



Written Statement of Maya M. Berry  
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**“Discrimination and the Civil Rights of the  
Muslim, Arab, and South Asian American Communities”**

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

March 1, 2022

Chairman Cohen, Vice Chair Ross, Ranking Member Johnson, and members of the Committee, thank you for convening today’s momentous hearing and for including our perspective. My name is Maya Berry and I am the Executive Director of the Arab American Institute (AAI), a national nonpartisan, civil rights advocacy organization that represents the interests of approximately 3.7 million Arab Americans.

A core belief of the Arab American Institute is that for our country to live up to its ideals, we must ensure strong civil rights *and* civil liberties protections for all. For more than thirty-five years, AAI has worked to empower Arab Americans, combat discrimination and bias, improve hate crime data collection and reporting, support efforts to improve government oversight and accountability, and defend the rights of all.

You have convened an important hearing today because it is the first congressional hearing to examine the civil rights of communities most directly impacted by post-9/11 national security policies and discrimination. For my community, it comes nearly thirty-six years after another historic hearing of the House Judiciary Committee. In July 1986, the Subcommittee on Criminal Justice, chaired by John Conyers, held an all-day hearing on “Ethnically Motivated Violence Against Arab-Americans.”<sup>1</sup> The impetus for the hearing was the surge in violent hate crimes targeting Arab Americans, including the tragic 1985 murder of civil rights advocate Alex Odeh.<sup>2</sup> The climate was dangerous enough for Federal Bureau of Investigation (FBI) Director William H. Webster to warn

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<sup>1</sup> *Ethnically Motivated Violence Against Arab Americans, Hearing Before the Subcomm. on Crim. Just. of the H. Comm. of the Judiciary, 99th Cong.* (1988).

<sup>2</sup> Alex Odeh was the west coast regional director for the American-Arab Anti-Discrimination Committee (ADC). He was murdered at his ADC office in Santa Ana, California, on October 11, 1985, when a bomb was triggered when he opened the door to his office, tragically killing him and injuring seven others on the same floor. Ed Pilkington, *Renewed Push to Investigate Alex Odeh Murder Begins 28 Years After Bombing*, GUARDIAN (Oct. 15, 2013, 10:07 AM), <https://www.theguardian.com/world/2013/oct/15/alex-odeh-bombing-murder-investigation-renewed>. The FBI’s case into Odeh’s murder remains open and no charges have been filed. Gabriel San Román, *Senator Calls for FBI Update on Unsolved Assassination of O.C. Activist Alex Odeh*, L.A. TIMES (Dec. 20, 2021, 6:19 PM), <https://www.latimes.com/california/story/2021-12-20/senator-durbin-calls-for-fbi-update-in-alex-odeh-assassination-cold-case>.

“that Arab individuals or those supporting of Arab points of view have come within the zone of danger.”<sup>3</sup> The importance of a hearing providing congressional oversight for a particular community targeted by violence is clear, but the hearing would also go on to serve as one of the key drivers for the passage of the Hate Crime Statistics Act of 1990.<sup>4</sup>

Among the witnesses who testified at the 1986 hearing was AAI co-founder and President, Dr. James Zogby. His testimony provided concrete examples of the “zone of danger” brought on by a “multi-pronged campaign, the components of which have varied in form and intensity, ranging from vilification and defamation of individual Arab Americans to acts of violence against leaders and institutions.”<sup>5</sup> This campaign of targeting what FBI Director Webster called “Arab points of view” was in reference to Arab Americans and others who were expressing support for Palestinian human rights. It is important to note at this time that the specifics of the rights being targeted then and discussed here in this testimony are not about raising foreign policy issues for the sake of discussing American foreign policy. That is another hearing for another time. In the context of this testimony and the discussion of the empowerment of Arab Americans, the issue is about the domestic implications of advocating for Palestinian human rights. And while there have been many negative implications, they have in no way diminished the commitment of Arab Americans to the issue. To be clear, though their right to support Palestinian human rights is undeniable, it has come at a cost—from being blacklisted by some mainstream American Jewish organizations or pro-Israel groups,<sup>6</sup> to being surveilled by their government, to becoming victims of hate crimes. A central importance of the 1986 hearing was that it allowed Arab Americans to explain these threats to the community’s well-being and power in the context of exclusion and to seek a remedy.

In the leadup to the hearing, the *New York Times* described it as a briefing on “Arab ‘McCarthyism,’” citing an interview in which Zogby referred to the attempted suppression of Arab Americans’ political activities as the “new McCarthyism.”<sup>7</sup> To advocates working to protect Arab American civil rights, the connection between the active political exclusion of the community and its ability to protect itself from hate crimes was both evident and experienced daily.<sup>8</sup> The Arab American witnesses, and the American Muslim witnesses who also testified at the hearing, from civil rights advocates to members of Congress to hate crime victims directly impacted, made a compelling case for necessary protections—and the rejection of the campaign to silence them.

At the very time this campaign of delegitimization and exclusion was underway, government agencies tasked with protecting constitutional rights, including the FBI, were unjustly surveilling

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<sup>3</sup> Philip Shenon, *F.B.I. Chief Warns Arabs of Danger*, N.Y. TIMES (Dec. 11, 1985), <https://www.nytimes.com/1985/12/11/us/fbi-chief-warns-arabs-of-danger.html>.

<sup>4</sup> See LEGISLATIVE HISTORY OF THE HATE CRIME STATISTICS ACT 3 (1990).

<sup>5</sup> *Ethnically Motivated Violence Against Arab Americans, Hearing Before the Subcomm. on Crim. Just. of the H. Comm. of the Judiciary*, 99th Cong. 129-140 (1986) (statement of Dr. James Zogby, Executive Director, Arab American Institute).

<sup>6</sup> Among the tactics employed by several organizations was the publishing of dossiers on leading Arab American advocates. Based on surveillance and intelligence gathering, the reports were published under different titles by different organizations and distributed as a tool for effective pro-Israel advocacy. See, e.g., Jim McGee, *Jewish Group’s Tactics Investigated*, WASH. POST (Oct. 19, 1993), <https://www.washingtonpost.com/archive/politics/1993/10/19/jewish-groups-tactics-investigated/96daef6a-a325-4a8a-ba09-da211fc1ba8a> (describing 1975 Anti-Defamation League report).

<sup>7</sup> Wayne King & Warren Weaver Jr, *BRIEFING; On Arab ‘McCarthyism,’* N.Y. TIMES (July 10, 1986), <https://www.nytimes.com/1986/07/10/us/briefing-on-arab-mccarthyism.html>.

<sup>8</sup> Dr. James Zogby and Helen Hatab Samhan coined the phrase “political exclusion” to describe these dynamics. Arab Am. Inst., *The Politics of Exclusion: A Report on Arab-Baiting in the 1986 Elections* (1987); see also Helen Hatab Samhan, *Politics and Exclusion: The Arab American Experience*, 17 J. PALESTINIAN STUD. 11 (1987).

Arab Americans. This context is necessary for understanding the anti-Arab animus that informed public perceptions and government policies both before *and* after the terrorist attacks of September 11.

### **Securitized Communities**

The federal government has justified counterterrorism and other law enforcement practices in the name of national security for what is a seemingly endless “war on terror.”<sup>9</sup> In the process, the government has viewed specific communities, including Arab Americans and American Muslims, as a threat to national security and in so doing, has securitized their relationship. The government’s view of Arab Americans through the lens of national security contributes to framing the community as merely a means of mitigating external threats, instead of a community deserving of service and protection as any other group of Americans.

While not an attempt at a comprehensive list, the following are select examples of government and law-enforcement policies that have targeted Arab Americans (and in some cases, American Muslims and South Asian Americans) or viewed them through a securitized lens. You will note throughout there are references to events in other parts of the world completely unrelated to our community here at home. Though they bear no connection to us, these events have had a direct impact on how we are treated by some of our fellow Americans and our government. We note it as the backlash effect, and it’s manifested in ways that include an increase in discrimination, hate crimes, and government profiling. In each of these cases, government or law-enforcement policies can be seen as facilitating discrimination rather than functioning as policies of a state actor obligated to safeguard and defend the rights of its citizens.

- In the wake of the killing of Israeli athletes in a terrorist attack at the 1972 Munich Olympics, the Nixon Administration created the surveillance program known as Operation Boulder.<sup>10</sup> The program sought to silence Arab and Arab American voices within the United States through investigation, surveillance, and harassment.<sup>11</sup> It “specifically targeted Arabs with U.S. citizenship, resident aliens of Arab descent, non-Arab Americans sympathetic to Arab causes, as well as the relatives, neighbors, friends, and employers of Arab individuals.”<sup>12</sup> Operation Boulder officially ended in 1975 after it was deemed “not worth it” by law enforcement, though its demise would be announced in a major media outlet as “A Plan to Screen Terrorists Ends.”<sup>13</sup>

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<sup>9</sup> On September 20, 2001, President George W. Bush told a joint session of Congress that “[o]ur war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.” *Text: President Bush Addresses the Nation*, WASH. POST (Sept. 20, 2001), [https://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress\\_092001.html](https://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress_092001.html).

<sup>10</sup> Pamela E. Pennock, *From 1967 to Operation Boulder: The Erosion of Arab Americans’ Civil Liberties in the 1970s*, 40 ARAB STUD. Q. 41, 41-42 (2018).

<sup>11</sup> Nadine Naber, *Introduction: Arab Americans and U.S. Racial Formations, in RACE AND ARAB AMERICANS BEFORE AND AFTER 9/11: FROM INVISIBLE CITIZENS TO VISIBLE SUBJECTS* 1, 34 (Amaney Jamal & Nadine Naber eds., 2008) (2008).  
<sup>12</sup> *Id.*

<sup>13</sup> *A Plan to Screen Terrorist Ends*, N.Y. TIMES (Apr. 24, 1975), <https://www.nytimes.com/1975/04/24/archives/a-plan-to-screen-terrorists-ends-us-project-to-block-arabs-was-not.html>.

- In 1987, seven Palestinian men and a Kenyan woman were arrested in Los Angeles for distributing a magazine of the Popular Front for the Liberation of Palestine,<sup>14</sup> an organization then considered an advocate for world communism. For the students, known as the “L.A. 8,” this was a deportable offense under the McCarthy-era McCarran-Walter Act. In 1989, a federal judge declared the charges unconstitutional and, in 1990, Congress repealed the Act. However, two members of the L.A. 8 faced the continued threat of deportation for decades until the government finally ended their effort to deport them in 2007. FBI Director William H. Webster noted they had not engaged in illegal activity and if they had been U. S. citizens, “there would not have been a basis for their arrest.”<sup>15</sup> The *New York Times* called it a “shameful prosecution.”<sup>16</sup> The case of the L.A. 8 is well known among Arab Americans. First, it targeted pro-Palestinian activists and raised the question of whether Arab immigrants or Arab Americans who advocated for Palestinian human rights were indeed protected by the same constitutional rights to free speech and association. Further, in proceedings of the case, it was discovered that the DOJ had a plan for a detention camp called, “Alien Terrorists and Undesirables: A Contingency Plan.” When admitting the plan into the record during a hearing on his Civil Liberties Act of 1987, then Congressman Norman Mineta, who was forcibly removed from his home with his family as a 10-year-old to be incarcerated during World War II at a Japanese American internment camp, offered the following: “A Department of Justice task force has proposed as legal and appropriate the mass round-up and incarceration of certain nationalities for vague security reasons. A camp has been identified in Louisiana, and rolls of barbed wire, cots, tents, et cetera, are already on the site, waiting for just a round-up. So this bill is not just about the past, it is about today and the future as well.”<sup>17</sup>
- Although concerns about hate crimes against Arab Americans motivated the passage of the Hate Crime Statistics Act (HCSA) of 1990,<sup>18</sup> the FBI’s hate crime reporting system did not officially include a category for anti-Arab hate crime until 2015.<sup>19</sup> But as AAI discovered in 2018, prototypes for the reporting system developed shortly after the HSCA’s passage included a specific anti-Arab hate crime category.<sup>20</sup> Notably, the FBI did not reference this history when it announced the new category in 2015, nor has it provided a public explanation for the category’s initial removal.

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<sup>14</sup> The organization was later added to the State Department’s list of designated foreign terrorist organizations. See *Foreign Terrorist Organizations*, U.S. DEPT OF STATE, BUREAU OF COUNTERTERRORISM, <https://www.state.gov/foreign-terrorist-organizations> (last visited Feb. 28, 2022).

<sup>15</sup> Alisa Solomon, *Remembering the L.A. 8*, VILLAGE VOICE (Oct. 30, 2001), <https://www.villagevoice.com/2001/10/30/remembering-the-l-a-8/>.

<sup>16</sup> Editorial Board, *A Shameful Prosecution*, N.Y. TIMES (Feb. 14, 2007), <https://www.nytimes.com/2007/02/14/opinion/14wed3.html>.

<sup>17</sup> *Legislation to Implement the Recommendations of the Commission on Wartime Relocation and Internment of Civilians, Hearing Before the Subcomm. on Admin. L. & Governmental Rel. of the H. Comm. on the Judiciary*, 100th Cong. 56-104, 56 (1987) (statement of Rep. Norman Y. Mineta).

<sup>18</sup> See *supra* text accompanying notes 1-5.

<sup>19</sup> See Press Release, Fed. Bureau of Investigation, Lates Hate Crime Statistics Released (Nov. 14, 2016), <https://www.fbi.gov/news/stories/2015-hate-crime-statistics-released>.

<sup>20</sup> See ARAB AM. INST. FOUND., UNDERREPORTED, UNDER THREAT: HATE CRIME IN THE UNITED STATES AND THE TARGETING OF ARAB AMERICANS, 1991-2016, at 72-82 (2018), <https://www.aaiusa.org/library/under-reported-under-threat>.

- Even before the United States entered the combat phase of the Gulf War in January 1991, the FBI was visiting Arab Americans. Concurrent with their response to the surge in hate crimes targeting Arab Americans, the FBI deployed agents to conduct interviews with hundreds of leaders and advocates nationally. According to an official spokesperson, the FBI had “two mandates. One is to protect these people from any ignorant individuals who might try to injure them if hostilities with Iraq would break out. But we also have a mandate to deter terrorism.”<sup>21</sup>
- Passed in response to the 1995 Oklahoma City bombing, a terrorist attack perpetrated by anti-government militia members, the Antiterrorism and Effective Death Penalty Act of 1996 established a new court where secret evidence could be used to deport non-citizens the government was accusing of terrorism related charges.<sup>22</sup> A 1998 report found that, of the twenty-five men targeted for deportation, all were Arab or Muslim.<sup>23</sup>
- After the terrorist attacks on September 11, 2001, a series of counter-terrorism policies targeted Arab Americans, including the FBI’s interviewing of thousands of Arab Americans without particularized suspicion, and a “Special Registration” program known as National Security Entry-Exit Registration System (NSEERS), which required tens of thousands of male immigrants to be “fingerprinted, photographed and questioned by authorities.”<sup>24</sup> Of the twenty-five countries requiring registration (Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen), all but one was Arab or majority Muslim. By the time NSEERS was suspended in 2011 and finally dismantled in December 2016, 80,000 people were required to register and thousands were deported.<sup>25</sup> The NSEERS program did not result in a single terrorism conviction.<sup>26</sup>
- First issued in 2003<sup>27</sup> and updated in 2014,<sup>28</sup> Department of Justice (DOJ) guidance on law-enforcement profiling creates exceptions in relation to national security, border security, and local law enforcement. Specifically, the loopholes in the guidance allow for continued profiling for screenings at the border, intelligence operations and national security, or state and local law enforcement when not part of federal crime task forces. In addition to being unlawful, we believe profiling to be ineffective, causing harm to the individuals and

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<sup>21</sup> Lisa Belkin, *For Many Arab Americans, F.B.I. Scrutiny Renews Fears*, N.Y. TIMES (Jan. 12, 1991), <https://www.nytimes.com/1991/01/12/us/for-many-arab-americans-fbi-scrutiny-renews-fears.html>.

<sup>22</sup> See Lawrence E. Harkenrider, *Due Process or Summary Justice: The Alien Terrorist Removal Provisions Under the Antiterrorism and Effective Death Penalty Act of 1996*, 4 TULSA J. COMPAR. & INT’L L. 143, 144-46 (1996).

<sup>23</sup> Ronald Smothers, *U.S. Bars or Expels Suspect Immigrants on Secret Evidence*, N.Y. TIMES (Aug. 15, 1988), <https://www.nytimes.com/1998/08/15/us/us-bars-or-expels-suspect-immigrants-on-secret-evidence.html>.

<sup>24</sup> Andrea Elliott, *After 9/11, Arab-Americans Fear Police Acts, Study Finds*, N.Y. TIMES (June 12, 2006), <https://www.nytimes.com/2006/06/12/us/12arabs.html>.

<sup>25</sup> Ed Pilkington, *Registry Used to Track Arabs and Muslims Dismantled by Obama Administration*, GUARDIAN (Dec. 22, 2016), <https://www.theguardian.com/us-news/2016/dec/22/nseers-arab-muslim-tracking-system-dismantled-obama>.

<sup>26</sup> See *id.*

<sup>27</sup> U.S. DEP’T OF JUST., C.R. DIV., GUIDANCE REGARDING THE USE OF RACE BY FEDERAL LAW ENFORCEMENT AGENCIES (June 2003).

<sup>28</sup> U.S. DEP’T OF JUST., GUIDANCE FOR FEDERAL LAW ENFORCEMENT AGENCIES REGARDING THE USE OF RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY (Dec. 2014).



communities profiled, while serving to distract officers from proper methods of law enforcement by treating entire groups of people as suspect.

- With the USA PATRIOT Act of 2001 and the FISA Amendments Act of 2008, Congress passed national security legislation empowering the executive branch to conduct mass surveillance of American citizens and lawful permanent residents.<sup>29</sup> A new addition to FISA known as Section 702 increased the government’s surveillance capabilities, removing the long-standing requirement that it obtain a warrant to monitor communications between U.S. persons and suspected foreign targets.<sup>30</sup> This form of warrantless surveillance resulted in the “incidental collection” of innocent Americans’ communications.<sup>31</sup> While these policies are facially neutral with respect to ethnicity, the National Security Agency has been shown to use similar tools to target Arab Americans and American Muslims alike.<sup>32</sup>
- In 2003, the Terrorist Screening Center was created to monitor potential terrorist suspects and place individuals on a variety of watchlists for surveillance.<sup>33</sup> The fact of a person’s presence on a list, and why a person was added, is not provided to listed individuals. Notably, Dearborn, Michigan, a city with approximately 100,000 residents and home to the largest concentration of Arab Americans in the country, was second only to New York City in the number of people on the watchlist.<sup>34</sup> To be clear, we are talking about Americans on watchlists of undetermined size, though some estimates have them at more than one million people,<sup>35</sup> without a process for redress.
- In 2004, it was learned through a Freedom of Information Act request that the Census Bureau had shared demographic data about Arab Americans with the Department of Homeland Security on at least two occasions, in 2002 and 2003. Without a Middle East and North Africa (MENA) category on the Census, it is well documented that Arab Americans are an undercounted community. Yet, DHS was provided with data showing cities with more than 1,000 Arab Americans and zip code-level data broken down by country of

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<sup>29</sup> See generally EDWARD C. LIU, CONG. RSCH. SERV., FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA): AN Overview (Apr. 6, 2021), <https://sgp.fas.org/crs/intel/IF11451.pdf>.

<sup>30</sup> As defined in 22 U.S.C. § 6010, “U.S. persons” refers to U.S. citizens, lawful permanent residents, and corporations, organizations, and partnerships organized under U.S. law. See also BRENNAN CTR. FOR JUST., REDUCING “INCIDENTAL” COLLECTION UNDER FISA SECTION 702: A CRITICAL PROTECTION FOR AMERICANS (Oct. 2017), <https://www.brennancenter.org/sites/default/files/FISASection702ReducingIncidentalCollection.pdf>.

<sup>31</sup> For up-to-date information and analysis related to Section 702, see *FISA: Section 702 Collection*, LAWFARE (Apr. 21, 2018), <https://www.lawfareblog.com/topic/fisa-702-collection>.

<sup>32</sup> David Welna, *FBI, NSA Spied on American Muslims, Report Says*, NPR (July 10, 2014), <https://www.npr.org/2014/07/10/330325121/fbi-nsa-spied-on-american-muslims-report-says>.

<sup>33</sup> *Terrorist Screening Center*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/about/leadership-and-structure/national-security-branch/tsc> (last visited Feb. 27, 2022).

<sup>34</sup> Christopher Matias et al., *The City that Bears the Brunt of the National Terror Watchlist*, ARAB AM. NEWS (Oct. 04, 2017), <https://www.arabamericanews.com/2017/10/04/the-city-that-bears-the-brunt-of-the-national-terror-watchlist>.

<sup>35</sup> See Timothy Bella, *The FBI’s Terrorism Watchlist Violates the Constitution, Federal Judge Says*, WASH. POST (Sept. 5, 2019), <https://www.washingtonpost.com/nation/2019/09/05/fbi-terror-watch-list-unconstitutional>.

origin.<sup>36</sup> As a result, the Census Bureau revised its policy on what it called “sensitive populations.”<sup>37</sup>

- In 2011, the Associated Press published an investigative report on New York Police Department (NYPD) counterterrorism and surveillance programs that directly targeted Arab American Muslim businesses, mosques, and communities in New York and New Jersey in the immediate aftermath of 9/11.<sup>38</sup> The revelations of the breadth and depth of the NYPD’s surveillance program were shocking, with use of widespread “ethnic mapping,” and reporting on innocent people going about their daily routines. The NYPD’s spying program and others like it are not only unconstitutional, but are also ineffective and significantly harmful to the communities they infiltrate. Not a single lead on terrorist operations resulted from NYPD’s spying activities.<sup>39</sup>
- In 2011, the Obama Administration released the “Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States.” The plan was introduced as a domestic counterterrorism strategy and became the foundation for the federal government’s Countering Violent Extremism (CVE) programs.<sup>40</sup> In 2016, DHS began the Interagency CVE Task Force, which essentially approached community outreach to American Muslim communities as part of counterterrorism programming. Beyond the serious issue of the lack of an evidence-based foundation for CVE, these programs sought to deputize local community members and organizations to surveil their own communities on behalf of the U.S. government. The FBI itself described CVE as designed to “strengthen our investigative, intelligence gathering, and collaborative abilities to be proactive in countering violent extremism.”<sup>41</sup>
- In 2011, a series of reports by an investigative journalist exposed biased FBI counterterrorism training material.<sup>42</sup> Characterizing American Muslims and Arab Americans as prone to violence, some of the material’s “highlights” include statements that “mainstream American Muslims are likely to be terrorist sympathizers,” comparisons between Islam and the Death Star from Star Wars, and assertions that the “Arab mind” is “swayed more by ideas than facts,” and that unlike the “Western Mind” being “even keel,”

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<sup>36</sup> Lynette Clemetson, *Homeland Security Given Data on Arab-Americans*, N.Y. TIMES (July 30, 2004), <https://www.nytimes.com/2004/07/30/us/homeland-security-given-data-on-arab-americans.html>.

<sup>37</sup> Lynette Clemetson, *Census Policy on Providing Sensitive Data Is Revised*, N.Y. TIMES (Aug. 31, 2004), <https://www.nytimes.com/2004/08/31/us/census-policy-on-providing-sensitive-data-is-revised.html>.

<sup>38</sup> See *Highlights of AP’s Pulitzer Prize-winning Probe into NYPD Intelligence Operations*, ASSOCIATED PRESS, <https://www.ap.org/about/awards-and-recognition/highlights-of-aps-pulitzer-prize-winning-probe-into-nypd-intelligence-operations> (last visited Feb. 27, 2022); David Crary, *AP Series About NYPD Surveillance Wins Pulitzer*, ASSOCIATED PRESS (Apr. 16, 2012), <https://www.ap.org/ap-in-the-news/2012/ap-series-about-nypd-surveillance-wins-pulitzer>.

<sup>39</sup> Matt Apuzzo & Joseph Goldstein, *New York Drops Unit that Spied on Muslims*, N.Y. TIMES (Apr. 15, 2014), <https://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html>.

<sup>40</sup> EXEC. OFF. OF THE PRESIDENT, STRATEGIC IMPLEMENTATION PLAN FOR EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES 3 (Dec. 2011), <https://obamawhitehouse.archives.gov/sites/default/files/sip-final.pdf>.

<sup>41</sup> FAIZA PATEL & MEGHAN KOUSHIK, BRENNAN CTR. FOR JUST., COUNTERING VIOLENT EXTREMISM 23 (2017), [https://www.brennancenter.org/sites/default/files/publications/Brennan%20Center%20CVE%20Report\\_0.pdf](https://www.brennancenter.org/sites/default/files/publications/Brennan%20Center%20CVE%20Report_0.pdf).

<sup>42</sup> Spencer Ackerman, *FBI ‘Islam 101’ Guide Depicted Muslims as 7th-Century Simpletons*, WIRED (July 27, 2011), <https://www.wired.com/2011/07/fbi-islam-101-guide>.

in the Arab world, “Outbursts and Loss of Control [is] Expected.”<sup>43</sup> Various government officials, including then FBI Director Robert Mueller, distanced themselves from the material and asserted they did not represent the government’s views accurately. The FBI conducted a review of 160,000 pages of material and more than 1,000 slides or videos and removed 876 documents.<sup>44</sup> Though an important step, it was not clear how the material pulled would be removed or corrected for those who received the bias trainings, including state and local officials, and what steps were being taken to ensure anti-Muslim or anti-Arab material would not be used in the future.

- In 2017, the Department of Transportation issued two guidance documents to address the plentiful examples of discrimination on American airplanes.<sup>45</sup> The year prior, AAI held a congressional briefing entitled, “Flying While Arab, Muslim, Sikh, Italian Economist Doing Math.” The briefing discussed the increase in cases of Arabs and Muslims, and those perceived to be either, being removed from airplanes or prevented from boarding. The reference in the title was to a case of an Italian economist whose differential equations were confused for Arabic by the passenger seated next to him and served as the grounds for his removal from plane.<sup>46</sup> The DOT guidance came years after complaints of discriminatory profiling from fellow passengers or airline employees who complained about their presence to the airlines themselves enforcing the discriminatory treatment with the removals. It is important to note these examples are in addition to the Transportation Security Administration’s (TSA’s) profiling of Arab Americans and American Muslims being subjected to “random” secondary screening.<sup>47</sup>
- In 2018, the Trump Administration announced that it would investigate thousands of decades-old fingerprints to identify and rescind the citizenship of U.S. citizens whose naturalization forms may have included false information.<sup>48</sup> This was an attempt to relaunch Operation Janus, a DHS program disbanded in 2016.<sup>49</sup> Troublingly, the program appeared to target South Asian, Arab, or Muslim men,<sup>50</sup> and between 2017 and 2018, many cases stemming from the operation “involve[d] people whose histories raise no national-security concerns.”<sup>51</sup>

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<sup>43</sup> Spencer Ackerman, *FBI Taught Agents They Could ‘Bend or Suspend the Law.’* WIRED (Mar. 28, 2012), <https://www.wired.com/2012/03/fbi-bend-suspend-law>.

<sup>44</sup> See *Oversight of the Federal Bureau of Investigation, Hearing Before the H. Comm. on the Judiciary*, 112th Cong. (2012).

<sup>45</sup> U.S. DEP’T OF TRANSP., GUIDANCE FOR AIRLINE PERSONNEL ON NON-DISCRIMINATION IN AIR TRAVEL (2017), <https://www.transportation.gov/airconsumer/guidance-airline-personnel-non-discrimination-air-travel>.

<sup>46</sup> Steph Solis, *Professor Suspected of Being a Terrorist Because of a Math Equation*, USA TODAY (May 7, 2016), <https://www.usatoday.com/story/news/2016/05/07/professors-airplane-math-leads-flight-delay/84084914>.

<sup>47</sup> See Michael S. Schmidt & Eric Lichtblau, *Racial Profiling Rife at Airport, U.S. Officers Say*, N.Y. TIMES (Aug. 11, 2012), [https://www.nytimes.com/2012/08/12/us/racial-profiling-at-boston-airport-officials-say.html?\\_r=0](https://www.nytimes.com/2012/08/12/us/racial-profiling-at-boston-airport-officials-say.html?_r=0).

<sup>48</sup> Nick Miroff, *Scanning Immigrants’ Old Fingerprints, U.S. Threatens to Strip Thousands of Citizenship*, WASH. POST (June 13, 2018), [https://www.washingtonpost.com/world/national-security/scanning-immigrants-old-fingerprints-us-threatens-to-strip-thousands-of-citizenship/2018/06/13/2230d8a2-6f2e-11e8-afd5-778aca903bbe\\_story.html](https://www.washingtonpost.com/world/national-security/scanning-immigrants-old-fingerprints-us-threatens-to-strip-thousands-of-citizenship/2018/06/13/2230d8a2-6f2e-11e8-afd5-778aca903bbe_story.html).

<sup>49</sup> *Id.*; see also U.S. DEP’T OF HOMELAND SEC., OFF. OF INSPECTOR GEN., POTENTIALLY INELIGIBLE INDIVIDUALS HAVE BEEN GRANTED U.S. CITIZENSHIP BECAUSE OF INCOMPLETE FINGERPRINT RECORDS 7 (Sept. 8, 2016), <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf>.

<sup>50</sup> See Tina Vasquez, *Trump Administration Is Conflating Immigration with Terrorism at the Expense of Domestic Threats*, REWIRE NEWS GRP. (Feb. 15, 2018), <https://rewirenewsgroup.com/article/2018/02/15/trump-administration-conflating-immigration-terrorism-expense-domestic-threats>.

<sup>51</sup> Seth Freed Wessler, *Is Denaturalization the Next Front in the Trump Administration’s War on Immigration?*, N.Y. TIMES (Dec. 19, 2018), <https://www.nytimes.com/2018/12/19/magazine/naturalized-citizenship-immigration-trump.html>.



- In 2016, as a presidential candidate, Donald Trump advocated for warrantless surveillance of U.S.-based mosques,<sup>52</sup> openly considered a database of American Muslims and Syrian refugees,<sup>53</sup> and called for a “total and complete shutdown of Muslims entering the United States . . . .”<sup>54</sup> During his first week in office, President Trump signed Executive Order 13769, which suspended the entry of all refugees, regardless of nationality, and foreign nationals from six Arab countries and Iran, all of which are majority Muslim.<sup>55</sup> The Muslim Ban saw several revisions and a multitude of legal challenges but was ultimately upheld by the U.S. Supreme Court in *Trump v. Hawaii*.<sup>56</sup> President Biden repealed the Muslim Ban by Executive Order, but the NO BAN Act has stalled in the Senate.<sup>57</sup>
- In 2021, the Biden Administration established the Center for Prevention Programs and Partnerships (CP3). While appearing to be an extension of the Obama Administration’s Countering Violent Extremism (CVE) programs,<sup>58</sup> Biden Administration officials have distanced themselves from previous CVE efforts saying they have taken a new approach. However, like its predecessors, CP3 seems to rest on flawed concepts about “radicalization” that perpetuate stereotypes of communities and undermine public trust in government.<sup>59</sup>

These highlighted policies have served to only entrench suspicion of Arab Americans among their fellow Americans, including policy makers. The fact that a specific community is disparately impacted by such policies seems to be viewed as a necessary outcome of post-9/11 national security practices. This does harm both to the people from these communities and to the rights and liberties of all Americans.

Experiencing the resulting distrust, many Arab Americans have developed a skepticism toward the underlying motivations of government policies and officials, and thus are disincentivized from taking affirmative steps to interact with their government. This applies in cases where they may be the victim of discrimination or hate crimes. According to a 2006 study funded by the National Institute of Justice, “government and public reactions after September 11 have created a particular environment in which some Arab American communities have collectively experienced a form of

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<sup>52</sup> Emily Stephenson & Amanda Becker, *Trump Backs Surveillance of Mosques Despite Criticism of Rhetoric*, REUTERS (June 15, 2016), <https://www.reuters.com/article/us-usa-election/trump-backs-surveillance-of-mosques-despite-criticism-of-rhetoric-idUSKCN0Z12AS>.

<sup>53</sup> Jeremy Diamond, *Trump Doubles Down on Calls for Mosque Surveillance*, CNN (June 15, 2016), <https://www.cnn.com/2016/06/15/politics/donald-trump-muslims-mosque-surveillance/index.html>.

<sup>54</sup> Jessica Taylor, *Trump Calls for ‘Total and Complete Shutdown of Muslims Entering’ U.S.*, NPR (Dec. 7, 2015), <https://www.npr.org/2015/12/07/458836388/trump-calls-for-total-and-complete-shutdown-of-muslims-entering-u-s>.

<sup>55</sup> See *Full Executive Order Text: Trump’s Action Limiting Refugees into the U.S.*, N.Y. TIMES (Jan. 27, 2017), <https://www.nytimes.com/2017/01/27/us/politics/refugee-muslim-executive-order-trump.html>; Alan Yuhas & Mazin Sidahmed, *Is This a Muslim Ban? Trump’s Executive Order Explained*, GUARDIAN (Jan. 31, 2017), <https://www.theguardian.com/us-news/2017/jan/28/trump-immigration-ban-syria-muslims-reaction-lawsuits>.

<sup>56</sup> Adam Liptak & Michael D. Shear, *Trump’s Travel Ban Is Upheld by Supreme Court*, N.Y. TIMES (June 26, 2018), <https://www.nytimes.com/2018/06/26/us/politics/supreme-court-trump-travel-ban.html>.

<sup>57</sup> *Biden Has Overturned Trump’s ‘Muslim Travel Ban.’ Activists Say That’s Not Enough*, NPR (Mar. 6, 2021), <https://www.npr.org/2021/03/06/974339586/biden-has-overturned-trumps-muslim-travel-ban-activists-say-thats-not-enough>.

<sup>58</sup> See HARSHA PANDURANGA, BRENNAN CTR. FOR JUST., COMMUNITY INVESTMENT, NOT CRIMINALIZATION 3-5 (June 17, 2021), <https://www.brennancenter.org/our-work/research-reports/community-investment-not-criminalization>.

<sup>59</sup> *Id.*; see generally FAIZA PATEL, BRENNAN CTR. FOR JUST., RETHINKING RADICALIZATION (2011), <https://www.brennancenter.org/sites/default/files/legacy/RethinkingRadicalization.pdf>.

cultural trauma, and in these concentrated communities, fear of being victimized by state-sponsored policies and practices is greater than fear of conventional hate or bias related violence.”<sup>60</sup> Like the bigotry, discrimination, and exclusion before it, government targeting of Arab Americans has negative impacts on public safety.

### **Anti-Arab Bigotry**

While this testimony has focused on government policies where the committee has direct jurisdiction, it is important to note that these policies also inform, and are themselves influenced by, anti-Arab bigotry. Negative portrayals of Arabs and Arab Americans are common. Both the entertainment industry and media outlets have played a significant role in either driving these negative portrayals or reinforcing them. Arabs and Muslims, two groups that are often falsely considered interchangeable, continue to be vilified on big and small screens alike. In the words of the late Jack Shaheen, who dedicated his life to examining and combating anti-Arab stereotypes in the media, “Arabs are the most maligned group in the history of Hollywood.”<sup>61</sup> While in recent years there have been increased depictions of Arabs as regular people (a decidedly sad threshold for certain), it will take a long time to overcome the harmful stereotypes of the historical depictions of undesirable characters, including dangerous terrorists.

The negative portrayal goes well beyond fiction. What emerges because of these stereotypes is an Arab and Muslim exception to the customary threshold of bigotry deemed appropriate for mainstream outlets. The news media’s embrace of anti-Arab commentary is evident. When a commentator declared, “Arabs like to bomb crap and live in open sewage,” his bigotry did not disqualify him from appearing on leading American media networks, from CNN to Fox News.<sup>62</sup> In the face of apparent pushback, a television personality lamented that “Forty-eight years ago in this country we could make fun of Arabs. . . . But now we can’t. What has changed in America?”<sup>63</sup>

The impact of the normalization of anti-Arab bigotry by the media is sporadically visible in our political discourse as well. For example, during the 2008 presidential election, Republican nominee Senator John McCain was confronted on the campaign trail by a woman who said: “I can’t trust Obama, . . . he’s an Arab.” Senator McCain challenged the bigotry inherent in her statement about then-candidate Barack Obama, and he was rightly acknowledged for it. However, his admirable instinct to defend Obama resulted in him harshly rejecting the “accusation” of Arab identity, stating, “No ma’am, no ma’am. He’s a decent family man,” without further explanation.<sup>64</sup> The impression left from this exchange was clear: being an Arab and decent were mutually exclusive terms.<sup>65</sup>

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<sup>60</sup> NICOLE J. HENDERSON ET AL., VERA INST. OF JUST., LAW ENFORCEMENT & ARAB AMERICAN COMMUNITY RELATIONS AFTER SEPTEMBER 11, 2001: TECHNICAL REPORT 69 (June 2006), <https://www.vera.org/publications/law-enforcement-arab-american-community-relations-after-september-11-2001-technical-report>.

<sup>61</sup> *Reel Bad Arabs: How Hollywood Vilifies a People: Transcript*, MEDIA EDUC. FOUND. (2006), <http://www.mediaed.org/transcripts/Reel-Bad-Arabs-Transcript.pdf>.

<sup>62</sup> Ben Shapiro (@benshapiro), TWITTER (Sept. 27, 2010, 3:06 PM), <https://twitter.com/benshapiro/status/25712847277?lang=en>.

<sup>63</sup> Adam Serwer, *Loss of Liberty*, AM. PROSPECT (Jan. 19, 2010), <https://prospect.org/article/loss-liberty/>.

<sup>64</sup> Jane Kim, *Arab or Decent?*, COLUM. J. REV. (Oct. 14, 2008), [https://archives.cjr.org/campaign\\_desk/arab\\_or\\_decent.php](https://archives.cjr.org/campaign_desk/arab_or_decent.php).

<sup>65</sup> *Id.*

The 2016 presidential election and the candidacy of Donald Trump would bring a newfound, noticeable increase in bigoted campaign rhetoric targeting many communities, particularly American Muslims.

Such stereotypes, particularly emanating from policy makers, are not without consequence. According to AAI polling, half of all Arab Americans have personally experienced discrimination in the past because of their ethnicity or country of origin, and sixty-two percent are concerned about future discrimination. When it comes to Arab Americans who are Muslim, that number jumps significantly, with nearly eight out of ten concerned about facing discrimination in the future.<sup>66</sup>

Given what AAI surveys of American attitudes show, these experiences or feelings are well founded. Since approval ratings have been tracked by AAI polling, the first time that a majority of Americans were found to hold favorable opinions of Arab Americans (52%) was in 2017.<sup>67</sup>

The depiction of Arabs in the entertainment industry, the often-biased reporting of news from the Arab world, and the unrelenting coverage of the indefinite “war on terror,” with its ostensibly leading Arab or Muslim main characters, come together to produce a prejudice or distrust of Arab Americans in the most classic understanding of bigotry.

### **The Backlash Effect**

In addition to bigotry, Arab Americans often find themselves as targets because of events wholly unrelated to them and vulnerable to attack—both threats and targeted attacks—in the wake of developments in the Middle East or incidents of mass violence. The incident may be domestic or take place abroad, but if viewed as an issue related to national security, members of Muslim, Arab or South Asian (MASA) communities will feel the backlash effect. Episodic violence against immigrant communities has been evidenced after major events such as intense waves of immigration, World War II, and 9/11.<sup>68</sup> In these instances, hate is “redeployed as patriotic gestures.”<sup>69</sup> The aftermath of 9/11, when communities perceived to be Arab or Muslim, including Sikh Americans, endured untold retaliatory violence, is a particularly salient example of the backlash. The violence prompted then FBI Director Robert Mueller to warn, “Such acts of retaliation violate federal law and, more particularly, run counter to the very principles of equality and freedom upon which our nation is founded.”<sup>70</sup>

However, similar tides of antipathy, albeit less severe, date back to the 1970s with the oil embargo and the Iran hostage crisis. As one Arab American would explain it, “suddenly we were being held responsible for things we had nothing to do with and no control over and maybe didn’t support in the first place.”<sup>71</sup>

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<sup>66</sup> ARAB AM. INST., THE ARAB AMERICAN VOTE: IDENTITY AND POLITICAL CONCERNS 14 (Oct. 25, 2016), <https://www.aaiusa.org/library/the-arab-american-vote-2016>.

<sup>67</sup> ARAB AM. INST., AMERICAN ATTITUDES TOWARDS ARABS AND MUSLIMS 5 (Dec. 5, 2017), <https://www.aaiusa.org/library/american-attitudes-towards-arabs-and-muslims-2017>.

<sup>68</sup> Muneer Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CAL. L. REV. 1259, 1284 (2004).

<sup>69</sup> *Id.* at 1307.

<sup>70</sup> *Some Arab-Americans Afraid to Go to Work – 2001-09-17*, VOICE OF AM. NEWS (Oct. 28, 2009, 9:33 AM), <https://www.voanews.com/a/a-13-a-2001-09-17-26-some-66961257/378296.html>.

<sup>71</sup> David Lamb, *Loyalty Questioned: U.S. Arabs Close Ranks Over Bias*, L.A. TIMES (Mar. 13, 1987), <https://www.latimes.com/archives/la-xpm-1987-03-13-mn-5585-story.html>.

It was not until 1990 in the aftermath of the Gulf War, and its dramatic increase in hate crime, that the backlash effect, which had been cemented in the Arab American experience, was so severe that President George H.W. Bush spoke out against it. After a meeting with community leaders, President Bush acknowledged the targeting of Arab Americans, stating, “I want this message to go out beyond this room—today some Americans are the victims of appalling acts of hatred. . . . Death threats, physical attacks, vandalism, religious violence, and discrimination against Arab-Americans must end. These hate crimes have no place in free society and we’re not going to stand for them.”<sup>72</sup>

Decades in the making, the backlash effect became common for Arab Americans, as well as members of the Muslim, Arab, and South Asian communities who would be equally subjected to its destructive impact. But the backlash following the terrorist attacks of September 11, 2001, would prove to be unprecedented. Four days after the terrorist attacks, Balbir Singh Sodhi, a Sikh American, was murdered in a violent hate crime in Arizona—the first of many.<sup>73</sup> According to FBI data, there was a fourfold increase in “Anti-Other Ethnicity” hate crimes, which anti-Arab hate crimes were classified as at the time, reported in 2001.<sup>74</sup> This data demonstrates with clarity the “retaliation” Director Mueller had condemned.

As noted, the backlash effect has meant that communities have continued to face bigotry, hostility, and sometimes violence in the wake of events unconnected to them, and that is not unique to Arab Americans. A contemporary example is found in the surge of hate crimes targeting Asian American and Pacific Islander (AAPI) communities during the COVID-19 pandemic. Another parallel involving AAPI communities can be found in the recently dismantled “China Initiative,” a 2018 DOJ program that securitized Asian Americans or Asian immigrants by targeting them for investigation based on their national origin or “nexus to China.”<sup>75</sup>

### **Looking forward**

From the perspective of a community that is both targeted by discrimination and government actions ostensibly designed to keep us all safe, we respectfully provide the following concrete recommendations. While not comprehensive, we believe these to be a good starting point.

- From the incarceration of Japanese Americans during World War II to the Trump Administration’s Muslim Ban—our country has justified sweeping constraints on civil rights and civil liberties in the name of national security. While the present threat of white supremacist violence is not without precedent, the policy debate over how to address this threat has shifted from the paradigm of civil rights enforcement to a national security framework. As an organization that represents a securitized community,<sup>76</sup> we believe it is

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<sup>72</sup> President George H.W. Bush, Remarks at White House Briefing for Representatives of the Arab American Community (Sept. 24, 1990), <https://www.presidency.ucsb.edu/documents/remarks-and-question-and-answer-session-white-house-briefing-for-representatives-the-arab>.

<sup>73</sup> Harmeet Kaur, *A Sikh Man’s Murder at a Gas Station Revealed Another Tragedy of 9/11*, CNN (Sept. 11, 2021), <https://www.cnn.com/interactive/2021/09/us/balbir-singh-sodhi-9-11-cec/>.

<sup>74</sup> Curt Anderson, *FBI: Hate Crimes vs. Muslims Rise*, ASSOCIATED PRESS (Nov. 25, 2002), <https://apnews.com/article/5e249fb6e4dc184720e3428c9d0bd046>.

<sup>75</sup> Ryan Lucas, *The Justice Department Is Ending Its Controversial China Initiative*, NPR (Feb. 23, 2022, 9:15 PM), <https://www.npr.org/2022/02/23/1082593735/justice-department-china-initiative>.

<sup>76</sup> *Responding to White Supremacist Violence: A Securitized Community’s Perspective on Domestic Terrorism*, ARAB AM. INST. (Jan. 9, 2021), [www.aaiusa.org/library/responding-to-white-supremacist-violence](http://www.aaiusa.org/library/responding-to-white-supremacist-violence).

imperative to ensure that impacted communities are protected through rigorous civil rights enforcement and not further harmed by historically flawed and discriminatory national security policies. This is why we believe we can respond to this increasing threat without creating a new charge of domestic terrorism.<sup>77</sup>

- Hate crime laws have evolved over time and—because of broad bipartisan and near unanimous support from Congress—now include the COVID-19 Hate Crime Act and the accompanying Khalid Jabara and Heather Heyer NO HATE Act.<sup>78</sup> We believe this is an important first step toward achieving meaningful mandatory hate crime data collection and reporting. Congress must conduct oversight of the FBI's national hate crime reporting system, ensure that the DOJ provides information about the system as required by the Jabara-Heyer Act, and consider additional legislative approaches to improve state and local participation in the reporting process.
- Communities must have trust in their government to be able to report and respond to threats. A significant roadblock to establishing trust is the continued profiling of communities by law enforcement.<sup>79</sup> Past efforts to curb profiling, a practice that is both ineffective and discriminatory, have fallen short. In 2014, Attorney General Eric Holder released a revised Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. The initial guidance was issued by Attorney General Ashcroft in 2003.<sup>80</sup> Yet the revised guidance contained significant loopholes. Specifically, that guidance excluded screenings at the border, intelligence operations and national security, or local law enforcement when not part of federal operations. To be effective, the federal government must finally ban profiling in any context, including but not limited to policing, immigration enforcement, border operations, ports of entry, and intelligence programming.<sup>81</sup> Further, we recommend legislation, such as the End Racial and Religious Profiling Act (ERRPA), which would apply profiling prohibitions to state and local law enforcement in all contexts.<sup>82</sup>
- To promote not only a better understanding of the threats facing communities, but also increased oversight of the federal government's expansive counter terrorism powers, Congress should pass the Domestic and International Terrorism DATA Act (H.R. 3106), which passed the House and was received in the Senate in October 2019.<sup>83</sup> The DATA Act would require DHS, DOJ, and the FBI to share detailed information about their counterterrorism efforts, including data on incidents, investigations, and prosecutions. This

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<sup>77</sup> See Letter from Leadership Conf. on Civ. & Hum. Rts. et al. to Members of Congress (Jan. 19, 2021), [http://civilrightsdocs.info/pdf/policy/letters/2020/No\\_Domestic\\_Terrorism\\_Charge\\_1\\_21\\_2021.pdf](http://civilrightsdocs.info/pdf/policy/letters/2020/No_Domestic_Terrorism_Charge_1_21_2021.pdf).

<sup>78</sup> See Pub. L. No. 117-13, 135 Stat. 265 (2021).

<sup>79</sup> NICOLE HENDERSON ET AL., U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS, POLICING IN ARAB-AMERICAN COMMUNITIES AFTER SEPTEMBER 11, at 8 (July 2008), <https://www.ojp.gov/pdffiles1/nij/221706.pdf>.

<sup>80</sup> See *supra* text accompanying notes 27-28.

<sup>81</sup> See Press Release, ACLU, ACLU Response to Revised DOJ Guidance on the Use of Race by Federal Law Enforcement Agencies (Dec. 8, 2014), <https://www.aclu.org/press-releases/aclu-response-revised-doj-guidance-use-race-federal-law-enforcement-agencies>.

<sup>82</sup> See *End Racial and Religious Profiling Act*, HUM. RTS. CAMPAIGN (Oct. 8, 2021), <https://www.hrc.org/resources/end-racial-religious-profiling-act>.

<sup>83</sup> H.R. 3106, 116th Cong. (2019). Similar legislation enacted as part of the National Defense Authorization Act of 2020, though a positive start, did not go far enough to ensure accountability and congressional oversight of federal counterterrorism enforcement. See National Defense Authorization Act for Fiscal Year 2020, §§ 5601-5602, 133 Stat. 1198, 2153-59 (2020).



legislation has three main requirements: (1) annual reporting on federal counterterrorism efforts, including domestic and international terrorism incidents, investigations, and prosecutions; (2) regular audits of federal reports to promote oversight and accountability of federal agencies; and (3) additional federal research on domestic and international terrorism.

- To ensure existing prevention efforts do not violate civil rights and liberties like the countering violent extremism programs that preceded them, we recommend increased congressional oversight of DHS, including of the newly launched Center for Prevention Programs and Partnerships (CP3) and Targeted Violence and Terrorism Prevention (TVTP) programs, which have been found to be discriminatory and ineffective. Beyond the efficacy issue requiring measurable metrics for success, compelling congressional testimony and detailed reports from these programs outlining whether, when, and how demographic information, such as race, ethnicity, religion, or national origin, is used is crucial in providing stringent oversight.
- Finally, to reckon with the expansive authorities now in place, Congress should require a complete mapping of post-9/11 era programs and the impact they have had on communities. As has been noted, DHS is “the only government entity that, as part of its regular operations, conducts invasive physical searches of millions of Americans and their belongings each week without any predicate. It is also one of the only government agencies that retains huge amounts of data on individuals, using only ‘implied consent’ for justification.”<sup>84</sup> Mapping of DHS information collected, the purpose of its collection, how it is used within DHS, and if it is shared with local, state, or federal agencies, or foreign governments is critical to understanding the effect of DHS programs on all Americans, particularly those who have faced a disparate impact of counterterrorism policies, including Arab Americans, American Muslims, Black Americans, and Asian Americans.

## **Conclusion**

Many communities have experienced tangible harm from discriminatory government counterterrorism policies, ones that have often compromised our civil rights and civil liberties without increasing our safety. Over the course of the last twenty years, the federal government’s counterterrorism authorities have expanded significantly, often with little oversight.<sup>85</sup> We believe the right time to examine the impact and effectiveness of these policies is before they are enacted and after they have been operational. Basically, it is always necessary to provide oversight of profiling, warrantless surveillance, denial of due process, and more. Relying on sunset provisions that ultimately receive insufficient scrutiny before they are reauthorized has not proven successful in response to the granting of overly broad authorities. Now, twenty years since 9/11, is also the right time to revisit policies put in place after a crisis. The protection of the fundamental rights of securitized communities, like Arab Americans, are certainly at stake, but so is our ability to protect the constitutional rights of all Americans and maintain a free society.

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<sup>84</sup> Chappell Lawson & Alan Bersin, *The Future of Homeland Security*, in *BEYOND 9/11: HOMELAND SECURITY FOR THE TWENTY-FIRST CENTURY* 303 (Chappell Lawson et al. eds., 2020).

<sup>85</sup> See *Transparency & Oversight*, BRENNAN CTR. FOR JUST., [www.brennancenter.org/issues/protect-liberty-security/transparency-oversight](http://www.brennancenter.org/issues/protect-liberty-security/transparency-oversight) (last visited Feb. 27, 2022).

In January 2002, the *National Review* ran a cover story making the case for profiling.<sup>86</sup> In what they must have thought was a clever spin on the children's book—"Where's Waldo?"—the story declared, in big bold letters, "WHERE'S WALEED?" The illustration on the cover depicted innocent people being subjected to long lines or intrusive searches at an airport while a man in traditional Arab dress with a brief case and a bomb is welcomed by a law enforcement officer. I mention it today because it hangs in my office to remind me of the work we must continue to do and how far we have come. The truth is "Waleed," as representative of a vibrant, proud, and empowered ethnic constituency of Arab Americans is everywhere. She is serving in this body as a member of Congress from Michigan or Minnesota. He is also serving in this body as a member of Congress from Illinois, California, or Louisiana, and as a congressional staffer working tirelessly on our nation's most pressing issues. We are running for office—and winning—to serve on school boards, city councils, as mayors, or state legislatures. We are lawyers working to protect the right to cast our sacred ballot in elections and to protect our First Amendment right to free speech. We have protested in the streets in support of Black lives and American democracy. We are working on the frontlines of our response to COVID-19 as researchers or doctors or nurses or teachers, or on the frontline of protecting our country, serving in our armed forces. We have run for president, served in cabinet positions, and serve in the Biden Administration today. We were victims and first responders on the tragic day of September 11, 2001. And our public service continues today as we demand meaningful reform so that our country lives up to its ideals.

Thank you for the opportunity to testify before your committee today and for the important congressional oversight you are providing by convening this hearing. The Arab American Institute remains ready to offer our support in efforts that protect communities and the civil rights and civil liberties of all Americans.

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<sup>86</sup> See Rich Lowry, *Profiles in Cowardice*, NAT'L REV. (Jan. 28, 2002), <https://www.nationalreview.com/2002/01/profiles-cowardice-rich-lowry>.