embassy);
    - Involving the authenticity of birth certificates issued near the U.S. - Mexico border.
- Review litigation posture in any pending cases involving passport revocation or passport issuance to ensure that passports are not being unfairly revoked or denied;
- Publish the results of the review undertaken by Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans as it relates to passport revocations (Section 5(a)(v)).

[41] In August 2020, the Second Circuit held that this was not an acceptable practice. *Alzokari v. Pompeo*, 973 F.3d 65, 72 (2d Cir. 2020) ("If the Department suspects that a citizen's certificate of naturalization was fraudulently obtained, it can institute denaturalization proceedings . . . What the Department cannot do is circumvent these proceedings by revoking a citizen's passport.").

III. *Border Rights and National Security*

A. Discriminatory Searches and Seizures Targeting BAMEMSA Travelers

BAMEMSA travelers are disproportionately stopped, searched, and interrogated at our international borders,[42] in part because of policies and procedures implemented post-9/11 that target BAMEMSA communities based on perceived ethnicity and religion, and in part because of the so-called "border search exception" to the Fourth Amendment.[43] These stops often result in seizures of forensic data from smartphones and other electronic devices containing information that the Supreme Court has agreed is "private" and "intimate."[44]

Policing or surveillance based solely on protected characteristics like race or religion violates equal protection guarantees.[45] In the context of border surveillance, courts have made clear that officers cannot rely on factors like a traveler's "race, without more," or "Arab ethnicity alone" when deciding to detain and interrogate individuals.[46] While DHS's own nondiscrimination policy "prohibit[s] the consideration of race or ethnicity in … screening … activities, in all but the most exceptional circumstances," it is silent on religion as a basis for scrutiny, and broadly permits consideration of nationality in "anti-terrorism, customs, or immigration activities" at the border, thus allowing border agents to rely solely on such characteristics.[47] As a consequence, many BAMEMSA travelers face higher levels of scrutiny when entering the United States based on their national origin or perceived religious identity and are often forced to hand over their phones and other digital devices. They also experience prolonged detention and interrogations regarding their personal and professional relationships, religious practices, and political opinions.[48] For many, entering the country can feel like a hostile experience. Nearly one-in-five Muslim-Americans who participated in a 2017 Pew Research survey have been called offensive names or singled out by airport security.[49]

The frequency of electronic device searches at the border more than doubled between fiscal year 2015 and 2016.[50] CBP and ICE officers utilize digital forensic searches using

---

[42] Br. for Asian Americans Advancing Justice – Asian Law Caucus, *Alasaad v. Mayorkas*, No. 20-1077 (1st Cir. Aug. 7, 2020), *available at* https://www.eff.org/files/2020/08/14/2020-08-07_amicus_brief_asian_americans_advancing_justice_-_asian_law_caucus_et_al.pdf.

[43] The "border search exception" allows officers to conduct routine searches and seizures at the border when a person is attempting to enter or is suspected to have entered the United States at the international border. *United States v. Flores-Montano*, 541 U.S. 149, 152-53 (2004). Routine searches, such as inquiring about name and citizenship, do not require reasonable suspicion, probable cause, or a warrant. *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985). Non-routine searches, however, such as those involving extended detention or an intrusive body search, require "reasonable suspicion." *United States v. Bravo*, 295 F.3d 1002, 1006 (9th Cir. 2002). Courts are divided as to the scope of digital forensic searches that fall within the "border search exception."

[44] *Riley v. California*, 573 U.S. 373 (2014).

[45] *Whren v. United States*, 517 U.S. 806, 813 (1996).

[46] *Farag v. United States*, 587 F. Supp. 2d 436, 464 (E.D.N.Y. 2008).

[47] U.S. Dep't of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity* 2, no. 2 (Dec. 2014), *available at* https://www.dhs.gov/sites/default/files/publications/use-of-race-policy_0.pdf.

[48] *Supra* note 73.

[49] Pew Research Ctr., *U.S. Muslims Concerned About Their Place in Society, But Continue to Believe in the American Dream* (July 26, 2017), https://www.pewforum.org/2017/07/26/findings-from-pew-research-centers-2017-survey-of-us-muslims/.

[50] Chloe Meade, Note, *The Border Search Exception in the Modern Era: An Exploration of Tensions Between Congress, the Supreme Court, and the Circuits*, 26 B.U. J. Sci. & Tech. L. 189, 192 (2020), *available at* http://www.bu.edu/jostl/files/2020/04/6.-Meade.pdf.

sophisticated software and algorithms to search for information contained in the device including active files, deleted files, metadata related to activities, and password-protected encrypted data. Both agencies allow their agents to "perform 'basic' searches of electronic devices without reasonable suspicion and 'advanced' searches only with reasonable suspicion."[51] "Advanced" searches encompass forensic searches of digital services; they are "nonroutine border searches . . . [that] may be conducted only with reasonable suspicion of activity that violates the customs laws or in cases raising national security concerns."[52] Restricting searches, and the discretion afforded to federal agents, to simply reasonable suspicion, however, poses a number of problems, not least of which is that the articulation of such reasonable suspicion depends mainly on the agents' individualized and potentially biased judgment. However, courts are divided as to the extent of the forensic search when only reasonable suspicion exists and the search is conducted pursuant to the "border search exception." The lack of a uniform, nationwide rule leads to inconsistent outcomes depending on where the travelers are entering the country and makes it hard for travelers to know their rights. For example, in the Ninth Circuit, a forensic search supported by reasonable suspicion "is restricted in scope to searches for contraband."[53] A warrant is required if the officer seeks "evidence of past or future border-related crimes."[54] In contrast, in the First Circuit, an officer can conduct an advanced search that extends to searching "for contraband, evidence of contraband, or for evidence of activity in violation of the laws enforced or administered by CBP or ICE."[55]

Body searches at the international border also fall within the "border search exception." Searches of "outer clothing, luggage, a purse, wallet, pockets [that] do not substantially infringe on a traveler's privacy rights" are considered routine and therefore do not require suspicion.[56] The "level of intrusion into a person's privacy determines" the nature of the search.[57] Officers need reasonable suspicion to conduct non-routine, more intrusive searches. While travelers, including those wearing religious head coverings, may request a pat-down or removal of their covering to be conducted "by a person of [their] gender and that it occur[] in a private area,"[58] humiliating practices have been reported. In particular, BAMEMSA women have described being forced to remove their headscarves in front of male officers, in violation of their religious beliefs.[59] The result has been a chilling impact on BAMEMSA travelers, with some unwilling to travel altogether or avoid travel unless it is absolutely necessary, and special concerns as they relate to foreign travelers, with the risk of denial of entry in case of refusal to acquiesce to a demand for search or seizure of a traveler's property. Additional precautions are now widespread amongst BAMEMSA travelers, including traveling with separate devices which contain limited data and allow for basic communicative functions, backing up and then erasing data from existing devices to maintain privacy, and letting family members and acquaintances know of the possibility of prolonged detention when attempting to enter the country.

---

[51] *Alasaad v. Mayorkas*, 988 F.3d 8, at 12 (1st Cir. 2021).
[52] *United States v. Kolsuz*, 890 F.3d 133, 146 (4th Cir. 2018) (citing U.S. CUSTOMS AND BORDER PROT., CBP Directive No. 3340-049A, BORDER SEARCH OF ELECTRONIC DEVICES (2018)).
[53] *United States v. Cano*. 934 F.3d 1002, 1018 (9th Cir. 2019).
[54] *Id.* at 1018.
[55] *Alasaad*, 988 F.3d, at 21.
[56] *Tabbaa v. Chertoff*, 509 F. 3d 89, 98 (2d Cir. 2007) (citation omitted).
[57] *Id.*
[58] ACLU, Know Your Rights: Enforcement at the Airport, *available at* https://www.aclu.org/know-your-rights/what-do-when-encountering-law-enforcement-airports-and-other-ports-entry-us/ (last visited Mar. 5, 2021).
[59] Carrie Decell, *"Dehumanized" at the Border, Travelers Push Back*, Knight First Amendment Inst. (Feb. 2, 2018), *available at* https://knightcolumbia.org/content/dehumanized-border-travelers-push-back.

Recommendations

- Modify existing DHS policy to explicitly prohibit agents from considering religion as a basis for consideration of further scrutiny, including the basis of searches and seizures of devices;
- Modify existing DHS policy to explicitly prohibit consideration of nationality in the examination of anti-terrorism, customs, or immigration activities at the border;
- Ensure that officers are properly trained to interact with BAMEMSA travelers, with DHS policy explicitly prohibiting questioning regarding religious practice or beliefs;
- Provide for efficient, prominently advertised methods (for instance at airports and other points of entry) to report incidents, including agents' misconduct or instances of policy violations.

B. Controlled Application Review and Resolution Program

The USCIS created the Controlled Application Review and Resolution Program (CARRP) in 2008 to investigate and adjudicate applications the agency deems to present undefined national security concerns. When a case is subjected to CARRP, it results in discriminatory background check delays and inordinate and unlawful delay in adjudication of the application. Thousands of applicants, including those married to United States citizens and seeking naturalization, have faced delays which, for many, last indefinitely. The CARRP program discriminates based on factors such as country of origin, religion, travel history, charitable donations, law enforcement and FBI visits and questioning, and other arbitrary factors. Between 2008 and 2013, USCIS applied CARRP to over 41,800 immigration applications, primarily impacting Muslim immigrants from Iran, Iraq, Yemen, India, and Pakistan.[60]

Little to no recourse exists for individuals whose immigration applications are subjected to CARRP. While individuals may schedule appointments with USCIS to inquire about the status of the application, USCIS at most only confirms that the application is being held in background checks. Individuals may also reach out to their congressional representatives to request a status update from USCIS on behalf of a constituent, but no documented cases to date have resulted in faster adjudication due to congressional outreach. Often, the only meaningful recourse available for impacted applicants is to file a mandamus suit in federal court which, if granted after often lengthy litigation, compels the government to take action on the application. Still, even if a court grants a plaintiff's petition for writ of mandamus and orders USCIS to take action on the application, USCIS may still deny the application without any other opportunity given to the applicant to cure any defects, address any issues, or be told the reasons for the denial, leaving open the possibility that the denial is on the basis of the factors mentioned above, including national origin and religion.

The Administrative Procedure Act (APA), 5 U.S.C. § 500 *et seq.*, requires USCIS to carry out its duties within a reasonable time. Specifically, the APA provides that, "[w]ith due

[60] CARRP was a secret policy until the ACLU of Southern California, the Council on American-Islamic Relations Greater Los Angeles Chapter, and the National Immigration Law Center filed a Freedom of Information Act request in 2012 and obtained thousands of documents exposing CARRP. The policy is also subject to ongoing litigation in the Western District of Washington, *Wagafe v. Trump*, 2:17-cv-00094-RAJ.

regard for the convenience and necessity of the parties or their representatives and *within a reasonable time, each agency shall proceed to conclude a matter presented to it*." 5 U.S.C. § 555(b) (emphasis added). Congress has also directed USCIS to process immigration benefit applications, including for adjustment of status, within 180 days under 8 U.S.C. § 1571(b). During this time, individuals' and families' lives are placed on hold with no explanation for the delay and no indication about when to expect a final answer. Not knowing if they will be able to stay in the country, travel, buy property, or plan their lives results in tremendous anxiety and emotional distress. And while the fact that the CARRP policy exists and continues to be actively implemented by USCIS is no longer unknown to the public and to advocates, USCIS's own consideration and review of applications subject to CARRP, as well as the factors determining whether an application is to be delayed or denied after being marked for CARRP, remain secret and undisclosed even to affected applicants' attorneys.

Recommendations

- End the CARRP program;
- Direct the Secretary of Homeland Security to ensure that all field officers cease applying CARRP and factors used under the program to pending and future immigration benefit applications;
- Expedite consideration of and adjudicate with final decisions immigration benefit applications currently pending and subject to CARRP, including all those subject to litigation;
- Reconsider or reopen, if possible, the immigration benefit applications of those previously denied under CARRP and expedite the renewed or newly filed applications of previously denied applicants;
- For those applications that will be reopened or reconsidered, provide the grounds for denial so that applicants know whether the application was denied based on statutory criteria and, if so, can prepare to address these grounds. As prior immigration benefit denials may harm an individual's future applications, DHS should instruct USCIS officials to prevent prior CARRP-based denials from adversely impacting any future applications.